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The Court of Justice in the Archives Project
Analysis of the *Van Duyn* case (41/74)

Rebecca Munro and Rebecca Williams

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Abstract

This Working Paper is part of the CJEU in the Archives Project that sought to find the "added value" of analysing the *dossier de procédure* alongside already publicly available documents relating to landmark EU cases. *Van Duyn v Home Office* (1974) C-41/74 was the U.K.'s first preliminary reference procedure case and is best known for its decisions on the meaning of direct effect, free movement of workers and public policy under EU law. The *dossier* did provide some additional insight into the case due to the inclusion of the U.K.'s High Court decision and references to the U.K.'s domestic political context and policy making. Much of the *dossier* largely reflected already publicly available documents relating to the case suggesting the Court's decision-making process is transparent. However, 11% of the *dossier* was redacted, potentially undermining this aforementioned conclusion. Being granting access to redacted documents in the future would be very beneficial for any research on the *dossiers*.

Keywords

Direct Effect; Directive; Freedom of Movement; Free Movement of Workers; Workers; Restrictions; Non-discrimination; Community Law; Fundamental Principle; Discretionary Power of National Authority; Strict interpretation; Public Policy; Public Security; Personal Conduct; Article 48 EEC; Article 3 Directive 64/221.

Executive summary

A. Insights into legal issues and arguments

The legal issues and arguments submitted in *Van D*uyn were largely accurately represented by the Court Judgment. Aside from the odd reference to domestic policy or political context, the Court judgment reflected the legal issues raised in the arguments of the parties very accurately. This assessment does not extend to issues raised in the Oral Proceedings, as this was redacted from the *dossier*.

B. Insights into procedures and institutions

There were no significant issues with procedures or institutional processes noted from this *dossier*. Again, this assessment does not extend to issues raised in the Oral Proceedings, as this was redacted from the *dossier*.

C. Insights into actors

Any noted differences between actors in sources or styles of legal reasoning could have been largely determined from the previously publicly available materials, as the Court Judgment did accurately reflect the submissions from the different parties. The redacted material from the Oral Proceedings from the *dossier*, however, may have provided some additional insight that we were unable to assess.

D. Dossier *as a document (compared to the judgment): length, contents, redaction*

The *dossier* was the shortest in the project. Moreover, its contents (see Annex I) were somewhat standard for a case being heard at the CJEU. Aside from the case file for the prior High Court Judgment, the content was mostly generic institutional correspondence and official reports e.g. the Court Judgment and AG Opinion. The most significant takeaway from the *Van Duyn dossier* is the research limitations caused by large redaction of documentation from the Oral Proceedings. Heavy redaction made it difficult to fully assess if there was any 'added value' from gaining access to the *dossiers*. As a result, this has the potential to undermine this paper's conclusion that the *dossier* did not provide much additional information beyond that of the previously publicly available document. Moreover, it demonstrates how redaction can limit academic research using the archives. Here the issue of finding the balance of protecting individuals and the secrecy of court to ensure judicial freedom with ensuring public transparency and subsequent academic investigation is apparent.

E. Key paragraph

There was not one key paragraph. Please see Annex II for key paragraph selections.

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1. Introduction

The archives of the Court of Justice were opened in December 2015 in the Historical Archives of the European Union (HAEU) at the European University Institute in Florence, Italy. These archives contain the *dossier de procédure* for all cases decided upon by the Court of Justice after an initial 30 year wait period from their judgment dates. These *dossiers* include a variety of documents that were not available to the public before the archives were opened, such as correspondence, legal opinions, testimonies, interim decisions and various pieces of evidence. The Court of Justice in the archives project seeks to demonstrate the opportunities and challenges the *dossier de procédure* present for relevant academic communities and lay solid foundations for ongoing work as more cases are released. Historical and legal methodologies are combined to analyse 12 different cases covering a variety of legal areas including: free movement of workers; free movement of goods; gender equality; access to justice; external relations; and competition law**.** This is with the intention to build on recent historical and sociological scholarship in EU law and bring the archives 'to life'.[1]

This paper is on the case of *Van Duyn* v *Home Office,*[2] a preliminary reference procedure (PRP) case concerning the principle of direct effect, free movement of workers and the meaning of public policy under EU law. The paper seeks to establish what value is added from the documents contained in the case *dossier* that were not previously available to the public. Firstly, an overview of the case is provided. The Court judgment and AG Opinion are then summarised and compared, before establishing the importance of the case in the evolution of EU Law**.** The *dossier's* composition is then presented, with some supplementary information on the actors in the case given, including their professional backgrounds. The argumentation of the actors for each submitted question to the PRP is then analysed, particularly addressing the variation in arguments submitted, sources used and legal reasoning styles of the actors. The paper ultimately concludes that the *dossier* demonstrates that the publicly available documents largely reflect the Court process (and thereby the *dossier's* contents) accurately. Nonetheless, some concerns are raised about the issue of redaction and how this may impact research undertaken on the *dossiers*.

2. Overview of *Van Duyn v Home Office*

Miss Van Duyn was a Dutch national who was offered employment as a secretary with the Church of Scientology. The Church of Scientology was a body established in the U.S.A. that operated in the U.K. through a College at East Grinstead, Sussex. She was interviewed by immigration on 9 May 1973 and was refused leave to enter on the grounds that it 'was undesirable to give anyone leave to enter the United Kingdom on the business of or in the employment of… [Scientology]'.[3] The grounds of refusal were based on Rule 65 of *Statement of Immigration Rules for Control on Entry, EEC and other Non-Commonwealth Nationals* under the Immigration Act 1971.[4] Rule 65 outlines that:

> Any passenger… may be refused leave to enter on the ground that the conclusion is conducive to the public good where from information available to the Immigration Officer it seems right to refuse leave to enter on that ground—if for example in the light of the passenger's character, conduct or associations it is undesirable to give him leave to enter.

[1] For more detail, see https://ecjarchives.eui.eu/.

[2] Case 41/74 *Van Duyn v Home Office*, ECLI:EU:C:1974:133

[3] Ibid para 1.

[4] Ibid para 2*;* The Immigration Act 1971.

To fully understand *Van Duyn,* it is necessary to consider the political context in which the case was decided. The case occurred during a period in which the U.K. Government had expressed concern in relation to the practice of Scientology and its impact on society. The practice of Scientology had been condemned in the U.K. in a number of government statements including by the Minister of Health in July 1968, who described the Church of Scientology as a 'pseudo-psychological cult' whose practices were 'socially harmful'.[5] Moreover, the government launched an inquiry into the practice and effects of Scientology, known as the Foster Report.[6] The findings of the inquiry reflected the U.K. Government's stance against scientology, and concluded that it would be unlawful to ban scientology outright but that steps must be taken to limit the perceived harms caused by its practice.[7] The U.K. Government nonetheless issued a statement regarding its intentions to prevent its growth under the Aliens Order and established a number of policies, including: Scientology institutions would not be accepted as educational establishments; any foreign nationals attending Scientology institutions would not be eligible for student status; and existing foreign nationals with student status would have their status revoked.[8] It also sought to ensure that work permits or extensions were not issued to foreign nationals who were in the U.K. for the purpose of attending the Church of Scientology.[9] There was no indication, however, that the activities of the Church of Scientology were unlawful, and no legal restrictions were placed upon such activities for British nationals.[10]

The U.K. acceded to the European Committees on 1 January 1973 and the British Government maintained its stance towards the practices of Scientology in its legal reasoning, claiming in its defence that 'nothing contained in the EEC Treaty nor in the Regulations or Directives made under Article 48 and 49 EEC precluded it from continuing to refuse entry and work permits to persons concerned with the Church of Scientology'.[11] Miss Van Duyn claimed that refusal of leave to enter was unlawful on the basis of Community rules on the free movement of workers and Article 48 of the EEC Treaty,[12] Regulation 1612/68[13] and Article 3 of Directive 64/221.[14] She sought a declaration from the High Court that she was entitled to stay in the U.K. for the purpose of employment and to be given leave to enter the United Kingdom. The U.K. High Court framed three questions to the ECJ for preliminary ruling, including:

1. Whether Article 48 of the Treaty establishing the EEC is directly applicable so as to confer on individuals rights enforceable by them in the Court of the Member State?
2. Whether Directive 64/221 is directly applicable so as to confer on individuals rights enforceable by them in the Court of a Member State?

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[5] Case 41/74 *Van Duyn v Home Office*, ECLI:EU:C:1974:133 para 1; Mr. Robinson, Statement made in House of Commons, 25 July 1968 No. 1459/1967/68.

[6] J Foster, 'Enquiry into the Practice and Effects of Scientology' (December 1971) <http://www.apologeticsindex.org/The%20Foster%20Report.pdf> (last accessed on 12 August 2020)

[7] Ibid.

[8] HC Deb 25 July 1968 vol 769 cc189-91W.

[9] Ibid.

[10] Case 41/74 *Van Duyn v Home Office* (n 5) para 1.

[11] Ibid para. 3.

[12] Treaty of Rome (in force 1957) Establishing European Community, Article 48.

[13] Regulation 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community OJ L 257.

[14] Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, OJ 056.

3. Whether upon the proper interpretation of Article 48 of the Treaty establishing the EEC and Article 3 of Directive 64/221/EEC, a Member State in performance of its duty is to base a measure taken on the grounds of public policy exclusively on the personal conduct of the individual concerned is entitled to take into account as matters of personal conduct:

- The fact that the individual is or has been associated with some body or organisation the activities of which the Member State consider contrary to the public good but which are not unlawful in that State;
- The fact that the individual intends to take employment in the Member State with such a body or organisation it being the case that no restrictions are placed upon nationals of the Member State who wish to undertake similar employment with such a body or organisation.

3. The parties' submissions

3.1 Direct Effect of Art. 48 of the EEC Treaty

Miss Van Duyn and the Commission

Both Van Duyn and the Commission submitted that Article 48 of the EEC Treaty was directly applicable based on the judgments of the Court of 4 April 1974 in *Commission v French Republic*[15] and of 21 June 1974 in *Reyners v Belgian State*.[16]

The United Kingdom

In light of *Commission of the European Communities v French Republic*[17], the U.K. made no submission.

