A True European
Essays for Judge David Edward

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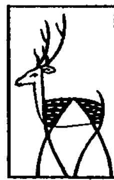

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Diplomas and the recognition of professional qualifications in the case law of the European Court of Justice

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1. ELEMENTA BRITANNICAE

IN A CONTRIBUTION to the *Festschrift* dedicated to David Edward it may be permitted to mention that the British members of the European Court of Justice have always played a particularly significant role in the development of the Court's case law on the recognition of diplomas and professional qualifications. The secrecy of the Court's deliberations and the rule under which judgments are never given by one judge alone certainly make it difficult to draw any particular conclusion from the fact that in many of the cases concerning students and their diplomas or, more generally, the recognition of professional qualifications, British members, both past and present, acted as *Judge Rapporteur*. Also, many of the influential Opinions delivered in those cases have been prepared by British Advocates General. One might even be tempted to think that this practice amounts to an unwritten jurisprudential principle that has emerged, in a very 'British' way indeed, over the last ten or fifteen years. David Edward has played a very prominent part in this tradition and the modest purpose of this article is to make some few comments on the state of Community law and, more particularly, on the Court's case law in that area.

2. THE INTERNAL MARKET, FREE MOVEMENT OF PERSONS AND COMMUNITY LEGISLATION FACILITATING THE MUTUAL RECOGNITION OF DIPLOMAS AND PROFESSIONAL QUALIFICATIONS

The fundamental objective, as stated in the preamble to the EC Treaty, of bringing about an ever closer union among the peoples of Europe could not be attained if the Community failed to realise that the success of its internal market required the concept of free movement of persons to go beyond the mere

physical move of persons and to extend to their diplomas and professional qualifications as well. Indeed, the right to take up employment or to establish oneself in another Member State or to provide cross-border services would be quite meaningless if those who wish to exercise these fundamental freedoms could not make use of their diplomas and professional qualifications abroad. On the other hand, the protection of the consumer or, more generally, the public interest calls for mechanisms to ensure that certain professions or activities cannot be exercised unless the person concerned posseses the appropriate specialised qualifications. But to require anyone wishing to exercise such a profession or activity in another Member State to hold all the professional qualifications prescribed by the law of that State, without taking into account the professional qualifications that person has acquired elsewhere, would seriously impede the achievement of one of the Treaty's most prominent objectives.

On the Treaty level, Community law provides for the Community legislator to adopt measures intended to facilitate the taking-up and pursuit of activities covered by the fundamental freedoms (see, in relation to workers, self-employed persons and services, Articles 40, 47, 55 EC, respectively). Exercising the competence thus conferred on it, the Community legislator adopted, mainly over a ten year period beginning in the late 1970s, a number of directives covering various professions, including those of doctor, general care nurse, dental practitioner, veterinary surgeon, midwife, pharmacist and architect (so-called sectoral directives).[1] Hence, with respect to the medical profession, Directive 93/16 provides that each Member State is to recognise the diplomas, certificates and other evidence of formal qualifications awarded to Community nationals by the other Member States in accordance with the conditions laid down in that directive, by giving such qualifications, so far as the right to take up and pursue the activities of doctor is concerned, the same effect in its territory as those which it itself awards. Thereby, Community law makes the award of a doctor's diploma subject to certain specific requirements, in order that the diploma is capable of being recognised automatically and unconditionally throughout the Community. Those requirements entail a degree of harmonisation and coordination at Community level of both basic and specialist medical training (the harmonisation aspect) and of the rules for taking up and pursuing the activities of a doctor in the Member States (the coordination aspect).[2]

However, since it had shown to be a rather difficult and lengthy process to provide for a Community regime on a profession by profession basis, the leg-

[1] The most important of those directives is the one on doctors: Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications (OJ 1993 L 165, 1), replacing Directives 75/362/EEC and 75/363/EEC. The other directives are Directives 77/452/EEC and 77/453/EEC (nurses responsible for general care), Directives 78/686/EEC and 78/687/EEC (dentists), Directives 78/1026/EEC and 78/1027/EEC (veterinary surgeons), Directives 80/154/EEC and 80/155/EEC (midwives), Directives 85/432/EEC and 85/433/EEC (pharmacists), Directives 85/384/EEC (architects), all as amended.

