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## SEMINAR 7                      THE RIGHT OF ESTABLISHMENT – Article 49 FEU (ex-Art 43 EC)

### Reading

Barnard Ch 12

Marengo, “The Notion of Restriction on the Freedom of Establishment and Provision of Services in the case-law of the Court (1991) 11 YEL 11

#### 1.     **Introduction**

- Distinction between the Right of Establishment and the freedom to provide Services
- *Commission v Germany* (Insurance cases) Case 205/84 [1986] ECR 3755
- The “centre of gravity” test: see *Gebhard* case C-55/94 [1995] ECR I-4165 (annotated in (1996) 33 CMLRev 1073)
- Services/goods

Establishment/Services [Article 49 v Article 56 FEU (ex-Arts 43 v 49 EC)]

- Right to entry and residence – Directive 73/148 (similar to Directive 68/360 re workers)
- Right to remain for self-employed – Directive 75/34 (Reg 1251/70)
- Directive 64/221

*All replaced*

#### 2.     **Freedom of Establishment**

- Direct effect of Article 49 FEU(ex-Art 43 EC) – *Reyners v Belgium* Case 2/74 [1974] ECR 631

What is establishment? *Klopp*, Case 107/83 [1984] ECR 2971 (secondary establishment)

Exercise of Freedom of Establishment by Legal Persons

*Segers*, Case 78/85 [1986] ECR 2375 (Director of company excluded from a national sickness insurance scheme on ground company’s registered office in another MS even though not conducted business there)

*R v Treasury ex p Daily Mail*, Case 81/87 [1988] ECR 5483

*Centros*, Case C-212/97 [1999] ECR I-1459

*Uberseering*, Case C-208 [2002] ECR I-9919

The Issue of Professional Qualifications (common to Establishment & Services)

Read: Pertek, “Free Movement of Professionals and Recognition of Higher Education Diplomas” (1992) 12 YEL 293

- *Vlassopoulou*, Case 340/89 [1991] ECR 2357
- Lawyers
  - Directive 77/249 re provisions of services by lawyers
  - Directive 98/5 home title for lawyer