3.2 Direct Effect of Art. 4 of Directive 64/221

Miss Van Duyn

Van Duyn submitted that Article 3 of Directive 64/221 had direct effect because the Court had already ruled that directives are susceptible to direct effect on the basis of *Grad v Finanzamt Traunstein*[18] and *Spa SACE v Italian Ministry of Finance*.[19] Citing *Salgoil v Italian Ministry*[20] and *Lütticke GmbH v Hauptzollamt Sarrelouis*[21], she submitted that the criterion for direct effect for a Directive is the same as for articles in the Treaty itself. She submitted that a treaty was not directly applicable merely because its formal wording imposes an obligation on a Member State. A directive was directly applicable where its provisions are clear and unconditional and where it left no substantial measure of discretion to the Member State. Provided these conditions were fulfilled, it did not matter if the directive consisted of a positive obligation or negative prohibition or that the MS had a choice of form and methods to be adopted in order to achieve the stated results. She claimed that Article 3 fulfilled the criteria for direct effect and

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[15] Case 167/73 *Commission v French Republic*, ECLI:EU:C:1974:35.

[16] Case 2/74 *Reyners v Belgian State*, ECLI:EU:C:1974:68.

[17] Case 167/73 *Commission v French Republic* (n 15).

[18] Case 9/70 *Grad v Finanzamt Traunstein*, ECLI:EU:C:1970:78, 825.

[19] Case 33/70 *Spa SACE v Italian Ministry of Finance*, ECLI:EU:C:1970:118, 1213.

[20] Case 13/68 *Salgoil v Italian Ministry*, ECLI:EU:C:1968:54, 661.

[21] Case 57/65 *Lütticke GmbH v Hauptzollamt Sarrelouis*, ECLI:EU:C:1966:34, 293.

noted that the preamble of the directive envisaged direct effect when it stated 'whereas, in each Member State, nationals of other Member States should have adequate legal remedies available to them in respect of the administration in such matters'.[22] Van Duyn submitted that the only legal remedy available was the right to invoke the provisions of the Directive before the national courts.

The Commission

Like Van Duyn, the Commission submitted that a directive was directly applicable if it was clear and unambiguous. *(Grad v Finanzamt Traunstein and Spa SACE v Italian Ministry of Finance).*[23] If provisions of a directive were legally clear and unambiguous, leaving only a marginal amount of discretion to the national authorities for their implementation, they must have an effect similar to those of Treaty provisions which the Court had recognised as directly applicable. The Commission submitted that Article 3 was one of the provisions of Directive 64/221 that had all the characteristics necessary to have direct effect in the Member States to which it was addressed. Relying on *Corveleyn*[24] the Commission claimed that Article 3 was a directly applicable obligation which limited the wide discretion given to immigration officers under Rule 65.

The United Kingdom

The U.K. submitted that Article 189 EEC Treaty[25] drew a clear distinction between regulations and directives, and that different effects were ascribed to each type of provision. It submitted that the Council, in not issuing a regulation, must have intended that the directive should have an effect other than that of a regulation and accordingly should not be binding in its entirety and not be applicable in all Member States. The U.K. submitted that neither decisions made in *Grad* nor *SACE* were authorities for the proposition that it was immaterial whether or not a provision was contained in a regulation, directive or decision. Instead, the cases showed that in special circumstances a limited provision in a directive could be directly applicable. The provisions of the Directive in the case at hand were different because Directive 64/221 was far broader, gave comprehensive guidance to the Member States, and it was expressly contemplated that Member States would put into force the measures necessary to comply with the provisions. It noted that the true effect of the *Corveleyn*[26] case has been the subject of considerable debate and that the Conseil d'État did not decide that the Directive was directly applicable but applied the Belgian concept of public order which itself required Belgium's international obligations to be taken into account.

3.3 Public Policy Exception and the Concept of Personal Conduct

Miss Van Duyn

Van Duyn claimed that merely belonging to an organisation, without necessarily taking part in its activities, could not amount to 'conduct'. Furthermore, the activities of the organisation in question were not, merely because the individual was a passive member, 'personal to the individual concerned'. She argued that if an activity was deemed contrary to the public good, then Member States should either ban everyone, including its own nationals, or tolerate nationals of other Member States, as it tolerated its own nationals engaging in such

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[22] Case 41/74 *Van Duyn v Home Office*, (n 5) para 4, 1342.

[23] Case 9/70 *Grad v Finanzamt Traunstein*, ECLI:EU:C:1970:78 p. 825; Case 33-70 *Spa SACE v Italian Ministry of Finance* Case, ECLI:EU:C:1970:118, 1213.

[24] Case 13/146 *Corvelyn* CE 1968 13 146, 710.

[25] Treaty of Rome (in force 1957) Establishing European Community, Article 189 *OJ C 325.*

[26] Case 13/146 *Corvelyn* (n 24*)* 710.

employment. She therefore claimed that refusal of entry on the grounds of personal conduct or association with the Church of Scientology was discriminatory and thus violated fundamental principles established in the Treaty, including free movement of people and freedom from discrimination.

The Commission

The Commission submitted that the concepts of 'public policy' and 'personal conduct' as contained in paragraph 3 of Article 48 of Directive 64/221 were concepts of Community law. They had to be interpreted in the context of Community law and national criteria were only relevant to its application. It submitted that it was only possible for freedom of movement to be maintained throughout the Community on the basis of uniform application in all Member States ('MS'). It would therefore be inconsistent with the Treaty if one MS accepted workers from another Member State while its own workers did not receive uniform treatment. The Commission submitted that discrimination on the grounds of public policy against nationals of another Member State for being employed by an organisation whose activities were deemed contrary to the public good, but without preventing its own nationals from being employed by such an organisation, was contrary to Article 48(2) of the Treaty. Measures taken on the ground of public policy had to be based exclusively on the personal conduct of the individual concerned. Personal conduct that was acceptable when exercised by a national of one Member State could not be unacceptable under Community law, when exercised by a national of another Member State. It was for consideration that Article 3 precluded a Member State, as a general contingency against some potential harm to society, from invoking public policy as a ground for refusing entry when the personal conduct of the individual was not contrary to the public policy in the Member State concerned. It did not deny however that membership of a militant organisation would be an element to be taken into account in assessing personal conduct for the purpose of justifying refusal of entry on the grounds of public policy or public security.

The United Kingdom

On the question of whether an individual's past or present association with an organisation can be regarded as an aspect of his personal conduct, the U.K. submitted that the intention of an individual to take employment with an organisation was a 'very material' aspect of the individual's personal conduct.[27] The U.K. also submitted that a measure taken on the grounds of public policy which excluded an individual from a Member State on the grounds of the individual's association with an organisation was compatible with the requirement of Article 3(1). The U.K. argued that it was not inconsistent with the intention of the Treaty to take into account an individual's association with an organisation and whether such exclusion was justified depended on the view the Member State took of the organisation. The U.K. asserted that officials had to act in accordance with directions given by the Government and it was inevitable that such directions would relate to particular organisations which a Government might consider contrary to the public good.

The fact that the activities of the organisation were not unlawful though considered by the Member State to be contrary to the public good did not disentitle the Member State from taking into account the individual's association with the organisation. It submitted that it was a matter for each State to decide whether it should make the activities of an organisation, or the organisation itself illegal. The U.K. claimed that it was inevitable that there had to be some discrimination in favour of nationals of that state. Invoking international law, the U.K. claimed that however undesirable and potentially harmful entrance might be, an individual could not be refused admission into her own state.

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[27] Case 41/74 *Van Duyn v Home Office* (n 5) 1345.

Table 1: Summary table of positions of actors on submitted questions

Position of Actors	Direct Effect of Art. 48	Direct Effect of Art. 3 Directive 64/221	Employment amounting to Personal Conduct	The Discrimination of Non-nationals working at Socially Undesirable Organisation
Van Duyn	Directly Effective	Directly Effective	Does not amount to personal conduct	Discriminates
The U.K.	Directly Effective	Not Directly Effective	Can amount to personal conduct	Does not discriminate
The Commission	Directly Effective	Directly Effective	Can amount to personal conduct	Discriminates
AG	Directly Effective	Directly Effective	Can amount to personal conduct	Does not discriminate
The Court	Directly Effective	Directly Effective	Can amount to personal conduct	Does not discriminate

4. The Court judgement and analysis

After initially presenting the arguments put forward by the U.K., the Commission and Van Duyn, the Court responded to all 3 questions raised in the PRP in its judgement.

4.1 The Direct Effect of Article 48

The Court concluded that Article 48 was directly effective. The Court stated that Article 48 itself imposed a precise obligation on Member States, which did not require any further measures to be adopted by either the Member States or Community institutions. As a result, no discretionary power existed in relation to its implementation. The Court went on to state that this was subject to paragraph 3 of the Article, which imposes limitations justified on the grounds of public policy, security or health. The Court also emphasised the fundamental principle of free movement of workers enshrined in Article 48. The Court stated that the application of this limitation was, however, subject to judicial control, so that a Member State's right to invoke the limitations did not prevent the provisions of Article 48 from conferring on individuals' rights which were enforceable by them and were protected by national courts.

4.2 The Direct Effect of Art 3(1) of Directive No. 64/221

The Court also stated that Art 3(1) of Directive No. 64/221 conferred on individuals rights which were enforceable by them and protectable in national courts. The Court emphasised that the Article was intended to limit the discretionary powers which national courts normally had over the entry and expulsion of foreign nationals, particularly as the measures taken on the aforementioned grounds of public policy had to be based solely on the personal conduct of the individual concerned. As a consequence, the Court held that the provision laid down an obligation that was not subject to any conditions and, by its nature, did not require any further action on the part of the Community institutions or Member States. The Court also highlighted that when implementing any derogations from fundamental principles of the Treaty, only

factors relating to personal conduct could be taken into consideration to ensure legal certainty for the persons concerned.

4.3 Public policy and the concept of personal conduct

The Court began by addressing whether association with a body or organisation could amount to personal conduct under Article 3 of the Directive. The Court held that a person's association, reflecting participation in the event of the body or organisation and identification with its aims and design, could be considered as a voluntary act of the person and, therefore, an individual's 'personal conduct'.