[2] See Case C–110/01 *Malika Tennah-Durez* v. *Conseil national de l'ordre des médecins*, judgment of 19 June 2003, not yet reported, para 31.

islative technique pursued in the following years favoured a more general approach, leading to (by now) three so-called 'general system' directives (Directives 89/48/EEC, 92/51/EEC and 1999/42/EC).[3] Those directives put in place another method of mutual recognition of diplomas and professional qualifications, a method that is based on the idea that the conditions upon which the practice of the professions concerned is dependent are to be broadly equivalent. Accordingly, persons holding a diploma authorising them to exercise a regulated activity in the Member State of origin should in principle be able to pursue the same activity in other Member States where that activity is regulated by the legislation of that State. If the activity is not regulated in the Member State of origin, the fact that it has been pursued there for a reasonable and sufficiently recent period of time should be regarded as a suitable qualification for taking up equivalent activities in Member States which regulate such activities. Nevertheless, the general system directives permit the host Member State to require the applicant, subject to certain conditions, to take compensation steps (adaptation period or aptitude test), notably where substantial differences exist between the theoretical and/or practical education and training undergone and that covered by the qualification required in the host Member State.

The 'SLIM' Directive 2001/19/EC amending and simplifying all these directives has achieved a remarkable consolidation of the legal and procedural regime for professional recognition.[4] With a view to further facilitating the rules on the recognition of professional qualifications, the Commission recently suggested replacing both the sectoral and the general system directives by a single text, in order to have a clearer and simpler set of rules applicable in that area.[5]

3. THE JUDGMENTS IN VLASSOPOULOU, HAIM AND HOCSMAN

As regards the case law, the judgment in *Vlassopoulou*[6] is certainly the leading case and this landmark decision pronounced in 1991 has soon become and still

[3] Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, 16), as amended; Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ 1992 L 209, 25), as amended; Directive 1999/42/EC of the European Parliament and of the Council of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications (OJ 1999 L 201, 77).

[4] Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 amending Council Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor (OJ 2001 L 206, 1).

[5] Com(2002) 119 final. Proposal for a Directive of the European Parliament and of the Council on the recognition of professional qualifications (document dated 7 March 2002).

[6] Case C–340/89 *Irene Vlassopoulou* v. *Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg* [1991] ECR I–2357.

is the foundation of the Court's case law in the area of recognition of diplomas and professional qualifications. In *Vlassopoulou* the Court was faced with the problem of how to deal with the refusal of the German authorities to admit a Greek lawyer, of the Athens Bar and with a German doctorate in law, to the legal profession in Germany. When the case started (in 1989), no measure had yet been adopted under Article 47(2) EC concerning the harmonisation of the conditions of access to the legal profession; Directive 89/48 did not apply to the facts of the case.[7] The Court stated that, even if applied without any discrimination on the basis of nationality, national requirements concerning qualifications may have the effect of hindering nationals of the other Member States in the exercise of their right of establishment guaranteed to them by Article 43 EC. That could be the case if the national rules in question took no account of the knowledge and qualifications already acquired by the person concerned in another Member State.[8] The Court's conclusion was that:

> a Member State which receives a request to admit a person to a profession to which access, under national law, depends upon the possession of a diploma or a professional qualification must take into consideration the diplomas, certificates and other evidence of qualifications which the person concerned has acquired in order to exercise the same profession in another Member State by making a comparison between the specialised knowledge and abilities certified by those diplomas and the knowledge and qualifications required by the national rules.[9]

Thus, it was in this judgment that the Court established the principle that in situations where no Directive on recognition of professional qualifications applies the Treaty obliges the national authorities to compare, on the one hand, the professional qualifications the host Member State requires for the exercise of the regulated profession concerned with, on the other hand, the professional qualifications the migrant Community national has. In so far as the applicant's qualifications correspond to those required, the host Member State must recognise the diploma of the person concerned.

Since then, the *Vlassopoulou* principle has proved to be very useful and beneficent. It has been applied to various other professions, such as those of doctor, dentist and architect, thereby being restated and refined. Today it can be said to be of general application.[10] The rulings in *Haim*[11] and *Hocsman*[12] provide good examples for it.

[7] *Vlassopoulou*, paras 11, 12. Now see Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ 1998 L 77, 36).

[8] *Vlassopoulou*, para 15.

[9] *Vlassopoulou*, para 16.