In addition to this consideration, the Court held that the third question raised the issue of the level of importance that should be attributed to the fact that the activities of the Scientology organisation were not illegal under national law, but were considered against the public good. The Court held that where public policy was raised as a justification for derogating from the principle of freedom of movement for workers, its interpretation had to be strict so far as it could not be determined unilaterally by the Member State without being subject to control by institutions of that community. Moreover, it emphasised that the meaning of public policy could vary between Member States, and thus the competent national authorities were allowed an area of discretion within the scope of the Treaty's limits when implementing this. As a consequence, the Court stated that where States had clearly defined standpoints regarding the activity of an organisation, and action has been taken to counteract these activities, the Member State could not be required to hold the activity unlawful in order to rely upon the public policy derogation if this was not thought appropriate in the circumstances.

Lastly, the Court addressed whether a Member State was entitled, on grounds of public policy, to prevent a national of another Member State from taking gainful employment within its territory with a body or organisation, where no such restriction was placed on nationals of that Member State. Article 48(3) enshrined the principle of free movement without discrimination. It only allowed derogations based on public policy, public security or public health. Under these terms, the right to accept employment, the right to free movement, and the right to stay in a Member State are equally subject to such limitations. The effect of these limitations when applied was that leave to enter the territory of a Member State and the right to reside there could be refused to a national of another Member State. Additionally, the Court raised the fact that under international law principles (under which the EEC was bound), no State was able to refuse entry to its own nationals. As a consequence, the Court held that a State may refuse the entry of a national of another Member State for reasons of public policy, even if similar restrictions are not placed upon its own nationals.

5. AG opinion analysis

AG Mayras, the AG for the case, was a French national who held several advisory positions for the French Government and academic positions before becoming the AG of the ECJ from March 1972 to 1981.[28] On the whole, the AG's Opinion correlates with the final Court judgment

[28] These include Agent of the Government at the Franco-Italian Conciliation Commission (1949-51); Technical Adviser in the office of the Minister for Justice (1952-53); Legal Assistant at the Council of State, then successively appointed Legal Adviser (1954) and Judge (1972); Legal Adviser of the French Embassy in Morocco (1956-58); Commissaire du gouvernement in the Judicial Division of the Council of State (1958-61); President of the Administrative Chamber of the Supreme Court of Morocco (1961-64); Director of Judicial Services at the Ministry for Justice (1964); Senior Lecturer at the École nationale d'administration; Assistant Lecturer at the Faculty of Law, Rabat; Professor at the Moroccan School of Administration; Advocate General at the Court of Justice from 22 March 1972 to 18 March 1981.

and a considerable amount of the argumentation relied upon by the Court was also presented by the AG. AG Mayras raised the three submitted questions to the PRP as the major legal issues that the case presented, with some small differences in argumentation that will be expanded upon thematically in this section.

5.1 Main legal issues

a. Direct Effect of Article 48 - The first of the issues raised by the AG was the direct effect of Article 48 of the Treaty establishing the EEC. Unlike the Court judgment, the AG recognised that there was an overlap between this PRP and *Commission v France*, which had been decided a few months prior, that in fact stated that Article 48 had direct effect.[29] He recognised that this question 'need not long retain [the Court]' as the direct effect of Article 48 had already been established.

b. Direct Effect of Article 3(1) of Directive No. 64/221 - Secondly, the direct effect of Directive No. 64/221 was raised as one the major legal issues presented by the case. AG Mayras made the point of indicating this was less certain in comparison to Article 48's direct effect that was previously established in *Commission v France*.

c. Public Policy & Concept of Personal Conduct - Lastly, he highlighted the public policy/security exemption and the conceptualisation of personal conduct under Article 48 as a major legal issue raised by the case. He raised the fact that it was the first time the Court had been required to decide upon the complexities raised by these exemptions. Moreover, it was the first time the Court has been required to balance the public policy exemption with uniform application of Community law, particularly in relation to the principle of non-discrimination between national and migrant work.

5.2 Differences in legal argumentation between AG's opinion and Court judgement

As was mentioned previously, the AG's Opinion and the Court judgement have similar legal conclusions with regard to the questions submitted under the PRP of this case. Article 48 and Article 3(1) of Directive No. 64/221 were both seen to be directly effective and enforceable in national courts by individuals. Restrictions were permitted under the public policy exception if the personal conduct of the individuals concerned was taken into consideration – an individual's association with a body or organisation which were considered 'socially harmful' but not illegal could amount to personal conduct, regardless of whether nationals of a Member State faced similar restrictions. This being said, there are a few subtle differences between the argumentation taken by the two actors.

5.2.1 Use of precedent and evidence

The Court used relatively streamlined and legalistic argumentation in its final judgement. It initially presented the arguments submitted by the parties, but it did not necessarily engage with them before making its conclusions. These conclusions do not make references to precedent or to the evidence presented to the Court. Instead, the actual law decided upon was simply stated. The AG, by contrast, did refer to case law when making his arguments. For example, when discussing the 'test' of direct effectiveness in relation to Article 48, he went on to refer to *Commission v France* (a case that had previously established the direct effect of Article 48).[30] In addition to this, he drew attention to another AG Opinion (AG Gand in *Lütticke*)

[29] Case 167/73 *Commission v French Republic Case*, ECLI:EU:C:1974:35.

[30] Ibid.

to solidify his opinions.[31] Moreover, the AG explicitly stated his consideration of the evidence put forward to the High Court to establish facts and discussed this in relation to his Opinion and the legal questions presented by Miss Van Duyn. As a consequence, it could be said that the AG used 'fuller' reasoning than the Court. This may be due to a need for the Court to provide a judgement that is functional for further legal application, therefore sparing any unnecessary detail that drifts away from core legal principles being stated. The role of AG therefore, by comparison, arguably provided more scope for further depth of reasoning to be presented. This is a common theme seen throughout this analysis.

5.2.2 Concept of community level public policy

The AG Opinion dealt with a Commission submission that suggested that there was a 'Community-level Public Policy', however this was not engaged with in the Court's final judgment. It was interesting here to note that the AG made the effort to emphasise that the Community institutions could only transfer Member State proficiency to the Community level if it related to *economic* public policy established in the Treaty, such as agricultural markets, trade, competition rules or Common Customs Tariffs, rather than policy related to social harms. In fact, he referred to this as one the prime considerations that needed to be made in relation to this case. These boundaries being emphasised, in addition to the largely economic purpose of the EEC established in the Treaty, demonstrated that the AG was keen to demonstrate the broader economic conceptualisation of Community purpose beyond those raised in the case. Again, this may not have been picked up by the Court in its final judgment as part of the need for 'bare bones', replicable legal principles in their report. However, its omittance when compared with the AG's Opinion is interesting to observe. When analysing the rest of the *dossier*, this submission from the Commission will be more fully addressed.

5.2.3 References to U.K. context

The AG also made comments about the U.K.'s democratic context, beyond merely the facts stated in the case. AG Mayras described the U.K. as a 'particularly liberal form of Government' when responding to the fact that the U.K. had no recourse to make Scientology illegal for its nationals.[32] He went on to state that this might be 'quite different' for other Member States dealing with this topic. Making this statement about the U.K.'s comparable level of liberalism to other Member States is interesting to see from the AG, and not engaged with by the Court. This perhaps provides some evidence of the different roles placed upon the AG and the Court during a PRP. Namely, the AG found it beneficial for his argumentation to provide some political context, whereas the Court tended to favour other lines of argumentation, such as the references to international law discussed below.

5.3 References to international law

Lastly, it is worth mentioning that the AG made no reference to international legal principles in his Opinion, whereas the Court did in its final judgment. When discussing the principle of non-discrimination in relation to the 'legality' of Scientology in the U.K., the Court picked up on an argument which submitted that nation states have to allow their nationals into their territory

[31] Case 57/65 *Lütticke GmbH v Hauptzollamt Sarrelouis*, Opinion of the Advocate General, ECLI:EU:C:1966:34.

[32] Case 41/74 *Van Duyn v Home Office*, Opinion of the Advocate General (n 5).

under international law – regardless of their criminal background or the socially desirability of their personal conduct. Whereas the AG discussed the level of political liberalism in the U.K. when trying to justify its refusal of entry for non-nationals who have gained employment in the U.K.'s Scientology college, the Court made recourse to concrete legal principles, such as those under international law, rather than more political lines of reasoning of the AG. Whilst this is only a single example in this specific case, it is interesting to note this difference in reasoning and sources used by the Court and AG respectively. It could be possible that the Court referred to international law standards because it provided more of an 'out' for them in the case. The use of international standards acknowledged the issue of discrimination in *Van Duyn* but did not interrogate forms of discrimination short of expulsion. This saved the Court from providing judgment on different forms and levels of discrimination, thereby avoiding excessive engagement with domestic social policy and perhaps extending an olive branch to the newly acceded U.K. with regards to its national social policies.

5.4 The importance of the case in the evolution of EU Law

5.4.1 Direct effect

Van Duyn has gained recognition for reinforcing the principle of direct effect, although it is important to note that the judgment largely reflects the legal reasoning applied to *Van Gend en Loos.*[33] *Van Gend en Loos* was a postal and transportation company which imported urea-formaldehyde from West Germany. The company contested an increase in import tariffs for the price of the plastic and argued that it violated Article 12 of the EEC Treaty. The Netherlands therefore lodged its first preliminary reference to the ECJ concerning whether Article 12 of the EEC Treaty had direct effect within the territory of the Member State. The ECJ held that 'to ascertain whether provisions of an international treaty extend so far in their effects, it is necessary to consider the spirit, general scheme and the wording of these provisions'.[34] As was also reasoned in *Van Duyn,* the Court noted that the object of Article 177 was to secure uniform interpretation of the Treaty by national courts and tribunals and thus states had acknowledged that Community law had an authority which could be invoked by their nationals before those courts and tribunals.[35] They noted that Article 12 'contains a clear and unconditional prohibition which… is not qualified by any reservation on the part of states which would make its implementation conditional upon a positive legislative measure enacted under national law'.[36] For this reason it was deemed as producing direct effect and thus individual rights which the courts must protect.

In *Van Duyn*, the ECJ deployed the same legal test as adopted in *Van Gend en Loos* and applied it to directives. It has therefore been argued to represent an effort by the ECJ to ensure the effectiveness of the Community provisions by emphasising the role of the individual in enforcing their rights. Murray, for instance, argues that the notion of direct effect as advanced by the ECJ in *Van Duyn* 'has transformed the individual into… a dynamic force capable of promoting the evolution of a new legal order by virtue of their right to challenge an individual case'.[37]

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[33] Case 26/62 *Van Gend v Nederlandse Administratie der Belastingen en Loos*, ECLI:EU:C:1963:1.

[34] Ibid.

[35] Ibid.

[36] ibid.

[37] John L Murray, 'Fundamental Rights in the European Community Legal Order' 32 Fordham International Law Journal 32 531 (2009).

Similar reasoning to *Van Gend en Loos* and *Van Duyn* was adopted in *Reyners*[38] which concerned a Dutch national who had been educated in Belgium but could not practice law there because the right to do so had been restricted to Belgian nationals. He therefore argued that Belgian law violated Article 52 of freedom of establishment. The Belgian, Irish, British and Luxembourg governments argued that Article 52 could not have direct effect because it was a general EEC principle, and no legislation had been created yet to enforce the principle. Broadening the scope of direct effect, the ECJ held that the obligations of Article 52 remained even in the absence of the norms being promulgated in a directive.[39] The ECJ adopted a similar argument in *Defrenne*[40] in which it stated that 'the effectiveness of this provision cannot be discharged by the mere fact that the duty imposed by the Treaty has not been discharged by certain Member States and that the joint institutions of the Community have not acted sufficiently energetically against failure to Act'.[41] They argued that Article 119 should be capable of invocation by individuals so as to 'ensure social progress… and the constant improvement of living and working conditions'.[42] The above case law suggests that the underlying logic behind *Van Gend en Loos* and *Van Duyn* may have informed the ECJ's reasoning in these cases, in terms of ensuring that Community provisions can be invoked by individuals, even where the integration programme formulated by the Treaty has not yet been fulfilled.[43]

It should be noted that, unlike the public policy exception developed in *Van Duyn,* the notion of application of direct effect has been maintained, and extended in subsequent case law, to the extent that in some cases[44] the question of direct effect has been by-passed altogether.[45] *Jany,* a case which is strikingly similar to *Van Duyn,* also demonstrated a similar stance towards the principle of direct effect.[46] The case concerned two Polish and four Czech prostitutes who invoked the Europe Agreements in order to obtain Dutch residence permits to work as self-employed prostitutes in the red light district in the centre of Amsterdam. They were refused residence permits and therefore launched objections against the authorities. Their claim was pronounced as unfounded on the basis that prostitution was an unlawful activity or was at least not a socially acceptable form of work and could not be treated as regular work or a liberal profession. The complainants argued that Article 44 of European Agreement establishing an association between the European Communities, Poland and the Czech Republic directly conferred on them a right to enter The Netherlands as self-employed prostitutes and in particular a right to treatment which is no less favourable than that which was reserved for Dutch nationals.[47]

On the question of the direct effect of the European Agreement, the Court held that the agreement was unambiguous in terms and the principle of non-discrimination but found that

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[38] Case 2/74 *Reyners v Belgian State*, ECLI:EU:C:1974:68.

[39] Paul P. Craig 'Once upon a time in the West: Direct Effect and the federalisation of EEC Law' 12(14) *Oxford Journal of Legal Studies* 464 (1992).

[40] Case 149/77 *Defrenne v Sabena*, ECLI:EU:C:1978:130.

[41] ibid.

[42] Craig (n 39) 468.

[43] Witte B 'Direct Effect, primacy, and the nature of the EU Legal Order' in De Burca G, Craig P (eds.) 'The Evolution of EU Law' (OUP, 2011) 330.

[44] ibid; cases C-55/07 and C-56/07 *Michaeler and others*, ECLI:EU:C:2008:248.

[45] Bruno De Witte 'Direct Effect, primacy, and the nature of the EU Legal Order' in De Burca G, Craig P (eds.) *'The Evolution of EU Law'* 323 (OUP, 2011).

[46] Case 268/99 *Aldona Malgorzata Jany & Others v Staatssecretaris van Justitie,* ECLI:EU:C:2001:616.

[47] ibid.

Member States had no obligation to grant a right of residence to Polish and Czech nationals. This case is similar to *Van Duyn* as it concerns the integration of states into the European Community (in this instance, Poland and the Czech Republic) and illustrates that whilst the ECJ is willing to confirm the existence of direct effect, it is less likely to place positive obligations upon States to grant residency. This illustrated the importance attached to ensuring that individuals are able to invoke Community norms before national courts. The main effect of *Van Gend en Loos* and *Van Duyn* therefore has been to put the individual at the centre of European law and to transform economic duties to enforceable individual rights which would allow private individuals to drive forward the integration process.[48]

5.4.2 Public policy

In addition, *Van Duyn* represents one of the first attempts by the ECJ to address the concepts of 'public policy' and 'personal conduct'. The Court held that present association with a body or an organisation could be considered to be part of the personal conduct of the individual. It also indicated that the body or organisation with which the individual associated did not necessarily need to be unlawful under national law. The *Van Duyn* judgment has been criticised as erring on the side of caution in terms of establishing guidelines for determining the scope or definition of 'personal conduct' and for leaving the public policy exception largely to the discretion of Member States.[49] However, it is important to note that the judgment is significant because it represents an effort by the Courts to balance the competing interests of the Member State and Community goals, including integration and harmonisation.[50] The context of the case is also significant given that *Van Duyn* was the first preliminary references made by a U.K. court and has therefore been heralded for highlighting the role of the preliminary reference procedure 'as an essential tool in the development of effective and certain relationships between the community legal order and the legal orders of Member States'.*[51]*

Nonetheless, the ECJ's willingness to provide Member State discretion in defining the scope of public policy was somewhat short lived. For example, three years later in *Bouchereau*, the Court took a much firmer line on determining the public policy exception, declaring that before anyone could be lawfully refused entry, the state had to demonstrate that the person's activities were socially harmful.[52] Similarly, in the 1982 joint cases *Adoui v Belgium* 115 and 116/81[53], the Court was more restrictive with what constituted acceptable grounds for invoking the public policy exception when restricting admissions or residence of a national of another Member State. Stricter requirements were required to rely upon the public policy exception - namely, 'the existence of a genuine and sufficiently serious threat affecting one of the fundamental interests of society'.[54] Moreover, it was considered that 'conduct may not be considered as being of a sufficiently serious nature to justify restrictions on the admission to/or residence

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[48] de Witte (n 45).

[49] Particularly because it developed much firmer stance in Case 30-77 *R v Bouchereau*, ECLI:EU:C:1977:172, declaring that before anyone could be lawfully refused entry (or deported), the state must demonstrate that person's activities to be socially harmful. See L Singer 'Free Movement of Workers in the European Economic Community: The Public Policy Exception' 29 (6) Stanford Law Review 1283 (1977).

[50] n. 32, p. 531.

[51] K. R. Simmonds, '*Van Duyn v The Home Office*: The Direct Effectiveness of Directive' 24 *The International and Comparative Law Quarterly* 419 (1975).

[52] Case 30/77 *R v Bouchereau*, ECLI:EU:C:1977:172.

[53] Joint Cases 115 and 116/81 *Rezguia Adoui v Belgian State and City of Liège; Dominique Cornuaille v Belgian State,* ECLI:EU:C:1982:183.

[54] Ibid.

within a MS of a national of another MS in a case where the MS does not adopt, with respect to the same conduct on the part of its own nationals, repressive measures of other genuine and effective measures intended to combat such conduct'.[55] Even where Member States felt their constitutional values were being compromised by permitting certain services to be provided, as in the *Omega*[56] case in 2004, the Court still did not permit restrictions on the grounds of public policy as seen in *Van Duyn*. Restrictions on freedom to provide services were only determined to be permitted 'if they are necessary for the protection of the interests which they are intended to guarantee and only insofar as those objectives cannot be attained by less restrictive measures'.[57] In *Josemans*[58] in 2010, the Dutch Government was permitted to ban cannabis 'Coffee shop' access to non-Dutch nationals in an attempt to curb nuisance issues stemming from drug tourism. This was seen as a justified restriction because merely banning non-Dutch nationals from purchasing cannabis products whilst still allowing access to these 'Coffee shops' could encourage illegal trade.[59] However, this discussion of proportionality was not seen in *Van Duyn*. *Van Duyn* is therefore often seen as an anomaly in the development of public policy exception case law. This may have been because the U.K. had recently acceded to the EU, and the Court was inclined to be more lenient in permitting restrictions to the free movement of workers in light of the anti-Scientology rhetoric in Parliament at the time. Over time, this leniency towards restrictions on grounds of public policy has been lessened.

6. The composition of the *dossier*

The *dossier* is compiled into categories of documents. These are:

- Documents submitted by parties
- Procedure-related documents
- Documents contained in the *dossier* already previously available
- Documents not available to the public

The following table provides an overview of the composition of the *dossier*:

Table 2: Categorisation of *dossier* by document type

Category of Document	**No. of Docs**	**% of No. of Docs (122 total available)**	**No. of pages**	**% of the *dossier* (331 pages total)**
Submissions by the Parties	5	4%	45	14%
Procedure-related docs	116	95%	191	58%
Report of Oral Hearing	1	0.8%	14	4%

[55] Ibid.

[56] Case C-36/02 *Omega Spielhallen und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn*, ECLI:EU:C:2004:614.

[57] Ibid.

[58] Case 137-09 *Josemans v Burgemeester van Maastricht*, ECLI:EU:C:2010:774.

[59] Ibid.

Opinion of AG	1	0.8%	14	4%
Final Judgment	1	0.8%	23	7%
Docs not available to public	N/A	N/A	37	11%

N.B. Section & dossier *title pages not included in categorisation = 7 pages.*

6.1 Documents submitted by the parties

The documents submitted by the parties were predominantly the written submissions of Miss Van Duyn, the U.K. and the Commission. This amounted to around 14% of the total *dossier*.

6.2 Procedure related documents

Procedure related documents form the majority of the *dossier*, both in terms of documents and pages. These include the initial High Court judgment and corresponding evidence related to the case, such as the U.K. Immigration Rules and correspondence between the Home Office and Van Duyn's legal representatives. There were some initial requests for further and better particulars of defence, but predominantly the documents were merely necessary administrative correspondence to parties regarding notifications of hearings, reports etc.