[10] Apart from the judgments referred to in the text, see eg Case C–234/97 *Teresa Fernández de Bobadilla* v. *Museo Nacional del Prado* [1999] ECR I–4773, para 29 to 31; Case C–232/99 *Commission* v. *Spain* [2002] ECR I–4235, para 21.

[11] Case C–319/92 *Salomone Haim* v. *Kassenzahnärztliche Vereinigung Nordrhein* [1994] ECR I–425.

[12] Case C–238/98 *Hugo Fernando Hocsman* v. *Ministre de l'Emploi et de la Solidarité* [2000] ECR I–6623.

In its judgment in *Haim*, the Court transposed the *Vlassopoulou* principle to the situation of an Italian national holding a diploma in dentistry awarded in 1946 by the University of Istanbul. Mr Haim had subsequently worked as a dental practitioner in Belgium where his Turkish diploma had been recognized as equivalent to a Belgian dentist's diploma. Having moved to Germany, he applied without success to the German authorities to be considered eligible for appointment as a dental practitioner of a social security scheme. The Court confirmed that recognition by a Member State of qualifications awarded by a third country, even if they have been recognised as equivalent in one or more Member States, does not bind the other Member States.[13] However, the Court went on to say that Article 43 EC prohibits Member States from refusing access to a regulated profession of a Community national whose diploma is not eligible for automatic recognition but who has been authorised to practise, and has been practising, his profession in the Community, without examining whether and, if so, to what extent, that person's professional experience corresponds to that required by the national legislation of the host Member State.[14]

The judgment in *Hocsman* clarified two points. First, doubts had been raised as to whether the *Vlassopoulou* principle is or should be limited to professions for which there is no sectoral directive. The argument put forward was that the Court's case law in this area concerned professions such as the profession of lawyer (at issue in *Vlassopoulou*) or estate agent (see *Aguirre Borrell*[15]) which at the time when those judgments were delivered had not (yet) been covered by Community legislation on the mutual recognition of diplomas. Some governments concluded that those judgments are therefore of no relevance to the freedom of movement of doctors, which is regulated (exhaustively) by Directive 93/16. The Court, however, followed the Commission's reasoning according to which it would be paradoxical if the existence of a directive aimed at mutual recognition of diplomas had the effect of depriving Community nationals whose diplomas did not meet the requirements set out in that directive of the possibility of relying on the *Vlassopoulou* principle, when they would certainly have been able to do so in the absence of such a directive. Moreover, the Court firmly asserted that the *Vlassopoulou* line of judgments is merely the jurisprudential expression of a principle which is inherent in the fundamental freedoms of the Treaty.[16] The second point relates to the extent as to which professional qualifications have to be taken into account when the *Vlassopoulou* principle is being applied. In that respect, the Court held that not only diplomas and related work experience obtained in a Member State but also every such qualification

[13] *Haim*, para 21, referring to Case C–154/93 *Abdullah Tawil-Albertini* v. *Ministre des Affaires Sociales* [1994] ECR I–451, para 13.

[14] *Haim*, para 29.

[15] Case C–104/91 *Colegio Nacional de Agentes de la Propiedad Inmobiliaria* v. *Aguirre Borrell and Others* [1992] ECR I–3003.

[16] *Hocsman*, para 24. See also Case C–31/00 *Conseil national de l'ordre des architectes* v. *Nicolas Dreessen* [2002] ECR I–663, para 25.

acquired in a third country have to be considered.[17] This appears to be a logical consequence of the fact that the *Vlassopoulou* principle stems from freedom of establishment, on which, as a fundamental freedom, all Community citizens can rely and which does not discriminate between professional qualifications originating within or outside the European Union. It is noteworthy that this formula seems to go beyond what Directive 2001/19 inserted into the sectoral directive on doctors. In effect, the new Article 42c of Directive 93/16 stipulates that Member States shall examine diplomas, certificates and other evidence of formal qualifications in the field covered by this Directive obtained by the holder outside the European Union in cases where those diplomas, certificates and other evidence of formal qualifications have been recognised in a Member State, as well as evidence of training undergone and/or professional experience gained in a Member State.[18]

In 2002, the Court effectively summarised this case law as follows:

> [T]he authorities of a Member State to which an application has been made by a Community national for authorisation to practise a profession, access to which depends, under national legislation, on the possession of a diploma or professional qualification or on periods of practical experience, are required to take into consideration all of the diplomas, certificates and other evidence of formal qualifications of the person concerned and his relevant experience, by comparing the specialised knowledge and abilities so certified and that experience with the knowledge and qualifications required by the national legislation.[19]
>
> That obligation extends to all diplomas, certificates and other evidence of formal qualifications as well as to the relevant experience of the person concerned, irrespective of whether they were acquired in a Member State or in a third country, and it does not cease to exist as a result of the adoption of directives on the mutual recognition of diplomas.[20]

4. TWO MAIN METHODS OF MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS

Generally speaking, two main methods of recognition of diplomas and professional qualifications can be distinguished: automatic and unconditional recognition on the sole basis of Community law and case-by-case recognition on the basis of a comparison of the actual qualifications with the qualifications required. Those methods are significantly different.

Automatic and unconditional recognition means that Member States must accept the equivalence of certain diplomas and cannot require the persons concerned to comply with obligations other than those laid down by the relevant directives. That type of recognition is governed by Community law alone.

[17] *Hocsman*, para 40.
[18] Article 14 No 17 of Directive 2001/19.
[19] *Dreessen*, para 24.
[20] *Commission* v. *Spain*, para 22.

Community law determines which are the minimum or other training requirements that need to be satisfied in order that the diploma qualifies for Community-wide recognition. Community law determines that every Member State has to treat such diplomas as if they were delivered by its own authorities. Community law determines in what way the professional title can be used. The effects of automatic and unconditional recognition are identical in all Member States. Automatic and unconditional recognition therefore presupposes some (minimal) harmonisation of the training leading to the grant of such a diploma. Otherwise the Member States' mutual trust in the adequacy of the diplomas awarded by other Member States might be at risk, such trust to be based on a training system the standards of which are determined by mutual agreement.

In contrast, recognition on a case-by-case basis compares professional qualifications: on the one hand those the migrant possesses with those the host Member State requires for the taking up and pursuit of the regulated activity. It is in principle the host Member State that determines according to its own legislation which professional qualifications are required to exercise the profession concerned. However, Community law provides a number of rules for the above-mentioned comparison: for instance that the exercise of a regulated activity in the home Member State for a certain period should generally suffice and provide sufficient guarantees for the host Member State to authorise the exercise of that activity on its own territory; or the obligation to take into account the migrant's diplomas as well as his experience in the area concerned and his relevant professional qualifications. The result of that comparison may, however, vary according to the Member State that carries out the comparison. Furthermore, it is possible that the host Member State may require the migrant person to complete a period of adaptation or to pass an aptitude test.

It is important to realise that no legal obligation for automatic and unconditional recognition can be found in the Treaty itself. Whereas the rules applicable to the case-by-case recognition can be derived from the Treaty, most notably the fundamental freedoms, and, therefore, apply whether there is a directive (further) facilitating recognition of professional qualifications or not, automatic and unconditional recognition necessarily presupposes the existence and applicability of Community legislation putting in place that method of recognition.

In most cases, automatic recognition is more advantageous for the person concerned since this method leaves no discretion to the host Member States' authorities.[21] It makes it possible to know precisely and in advance if a particular diploma gives the right to take up and pursue the corresponding profession in other Member States whereas the migrant has much less certainty as to what will be result of any case-by-case comparison.[22] A diploma that qualifies for

[21] This does not exclude the possibility that the host Member State requires the migrant person to have the language skills needed to practise the profession. In that regard and as to the limits the principle of proportionality imposes on the Member States, see Case C-424/97 *Salomone Haim* v. *Kassenzahnärztliche Vereinigung Nordrhein* [2000] ECR I-5123, paras 59, 60.
[22] See *Commission* v. *Spain*, para 25.

automatic and unconditional recognition amounts to a 'passport' enabling its holder to exercise the professional qualifications attested to by the diploma throughout the European Union, without their being open to challenge in the host Member State except in specific circumstances laid down by Community law.[23]

Since the mechanism of automatic and unconditional recognition has such far-reaching effects, it can only apply where its conditions are clearly and fully met. The judgment in *Erpelding*[24] provides an useful example.