6.3 Documents contained in dossier *already previously available*

Both the AG Opinion and Final Judgement Report were available before the *dossier* was released for this case – this amounts to around 11% of the total *dossier*. The separate, original High Court judgment was also publicly accessible before the *dossier* was released, although only attainable through the U.K.'s legal institutions. However, the full High Court case file, including evidence submissions, were not available.

6.4 Documents not available to the public

Around 11% of the *dossier* material has been removed from the *dossier* file provided by the Archives of the CJEU. It is unclear what was included in these pages, other than knowing that 37 of the 93 Oral Procedure related documents are redacted (around 40%) and all of the Instruction related pages (4 pages in total). No hints towards the type or authorship of the documents is provided. Generally, all judicial documents are subject to a 30 year wait period before they are released to the public. When secret deliberations occur in a case, the Court has the power to redact this information, and 'under no circumstance shall access be given to documents relating to the secrecy of deliberation.'[60] Redaction may similarly occur to protect individuals, data privacy or commercial secrets. However, this was not the case for the large redaction in the *Van Duyn dossier*. The oral proceedings were redacted from the *dossier*, which is unusual as the oral hearing is open to the public. It is therefore confusing why this has been redacted from the final released *dossier*, as at the time the oral proceedings' contents were public knowledge.

[60] See Case 406/2 Decision of the Court of Justice of the European Union on June 10 (2015/C 406/02) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1207(01)&from=IT (last accessed 12 August 2020).

7. The 'added value' of the *dossier*

7.1 Actors and institutions

The *dossier* itself does not reveal a great amount of background information about the actors involved in the case. However, for the purposes of this project and this paper, it seemed worthwhile to include information collected about actors who had backgrounds that might be relevant for the final Court decision. Particularly, the careers of specific ECJ judges are those for which this information was retrievable and was relevant for the case at hand.

Table 3: Table of actors in Van Duyn case

Name	**Position in case**
Alan Newman	Representation for Miss Van Duyn
Stephen Bird	Representation for Miss Van Duyn
W.H. Godwin	Representation for U.K. Government
P L Gibson - The Treasury Solicitor	Representation for U.K. Government
A McClellan	Representation for Commission
C B B Parselle	D/Guardian Legal WW
- Lecourt **- Ó Dálaigh (President)** **- Mackenzie Stuart** **- Donner** **- Monaco** **- Mertens de Wilmars** **- Pescatore** **- Kutscher** **- Sørensen (Judge Rapporteur)**	ECJ Judges
H Mayras	AG

Robert Lecourt

One of the first judges who may have a background or career trajectory of interest to the *Van Duyn* case is Robert Lecourt. He served as a judge for the ECJ from 1962 to 1976, also becoming President of the Court from 1967 to 1976. His appointment in 1962 has been described as shifting the ECJ's balance towards European constitutionalism[61] and was renowned for having a strong EU integration focus. He sat as a judge on the *Van Gend en*

[61] M Rasmussen 'Revolutionising European Law: A history of the Van Gend en Loos judgment' 12 1 *ICON* 136 (2014).

Loos case, which led to the principle of direct effect being established in EU law.[62] He also acted as Judge Rapporteur in other landmark cases, such as the *Costa v ENEL* case that established EU law supremacy over national law.[63] When acting as President he continued to promote the idea of an 'ever closer' Union, even developing a vast communication strategy aimed at promoting the PRP process to national judges.[64] He also published two monographs during his Presidency*, Le juge devant le marché commun* and *L'Europe des juges*. In *L'Europe des juges* he sought to debunk accusations of ECJ judicial activism and to increase awareness of the legal integration of Europe aided by ECJ judges.[65] However, In *Le juge devant le marché commun* he provided a detailed discussion on the Court and its cooperation with national judges in PRP that he highlighted as being particularly crucial in preventing diverging interpretations of Community law in different Member States and upholding the uniform nature of EU law. This is one of the core premises of the Van Duyn judgment when conceptualising the legal boundaries of the public policy exception.

Judge Pierre Pescatore

Judge Pescatore was a professor at the University of Luxembourg and had been a representative for the Luxembourg Government at the negotiations for the Treaty of Rome whilst working for the Ministry of Foreign Affairs. His involvement in the *Van Duyn* case is particularly interesting given his later publications concerning the doctrine of direct effect in which he has described the doctrine as 'the infant disease of community law'.[66] Pescatore reiterated his conception of the doctrine in 2015 whereby he noted that 'direct effect is the normal state of health of the law' and that 'it is only the absence of direct effect which causes concern and calls for the attention of legal doctors'.[67] In line with the arguments presented by the Court in *Van Duyn* concerning the direct effect of directives, Pescatore acknowledged that the intention of Article 177 was to secure 'the uniform interpretation of the Treaty by national courts and tribunals' and confirmed 'that community law has authority which can be invoked by their nationals before courts and tribunals'.[68] The fact that Pescatore has written extensively on the doctrine of direct effect and its application sheds some light on the arguments presented by the Court in this area, specifically that direct effect must be established in order to ensure the 'healthy' functioning of Community rules.

More generally, it was difficult to locate information about the ECJ judges, except where specific projects had been written on certain individuals, such as Robert Lecourt or Riccardo Monaco. If this information was more readily available, it would provide additional detail in addition to the *dossier* that could enable full contextual analysis of Court judgments, including *Van Duyn*. Regardless, it is worth highlighting that this additional detail was not revealed by the *dossier* itself, but from additional research from other sources.

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[62] V Fritz 'Robert Lecourt (1908 – 2004) http://orbilu.uni.lu/bitstream/10993/37169/1/Fritz%20-%20Robert%20Lecourt%20%281908%20-%202004%29.pdf p. 5 (last accessed 29/09/2019).

[63] Case 6-64 *Costa v E.N.E.L.,* ECLI:EU:C:1964:66.

[64] *Defrenne v Sabena* (n 40) 6.

[65] Ibid 7.

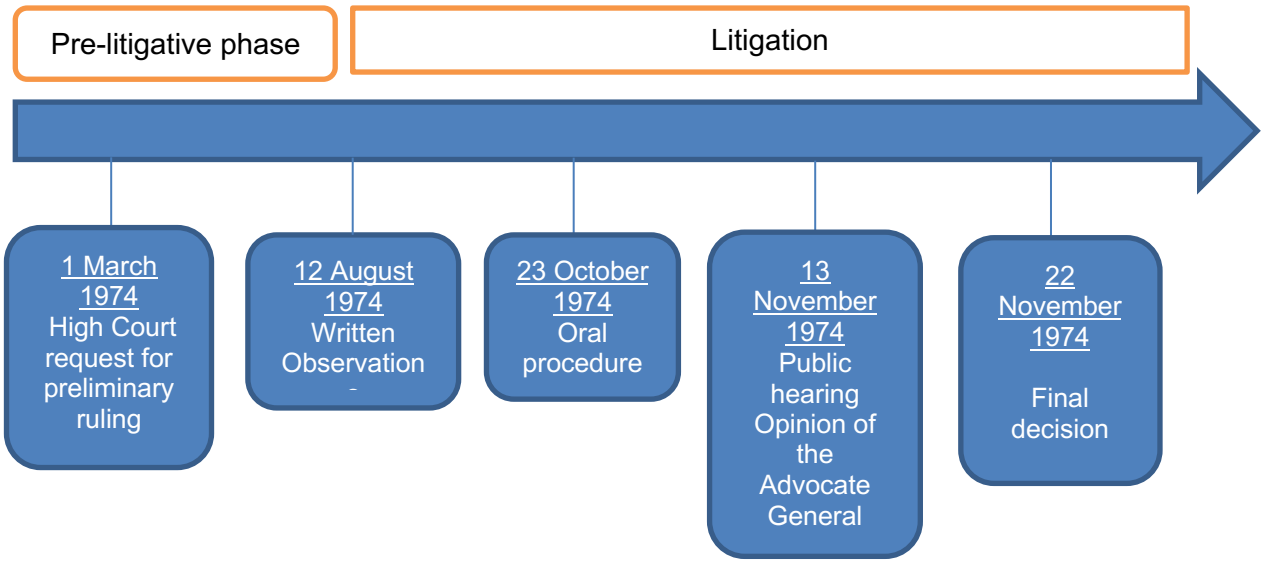
[66] P Pescatore 'The doctrine of direct effect: an infant disease of community law' 40(2) *ELR* 135 (1983).

[67] Ibid.

[68] Pescatore (n 66) 137.

7.2 Procedures and case management

Figure 1: Timeline of Van Duyn's procedure



In terms of procedure, the *dossier* does not appear to add anything of significant value which was not already accessible in the publicly available materials. It is important to note that the oral proceedings and instructions have been redacted from the *dossier*. This material has been redacted as it was deemed sensitive or confidential. The large amount of redaction has limited our inhibited our ability to analyse the development of legal argumentation during oral proceedings.

7.3 Arguments

7.3.1 Question one: direct effect of Article 48

Reflections on arguments in publicly available materials

With regard to question one, the majority of arguments made by the parties were reflected accurately in the publicly available materials. In general, both questions surrounding direct effect were largely uncontentious and were less of a focus in the Court's judgment when compared to the range of arguments presented relating to the public policy exception and the concept of personal conduct.

Legal Reasoning

There was little variation in terms of the styles of legal reasoning adopted by the parties. As previously explained, both Van Duyn and the Commission adopted a formalistic approach to their legal reasoning by relying solely on Case 167/73 to argue for the direct effect of Article 48. This largely reflects that fact that Case 167/73 was decided after the preliminary reference had been made by the U.K. This also explains why the U.K. withdrew its submission on this question.

Given that both Miss Van Duyn and the Commission relied on Case 167/73 to support the view that Article 48 had direct effect, it is surprising that the Court did not refer to the case when deciding that Article 48 was directly effective. It seems that the lack of engagement directly with the arguments presented by Van Duyn and the Commission may be largely because the question had already been settled by the Court in its previous case law and because there had

been an overlap between the preliminary reference submission and the decision made in Case 167/73. As previously discussed, whilst the AG acknowledged the overlap between the preliminary reference and the ruling on Case 167/73, the Court did not reflect on this. In addition, although the ECJ rarely overrules its previous case law, the ECJ is not, strictly speaking, bound by its precedent.[69] It has been argued that the ECJ's practice of following precedent in its judgments was influenced largely by the arrival of judges from the U.K. and Ireland, since both states follow the doctrine of precedent or stare decisis.[70] Therefore, the lack of engagement with Case 167/73 may have been because it was not common practice at the time to rely on previous case law in its judgments.

Omitted arguments

Van Duyn- The arguments made by Van Duyn are fully reflected in the publicly available materials.

The Commission- Whilst the publicly available materials cite *Reyners v Belgian State* (Case No 2/74) as supporting the Commission's claim that Article 48 is directly applicable, it does not reflect further submissions made by the Commission concerning the parallels between Article 52 (as addressed in *Reyners*) and Article 48. The Commission stated that like Article 52, Article 48 contained an obligation to achieve a precise result for which the time limit was the end of the period of transition. It is unclear why the Court judgment did not engage with this line of reasoning, however it is likely that it reflects the formal approach adopted by the Court and an effort to ensure that the judgment did not stray purely from the facts of the case raised through the preliminary reference procedure.

7.3.2 Question two: The direct effect of art 3(1) of directive no. 64/221

Reflection of arguments in publicly available materials

As with question one, the arguments made by all three parties are largely reflected in the available materials. The only exception is that the Court did not engage with the arguments presented by the U.K. that it had implemented Article 3.1 of the directive in its Immigration Rules and that the Plaintiff could bring proceedings in the U.K. if she believed that a provision of those Rules which affects her has not been complied with in her case. As previously discussed, it is likely that this is symptomatic of an approach made by the ECJ to adhere to legal argumentation as opposed to engaging with the domestic context.

Instead, the ECJ focused primarily on the argument made by the U.K. concerning Article 189 and the clear distinction drawn between regulations and directives. This may reflect its intention to ensure that Community provisions could be raised by individuals domestically particularly because the Court refuted the U.K.'s claim by firstly illustrating that 'it would be incompatible with the binding effect attributed to a directive by Article 189 to exclude… the possibility that the obligation which it imposes may be invoked by those concerned' especially

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[69] John J. Barceló, 'Precedent in European Community Law' in D. Neil MacCormick, Robert S. Summers (eds.), 'Interpreting Precedents – A comparative study' (Aldershot,1997) 407–436; Anthony Arnull, 'Interpretation and Precedent in European Community Law' in Mads Andenas, Francis Jacobs (eds.), *European Community Law in the English Courts* (Clarendon Press 1998, Oxford) 115–136. ; For more on this see AG Opinion in Joint Cases 267/95 and 268/95, Merck & Co. Inc., Merck Sharp & Dohme Ltd and Merck Sharp & Dohme International Services BV v Primecrown Ltd, Ketan Himatlal Mehta, Bharat Himatlal Mehta and Necessity Supplies Ltd and Beecham Group plc v Europharm of Worthing Ltd., Opinion of the Advocate General, ECLI:EU:C:1996:228, para 139.

[70] Jan Komárek, 'Reasoning with Previous Decisions: Beyond the Doctrine of Precedent' 61 American Journal of Comparative Law 149 (2013).

where a Member State is under an obligation to pursue a course of conduct.[71] Furthermore, it is likely that the ECJ focused specifically on this line of argumentation in order to make it clear to the U.K., in light of its recent membership, that individuals had the right to rely on EEC provisions domestically.

Legal reasoning

There was little variation in terms of the legal reasoning used by all parties. The majority of submissions relied on existing ECJ case law, specifically *SACE* and *Grad*. This largely reflects the legal reasoning adopted by Van Duyn, the Commission and the U.K. in the sense that it was formalistic and largely informed by existing ECJ precedent.

It is important to note, however, that the ECJ relied on Article 177 to explain that if national courts were able to refer questions to Court concerning the validity and interpretation of all acts of the Community, it was implied that these acts could also be invoked by individuals in national courts.[72] This line of legal argumentation mirrors the legal reasoning adopted in *Van Gend en Loos.*[73] *Van Gend en Loos* has been described as an attempt to differentiate European Law from public international law by addressing the perceived weaknesses of international law, including its lack of harmonisation and uniformity.[74] It is considered a landmark case because it shifted the perception that international law concerned the constitutional or domestic arrangement of Member States, and instead highlighted the primacy that was to be attached to the ability of individuals to invoke Community standards before domestic courts.

As previously discussed, the AG adopted similar reasoning in its submission in which it argued that the direct effect of directives should be assumed because 'what other aim could the Council have had in enacting this provision than to limit the discretionary power of Member States'.[75] In line with the reasoning employed by the ECJ in *Van Gend,* this also implies that as opposed to textual interpretation, the Court has adopted teleological reasoning and focused on the 'spirit' or intention of the Treaties in an effort to ensure the functionality of the Community Order. This is largely reflected by Pescatore in a later academic publication, in which he stated that the philosophy of direct effect dictated that legal rules must have a practical purpose to operate effectively, and that it is the 'purpose of lawyers not to thwart the effects of legal rules, but to help in putting them into operation'.[76] An analysis of the *dossier* has illustrated that as well as relying on the submissions provided by the parties, the ECJ also based its reasoning on precedent, particularly *Van Gend,* to convey the importance of ensuring that EEC provisions could be relied upon by individuals domestically. This perhaps reflects the broader goals of the ECJ in ensuring the functioning of the Community Order, particularly in the context of new membership to the EEC.

7.4 Public policy/security exemption and the concept of personal conduct

7.4.1 Reflection of arguments in publicly available materials

The question of the public policy exemption and the meaning of personal conduct appeared to be a more complex matter for the Court to deal with than the previous questions submitted.

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[71] Case 41/74 *Van Duyn v Home Office*, ECLI:EU:C:1974:133, para 12.

[72] Ibid.

[73] Case 26/62 *Van Gend v Nederlandse Administratie der Belastingen en Loos,* ECLI:EU:C:1963:1.

[74]Rasmussen M (n) 61.

[75] Case 41/74 *Van Duyn v Home Office*, Opinion of the Advocate General, ECLI:EU:C:1974:133.

[76] Pescatore (n 66) 136.

More material seemed to cover this third question than the previous two. This being said, the majority of the arguments submitted by Miss Van Duyn, the U.K. and the Commission were accurately reflected when written up in the final Court judgment. Often, there were word-for-word summaries from the written submissions. Even considering this, some subtleties of a few arguments were not accurately reflected in the Court's final judgment.

1. Practical reasoning - Firstly, the U.K. used a large amount of 'common sense' and practical reasoning in their written submission. When referring to the concept of personal conduct, they suggested its meaning be its 'ordinary meaning' in common, everyday language. Additionally, when discussing a State's need to assess an individual's association with a body or organisation, they raised the practical considerations needed for large numbers of officials (e.g. immigration officers) to be able to implement Art 3(1) on the ground. The Court omitted when summarising the U.K.'s submissions – again, perhaps representative of its tendency to be more legalistic and formalistic in its argumentation style. Moreover, this may provide a small insight into the types of things that Member States have to address, whereas the ECJ does not.

2. Political Context - Additionally, also from the U.K. submissions, the Court failed to mention the analogy drawn from the U.K.'s dealings with the IRA's activities in Northern Ireland during the Troubles. The U.K. used this example to demonstrate the fact that the Government could not make 'socially harmful' organisations' activities illegal for nationals as they do not have the power to do so. Yet, the IRA reference absent in the final Court judgment. Perhaps this is an attempt to depoliticise the discussion being had – or even an attempt by the Court to strip the legal argumentation down to its bare bones and avoid excessive engagement with national social policies.

7.4.2 Sources of legal reasoning relied upon in comparison to the AG and Court

A number of sources of legal reasoning were relied upon for the argumentation relating to the conceptualisation of the public policy exception and the meaning of personal conduct – at times differing from the AG Opinion and final Court judgment. As some of the material from the Oral hearing was redacted from the *dossier*, there may be additional sources that were used by the parties, but it is impossible to determine what these might be.

1. **Van Duyn** – As previously discussed, in addition to referring explicitly to Art 3(1) of Directive 64/221, Miss Van Duyn relied heavily on the concept of fundamental principles in this case, particularly the principle of non-discrimination. In fact, she often used these sources and their meanings interpreted strictly, without balancing them against Treaty limitations, in order to substantiate her position. The AG and Court similarly referred to these fundamental principles, but they provide that a balancing of interests was required, for example, between the principle of non-discrimination and the public policy exception that protected some of Member State autonomy - even if this was limited to discussions of international law standards in the case before the Court.

2. **U.K.** – the U.K. also referred to Art 3(1) and acknowledged the relevance of fundamental principles, such as non-discrimination. However, at times they added additional context to their position. An example of this has already been mentioned – a reference to the IRA as an analogy to demonstrate the U.K.'s liberal stance towards prohibiting 'socially harmful' organisations by law. The AG does make some reference to the U.K.'s liberalism in this regard, but without naming specific historic, or real-life examples. The Court, by contrast. very rarely used contextual sources of argumentation, preferring a streamlined, legalistic approach to its argumentation. The U.K. also referred to international law, namely human rights treaties, when discussing the principle of non-discrimination and its inability to expel nationals who partake in the activities of socially harmful organisations. The Court also used this as a source of law,

however, the AG Opinion did not include this line of argument, instead relying solely upon the U.K.'s liberalism to substantiate its argument.

3. **The Commission** – the Commission also referred to Art 3(1) and discussed the principle of non-discrimination. However, when discussing the public policy exception – it forms a Community level conceptualisation. The AG explicitly dismissed the idea that EU public policy could be anything but economic in nature, and the Court failed to engage with this conception as the AG interpreted it. So, whilst it is the same source being used, a different conceptualisation of its meaning was used by the Commission. Lastly, the Commission referred to previous case's AG Opinions, such as in *Sotgiu v Deutsche Bundespost*, with regard to the objectives and weight of limitation clauses. [77] This case is not referred to by the AG or the Court, however the AG does rely on some AG Opinions, unlike the Court, which used a streamlined legal argumentation with no references to case law precedent or AG Opinions. This may be as a result of the Court's judgment writing style at the time, but it is nonetheless still interesting to observe.

7.4.3 Legal reasoning styles of the parties

The presentation and types of sources used by the parties varied, often with slightly different styles of legal reasoning when addressing the public policy questions.