Dr Erpelding, a Luxembourg national, had obtained a diploma of doctor and a diploma of specialist in internal (general) medicine in Austria. Both diplomas had been recognised by the competent Luxembourg authorities so that he could practise internal (general) medicine there. After having further qualified, again in Austria, as a specialist in 'internal medicine, cardiology practice', he wished, some years later and back in Luxembourg, to devote himself exclusively to the practice of cardiology. However, the Luxembourg authorities refused him the right to use the professional title of cardiologist. Indeed, under Directive 93/16, automatic recognition of a medical specialty requires that the specialty exists—as a specialty—in both Member States concerned. Since cardiology is regarded in Austria as a branch of internal medicine, cardiology did not appear, for Austria, on the list of medical specialties in Directive 93/16. For that reason, Dr Erpeldings's diploma in cardiology was not eligible for automatic recognition in Luxembourg where cardiology is a medical specialty. Accordingly, and although his Austrian diploma of cardiology might have been the standard Austrian qualification in cardiology, he had no automatic right, on the basis of that diploma, to use the professional title of cardiologist in Luxembourg.[25] This was a fairly obvious and inevitable result on the basis of Directive 93/16.[26]

If the judgment in *Erpelding* serves to illustrate the limitations of the system of automatic and unconditional recognition under Directive 93/16, the recent judgment in *Tennah-Durez* demonstrates the strength of that mechanism.

Mrs Tennah-Durez, of Algerian and then Belgian nationality, obtained a diploma of doctor in medicine from the Algiers faculty of medicine in 1989. The University of Ghent in Belgium recognised her six years of training and consequently authorised her to enrol for the seventh and final year of medicine, on

[23] See *Tennah-Durez*, para 57.

[24] Case C–16/99 *Ministre de la Santé* v. *Jeff Erpelding* [2000] ECR I–6821.

[25] *Erpelding*, paras 26, 27. The Luxembourg Minister of Health had (only) authorised Dr Erpelding to use the academic title of the Austrian diploma in the language of the State where that diploma had been obtained, namely 'Facharzt für Innere Medizin, Teilgebiet Kardiologie'.

[26] The application of the *Vlassopoulou* principle might well have led to a different solution. In order to avoid the (erroneous) impression that that principle could not apply in the present case, the Court pointed out that it had neither been mentioned in the order for reference nor discussed in the hearing (*Erpelding*, paras 20, 21). After the first *Dreessen* case (C–447/93), where no such statement had been included in the judgment that simply held that Mr Dreessen's diploma in architecture did not qualify for automatic recognition under Directive 85/384, it took many years until the issue was referred again, this time to ascertain whether the *Vlassopoulou* principle applies to Mr Dreessen's situation (see the second judgment in *Dreessen*, [C–31/00] paras 21, 22).

completion of which she was awarded the Belgian diploma of doctor in 1995. In addition, she qualified and was authorised to practise in Belgium as a general medical practitioner in 1998. Having moved to France, the question arose whether her Belgian diploma of doctor qualified for automatic and unconditional recognition in the other Member States, notwithstanding the fact that six out of seven years of the training had been received outside the European Union. The argument which was put forward against automatic recognition was that automatic recognition requires the medical training to be received predominantly in a university in a Member State or under the supervision of such a university. The Court, however, did not accept that argument. It stressed that Directive 93/16 does not specify either expressly or by implication the extent to which the medical training required by Directive 93/16 may comprise training received in a third country. The reason for this, as explained by the Court, was that for the purposes of recognition under Directive 93/16 the relevant aspect is not where the training leading to the diploma has been provided but whether the training complies with the qualitative and quantitative requirements laid down by Directive 93/16.[27] Consequently, provided that the competent authority in the Member State awarding the diploma is in a position to validate medical training received in a third country and to conclude on that basis that the training duly complies with the training requirements laid down by Directive 93/16, that training may be taken into account in deciding whether to award a doctor's diploma.[28] The Court stressed that the responsibility for ensuring that the training requirements, both qualitative and quantitative, are fully complied with falls wholly on the competent authority of the Member State awarding the diploma. In exercising its powers that authority must bear in mind that a doctor's diploma will enable its holder to move around and practise throughout the European Union as a result of its being recognised automatically and unconditionally.[29] The Court also pointed out that such a diploma is in fact not a diploma awarded in a third country but a diploma awarded by a university in a Member State.[30]

That last point is the key difference between *Tennah-Durez* and *Hocsman*. In *Hocsman*, the migrant doctor also held a third country diploma in medicine, went to Spain, had his Argentinean diploma recognized as equivalent to the Spanish degree in medicine and surgery so allowing him to practice medicine in Spain and to train there as a specialist in urology. He then moved to France where his various applications to register with the *Ordre National des Médecins* with a view to practising in France were rejected on the ground that the Argentinean diploma did not satisfy the conditions required in that respect. In effect, unlike Dr Tennah-Durez, he had not obtained a—new—doctor's diploma under Directive 93/16, but—only—a certificate of equivalence. His

[27] *Tennah-Durez*, para 53.