1. Van Duyn – Miss Van Duyn did refer to Art 3(1) of Directive 64/221. As previously explained however, the majority of her legal reasoning related to fundamental EU principles and concepts (often in rather absolute terms), such as non-discrimination and free movement of workers and applying to this the facts of the case.

2. U.K. – the U.K. by contrast often took a more pragmatic approach to its legal reasoning, considering how EU legal principles translated to interpretation by U.K. officials. When conceptualising the meaning of 'personal conduct', it referred to it being defined by its 'ordinary meaning'. Moreover, it raised the issue of ease of interpretation and implementation by a wide range of government officials when discussing how the public policy exception functioned in the real world. Therefore, the U.K. can be seen to have a more practical legal reasoning style, attempting to decipher legislation and EU principles in ways that can be understood by a layman outside of a courtroom. Additionally, the U.K. referred to contextual analogies to aid its argumentation, such as the government response to the IRA in Northern Ireland. This provides a law-in-context approach, arguably again demonstrating a pragmatic approach to legal reasoning to understand how EU law functions in practice. This was not atypical for a common law system and has been something the U.K. and Ireland enhanced and contributed to in the EEC legal/judicial dynamic over the years.

3. Commission – the Commission also addressed Art 3(1) and engaged with the fundamental principles of EU law. In terms of legal reasoning, they arguably took more of a rule-based approach than Van Duyn or the U.K. It referred to and relied on precedents more frequently, such as the AG Opinion in *Sotgiu v Deutsche Bundespost* in relation to limitation clauses.[78] Whilst it did not make an extensive number of references, it is interesting to observe this as other actors did not do so in relation to this question of public policy exemptions.

[77] Giovanni *Maria Sotgiu v Deutsche Bundespost* Case 152-73 [1974] ECR 00153

[78] Ibid.

7.4.4 Omitted arguments

There were no substantial arguments in relation to the third question that were omitted by the Court in their final Judgment. Any of the differences that existed have already been discussed – for example, the Court did not use the 'ordinary meaning' of personal conduct argument submitted by the U.K. Often the Court omitted case law or AG Opinion references in addition to contextual detail, but the core premises of the arguments were accurately reflected and engaged with in the final Judgment. This being said, there was a substantial chunk of redacted material from the Oral Procedure section of the *dossier*.

8. Conclusion

The *dossier* of *Van Duyn* provided some additional value to the Judgments and Opinion that were previously available to the public and researchers. The *dossier* shows the case in its entirety chronologically, bringing High Court documents alongside Court documentation to follow the case's progression from start to finish. Moreover, it was interesting to see the differences in legal reasoning and sources relied upon for legal reasoning from different parties. The Court tended to use more streamlined and legalistic argumentation. The analysis often alluded to instances in which the Courts' reasoning was not informed by party submissions but by its own overarching motivations, such as ensuring the effective functioning of the Community Order. The U.K. was often pragmatic in its reasoning - thinking of the practical ease of implementation of EU law in their arguments, and not responding to the first submitted question due to it already being answered in a prior ECJ case. Van Duyn, by comparison, relied heavily on balancing the fundamental principles of EU law in her submitted arguments, whereas the AG was more likely to refer to existing precedents and political context to substantiate his positions. Much of this could have been largely determined from the previously publicly available materials, as the Court Judgment did accurately reflect the submissions from the different parties. However, the fact that these submissions were accurately reflected by the Court was an interesting finding of this research itself. Aside from the odd reference to domestic policy or political context, the Court synthesised the arguments of the parties very accurately. This is a positive finding for the reputation and transparency objectives of the Court, as it shows that the public are being correctly informed about Court of Justice cases and their procedure. It probably also reflects the need for the Court to provide streamlined and replicable judgments.

However, it is important here to mention the significant redaction of documents from the *dossier*. 11% of the *dossier* was redacted, largely from the oral procedure and instruction sections of the *dossier*. This information was redacted due to it containing sensitive information from the case, such as judicial deliberations or information that needed to be protected for data protection reasons. This did present some difficulty for the research on this *dossier*. As analysis was not able to be completed on large sections of the oral proceedings, this has the potential to undermine this paper's conclusion that the *dossier* did not provide much additional information beyond that of the previously publicly available documents. Here the issue of finding the balance of protecting individuals and the secrecy of court to ensure judicial freedom[79] with ensuring public transparency and subsequent academic investigation is particularly apparent. For research purposes, being granted access to redacted documents (or even given further details on why the documents were redacted) would be extremely beneficial to assess the full historical and sociological context of EU case law. This concurs with previous,

[79] Statute of the Court of Justice of the European Union, Article 2 which states "The deliberations of the [ECJ] shall be and shall remain secret.'

similar research work that additionally called for French translations and judge notes on comparative law elements of case decision-making to also be added to the *dossiers* to shed light on the full judicial process of the Court of Justice.[80] Both sides of the balancing act have important connotations, but assessing the full debate on these issues is outside the scope of this paper. Consequently, all that can be said is that for future research on the *dossiers*, attention should be paid to redacted sections of the *dossier* in addition to those unredacted. Both have interesting implications for the historical, sociological and legal type of research that is being undertaken when investigating the archives of the Court of Justice.

[80] Nicola F 'Waiting for the Barbarians: Inside the Archive of the European Court of Justice' in Kilpatrick C, Scott J eds. '*New Legal Approaches to studying the Courts of Justice'* (OUP, 2019).

Annex 1: List of Documents

	Type of document	Institution	Ref no.	Number of pages
Opening Pages				
	Dossier Cover			1
	Dossier Contents			1
Written Procedure				
Doc 1	Request for preliminary ruling of the Court of Justice of the European Communities	Royal Courts of Justice registrar	41/74-1	8
Doc 2	Vice Chancellor order of Reference of 1 March 1974	Supreme Court of Judicature Chancery Registrar's office	1973 D 1341	7
Doc 3	Duplicate order	High Court of Justice Chancery Division		1
Doc 4	Notice of motion	High Court of Justice Chancery Division		4
Doc 5	Writ and statement of claim	High Court of Justice Chancery Division		3
Doc 6	Writ of summons	High Court of Justice Chancery Division		1
Doc 7	Defence	High Court of Justice Chancery Division		3
Doc 8	Request for further and better particulars of defence	High Court of Justice Chancery Division		3
Doc 9	Further and better particulars of defence	High Court of Justice Chancery Division		1
Doc 10	Reply	High Court of Justice Chancery Division		1
Doc 11	Letter of C.B.B. Parselle dated 15th Feb 1973	C.B.B. Parselle D/Guardian Legal WW		1
Doc 12	Letter of C.B.B. Parselle dated 13 March 1973	C.B.B. Parselle D/Guardian Legal WW		1
Doc 13	Letter of C.B.B. Parselle dated 21 March 1973	C.B.B. Parselle D/Guardian Legal WW		1
Doc 14	Letter of Home Office to C.B.B. Parselle dated 2nd April 1973	Home Office		1
Doc 15	Offer of employment to Miss Van Duyn dated 4 May 1973	Illegible signature-employer		1
Doc 16	Refusal of leave to enter 4 May 1973	Home Office		2
Doc 17	Statement of 25th July 1968 by Minister of Health	House of Commons		3
Doc 18	Statement of immigration rules for control of entry	House of Commons		20

Doc 19	Judgment - dated 14th Feb 1974	Royal Courts of Justice		18
Doc 20	Receipt of preliminary reference ruling, 13 June 1974	Registrar, ECJ	55150	1
Doc 21	Letter attaching copy of order of the Supreme Court dated 13 June 1974	Registrar, ECJ	55151	1
Doc 22	Letter to Royal Court of Justice with Copy of Order made by Vice Chancellor dated 10 June 1974	Registrar, ECJ		1
Doc 23	Copy of Order made by Vice Chancellor	Royal Courts of Justice	Ref No.1 of 1974	1
Doc 24	Letter appointing Sorenson as rapporteur dated 13 June 1974	Registrar, ECJ	41/74	1
Doc 25	Letter appointing AG Mayas as Advocate General	Registrar ECJ	41/74	1
Doc 26	Assignment of case to IIeme chambre?	President, ECJ	55218	1
Doc 27	Copy of order of Vice Chancellor sent to Stephen Bird, dated 21 June 1974	ECJ registrar	55277	1
Doc 28	Copy of order of Vice Chancellor sent to Treasury Solicitor, dated 21 June 1974	ECJ Registrar	55278	1
Doc 29	Copy of order of Vice Chancellor sent to President and Members of Council	ECJ Registrar	55279	1
Doc 30	Copy of order of Vice Chancellor sent to Permanent Representative, Luxembourg	ECJ Registrar	55280	1
Doc 31	Copy of order of Vice Chancellor sent to Permanent Representative, Brussels	ECJ Registrar	55281	1
Doc 32	Copy of order of Vice Chancellor sent to Permanent Representative, Paris	ECJ Registrar	55282	1
Doc 33	Copy of order of Vice Chancellor sent to Permanent Representative, Germany	ECJ Registrar	55283	2
Doc 34	Copy of order of Vice Chancellor sent to Permanent	ECJ Registrar	55284	1