[28] *Tennah-Durez*, para 60.

[29] *Tennah-Durez*, para 56.

[30] *Tennah-Durez*, para 69.

situation therefore was not covered by the automatic and unconditional recognition available for a diploma awarded under Directive 93/16. All that the Court could do was to invite the national authorities to consider, when applying the *Vlassopoulou* principle, whether the equivalence accorded in Spain was based on criteria comparable to those whose purpose, in the context of Directive 93/16, is to ensure that Member States may rely on the quality of the diplomas in medicine awarded by the other Member States.[31] That might facilitate the recognition of his Argentinean diploma.[32]

5. CONCLUSION

Automatic recognition of diplomas and professional qualifications has proved to be a very powerful tool that appreciably facilitates the free movement of those professionals entitled to benefit from it. As the case law shows, the applicability of that mechanism and, more particularly, its unconditional effect is linked to and coupled with a rather strict handling of the requirements the various sectoral directives set out. However, once a diploma eligible for automatic recognition has been delivered in accordance with the relevant directive, the effects of its recognition by virtue of Community law cannot easily be put into question. The general system directives are of a greater scope than the sectoral directives but their effects are more limited since the recognition mechanism they create is partly national in nature such that outcomes are liable to vary from Member State to Member State. The principle established in *Vlassopoulou* and further developed since then underpins and strengthens both mechanisms, in that this principle constantly acts as a reminder of the Treaty dimension of mutual recognition of diplomas and professional qualifications.

[31] *Hocsman*, para 39.
[32] It seems that Dr Hocsman eventually was granted recognition of his Argentinean diploma.

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The Transformation of the Rome Convention

RICHARD PLENDER QC

1. INTRODUCTION

THE ROME CONVENTION on the Law Applicable to Contractual Obligations[1] is one of the few texts related to Community law on which David Edward was not called upon to rule in the period, approaching twelve years, that he spent as judge of the Court of Justice of the European Communities. Admittedly he had cause to refer to it in conjunction with the Brussels Convention.[2] In *Groupe Concorde*[3] he sat as a member of the full court which found support in the Rome Convention for the conclusion that it is for the applicable law to determine the place of performance of the obligation for the purposes of Article 5(1) of the Brussels Convention. In *Coreck Maritime GmbH* v. *Handelsveem BV*[4] he presided over the Fifth Chamber when it reasoned that a court situated in a contracting state must assess the validity of a jurisdiction clause according to the applicable law, including conflict of laws rules, when applying Article 17 of the Brussels Convention. He was however denied the opportunity to rule on the meaning of the Rome Convention directly since the protocols on its interpretation remain to be ratified by one of the contracting states, almost a quarter of a century after the Convention's conclusion.[5]

As a former holder of the Salvesen Chair at Edinburgh, he would know better than most that the shipping company of that name contributed to the development of Scottish private international law as litigant in a seminal judgment of

[1] Convention on the Law Applicable to Contractual Obligations, Rome, 19 June 1980, OJ 1980 L266.
[2] Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 27 September 1968, OJ 1972 of L299/32 as amended by the Convention of Accession of 9 October 1978 of the Kingdom of Denmark, of Ireland and of the United Kingdom, OJ 1978 L304, the Convention of 25 October 1982 on the Accession of the Hellenic Republic, OJ 1982 L388 and the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, OJ 1989 L285.
[3] Case C–440/97 *GIE Groupe Concorde and Others* v. *Master of the vessel 'Suhadiwarno Panjan'* [1999] ECR I–6307, paras 26 and 32.
[4] Case C–387/98 *Coreck Maritime GmbH* v. *Handelsveem BV and others* [2000] ECR I–9337.
[5] Belgium has yet to ratify the two Protocols on Interpretation, 19 June 1980, OJ 1980 L266/1.