	Representative, The Netherlands			
Doc 35	Copy of order of Vice Chancellor sent to Permanent representative Italy	ECJ Registrar	55284	1
Doc 36	Copy of order of Vice Chancellor sent to Permanent representative U.K.	ECJ Registrar	55287	1
Doc 37	Copy of order of Vice Chancellor sent to Permanent representative Ireland	ECJ Registrar	55287	1
Doc 38	Copy of order of Vice Chancellor sent to Permanent representative Denmark	ECJ Registrar	55288	1
Doc 39	Letter to ECJ from W.H. Godwin enclosing appointment to act as agent in case dated 18 July 1974	W.H. Godwin		3
Doc 40	German letter to ECJ- no opinion re preliminary reference	Dr. Seidel		1
Doc 41	Appointment of Mr. Anthony McClellan as representative for Commission	Commission		1
Doc 42	Written observations, The Commission	Anthony McClellan	JUR/2167/74	17
Doc 43	Statement of case of U.K.	W.H.Godwin		11
Doc 44	Annex to case of U.K.			3
Doc 45	Written observations by Yvonne Van Duyn	Stephen Bird		14
Doc 46	Letter to Senior Master of the Supreme Court in England with copies of observations	Registrar	56186	1
Doc 47	Letter to Commission representative with copies of observations	Registrar	56187	1
Doc 48	Letter to representative of Van Duyn with copies of written observations	Registrar	56188	1
Doc 49	Letter to Treasury Solicitor with copies of written observations	Registrar	56189	1
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Doc 51	Letter to permanent representative Luxembourg with written observations	Registrar	56191	1
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Oral Procedure				
Doc 54	Notification of Public Hearing of Oral Procedure (Recipient: U.K. Royal Courts of Justice)	Court of Justice Registrar	56377	1
Doc 55	Notification of Public Hearing of Oral Procedure (Recipient: Anthony McCLellan, Commission)	Court of Justice Registrar	56378	1
Doc 56	Notification of Public Hearing of Oral Procedure (Recipient: Stephen Bird, Van Duyn's Solicitor)	Court of Justice Registrar	56379	1
Doc 57	Notification of Public Hearing of Oral Procedure (Recipient: The Treasury Solicitor)	Court of Justice Registrar	56380	1
Doc 58	'Receipt of Postage of Letter to Treasury Solicitor	Court of Justice	56380	1
Doc 59	Notification of Public Hearing of Oral Procedure (Recipient: President and Members of EC Council)	Court of Justice Registrar	56381	1
Doc 60	Notification of Public Hearing of Oral Procedure (Recipient: Minister of Foreign Affairs, Luxembourg)	Court of Justice Registrar	56382	1
Doc 61	Notification of Public Hearing of Oral Procedure (Recipient: Minister of Foreign Affairs, Brussels)	Court of Justice Registrar	56383	1
Doc 62	Notification of Public Hearing of Oral Procedure (Recipient: Minister of Foreign Affairs, Paris)	Court of Justice Registrar	56384	1
Doc 63	Notification of Public Hearing of Oral Procedure (Recipient: Minister of Foreign Affairs, Bonn)	Court of Justice Registrar	56385	1
Doc 64	Notification of Public Hearing of Oral Procedure	Court of Justice Registrar	56386	1

	(Recipient:: Permanent Representative of the Netherlands to the European Communities in Brussels)			
Doc 65	Notification of Public Hearing of Oral Procedure (Recipient: Minister of Foreign Affairs, Rome)	Court of Justice Registrar	56387	1
Doc 66	Notification of Public Hearing of Oral Procedure (Recipient: Secretary of State for Foreign and Commonwealth Affairs, U.K.)	Court of Justice Registrar	56388	1
Doc 67	Notification of Public Hearing of Oral Procedure (Recipient: Minister of Foreign Affairs, Dublin)	Court of Justice Registrar	56389	1
Doc 68	Notification of Public Hearing of Oral Procedure (Recipient: Danish Foreign Ministry)	Court of Justice Registrar	56390	1
Doc 69	Notification to the Court of errors in Written Observations of the U.K.	W H Godwin, Treasury Solicitor	(57010?)	1
Doc 70	Letter accompanying the Corrigendum to the Observations of the U.K. (Recipient: Royal Courts of Justice)	Court of Justice Registrar	57011	1
Doc 71	Letter accompanying the Corrigendum to the Observations of the U.K. (Recipient: Anthony McClellan)	Court of Justice Registrar	57012	2
Doc 72	Letter accompanying the Corrigendum to the Observations of the U.K. (Recipient: Stephen Bird)	Court of Justice Registrar	57013	1
Doc 73	Letter accompanying the Corrigendum to the Observations of the U.K. (Recipient: President and Members of the Council of the EC)	Court of Justice Registrar	57014	1
Doc 74	Letter accompanying the Corrigendum to the Observations of the U.K. (Recipient: Minister of Foreign Affairs, Luxembourg)	Court of Justice Registrar	57015	1

Doc 75	Letter accompanying the Corrigendum to the Observations of the U.K. (Recipient: Minister of Foreign Affairs, Brussels)	Court of Justice Registrar	57016	1
Doc 76	Letter accompanying the Corrigendum to the Observations of the U.K. (Recipient: Minister of Foreign Affairs, Paris)	Court of Justice Registrar	57017	1
Doc 77	Letter accompanying the Corrigendum to the Observations of the U.K. (Recipient: Minister of Foreign Affairs, Germany)	Court of Justice Registrar	57018	1
Doc 78	Letter accompanying the Corrigendum to the Observations of the U.K. (Recipient: Minister of Foreign Affairs, The Hague)	Court of Justice Registrar	57019	1
Doc 79	Letter accompanying the Corrigendum to the Observations of the U.K. (Recipient: Minister of Foreign Affairs, Rome)	Court of Justice Registrar	57020	2
Doc 80	Letter accompanying the Corrigendum to the Observations of the U.K. (Recipient: Minister of Foreign Affairs, U.K)	Court of Justice Registrar	57021	1
Doc 81	Letter accompanying the Corrigendum to the Observations of the U.K. (Recipient: Foreign Ministry, Denmark)	Court of Justice Registrar	57022	1
Doc 82	Letter accompanying the Copy of the Report for the Public Hearing (Recipient: Royal Courts of Justice)	Court of Justice Registrar	57142	1
Doc 83	Letter accompanying the Copy of the Report for the Public Hearing (Recipient: Anthony McClellan)	Court of Justice Registrar	57143	1
Doc 84	Letter accompanying the Copy of the Report for the Public Hearing (Recipient: Stephen Bird)	Court of Justice Registrar	57144	1
Doc 85	Letter accompanying the Copy of the Report for the Public Hearing (Recipient: W.H. Goodwin, The Treasury Solicitor)	Court of Justice Registrar	57145	1

Doc 86	Letter accompanying the Copy of the Report for the Public Hearing (Recipient: The President and Members of the Council of the EC)	Court of Justice Registrar	57146	1
Doc 87	Letter accompanying the Copy of the Report for the Public Hearing (Recipient: Minister of Foreign Affairs, Luxembourg)	Court of Justice Registrar	57147	1
Doc 88	Letter accompanying the Copy of the Report for the Public Hearing (Recipient: Minister of Foreign Affairs Brussels)	Court of Justice Registrar	57148	1
Doc 89	Letter accompanying the Copy of the Report for the Public Hearing (Recipient: Minister of Foreign Affairs Paris)	Court of Justice Registrar	57149	1
Doc 90	Letter accompanying the Copy of the Report for the Public Hearing (Recipient: Ministry of Foreign Affairs, Germany)	Court of Justice Registrar	57150	1
Doc 91	Letter accompanying the Copy of the Report for the Public Hearing (Recipient: Minister of Foreign Affairs The Hague)	Court of Justice Registrar	57151	1
Doc 92	Letter accompanying the Copy of the Report for the Public Hearing (Recipient: Minister of Foreign Affairs Rome)	Court of Justice Registrar	57152	1
Doc 93	Letter accompanying the Copy of the Report for the Public Hearing (Recipient: Secretary of State for Foreign and Commonwealth Affairs, London)	Court of Justice Registrar	57153	1
Doc 94	Letter accompanying the Copy of the Report for the Public Hearing (Recipient: Minister of Foreign Affairs Dublin)	Court of Justice Registrar	57154	1
Doc 95	Letter accompanying the Copy of the Report for the Public Hearing (Recipient: Foreign Ministry, Denmark)	Court of Justice Registrar	57155	1

Doc 96	Hearing Report	Max Sorensen, Judge Rapporteur	Rep. 41/74	14
Pages 234-268	Not available to public	Not available to public	Not available to public	Not available to public
Instruction				
Pages 171-174	Not available to public	Not available to public	Not available to public	Not available to public
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Doc 97	Notification of Public Hearing of Delivery of Judgement (Recipient: Royal Courts of Justice)	Court of Justice Registrar	57894	1
Doc 98	Notification of Public Hearing of Delivery of Judgement (Recipient: Anthony McClellan)	Court of Justice Registrar	57895	1
Doc 99	Notification of Public Hearing of Delivery of Judgement (Recipient: Stephen Bird)	Court of Justice Registrar	57896	1
Doc 100	Notification of Public Hearing of Delivery of Judgement (Recipient: W H Godwin)	Court of Justice Registrar	57897	1
Doc 101	Notification of Public Hearing of Delivery of Judgement (Recipient: President and Members of the Council of the EC)	Court of Justice Registrar	57898	1
Doc 102	Judgement of the Court	Court of Justice	J. 41/74	23
Doc 103	Letter accompanying certified copies of the Judgement of the Court (Recipient: Royal Courts of Justice)	Court of Justice Registrar	58003	1
Doc 104	Letter accompanying certified copies of the Judgement of the Court (Recipient: Anthony McClellan)	Court of Justice Registrar	58004	1

Doc 105	Letter accompanying certified copies of the Judgement of the Court (Recipient: Stephen Bird)	Court of Justice Registrar	58005	1
Doc 106	Letter accompanying certified copies of the Judgement of the Court (Recipient: W H Godwin)	Court of Justice Registrar	58006	1
Doc 107	Letter accompanying certified copies of the Judgement of the Court (Recipient: President and Members of the Council of the EC)	Court of Justice Registrar	58007	1
Doc 108	Letter accompanying certified copies of the Judgement of the Court (Recipient: Minister of Foreign Affairs, Luxembourg)	Court of Justice Registrar	58006	1
Doc 109	Letter accompanying certified copies of the Judgement of the Court (Recipient: Minister of Foreign Affairs, Brussels)	Court of Justice Registrar	58009	1
Doc 110	Letter accompanying certified copies of the Judgement of the Court (Recipient:Minister of Foreign Affairs, Paris)	Court of Justice Registrar	58010	1
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Doc 112	Letter accompanying certified copies of the Judgement of the Court (Recipient: Permanent Representative of the Netherlands to the European Communities in Brussels)	Court of Justice Registrar	58012	1
Doc 113	Letter accompanying certified copies of the Judgement of the Court (Recipient: Permanent Representative of Italy to the European Communities in Brussels)	Court of Justice Registrar	58013	1
Doc 114	Letter accompanying certified copies of the Judgement of the Court (Recipient: Secretary of State for Foreign and Commonwealth Affairs, London)	Court of Justice Registrar	58014	1
Doc 115	Letter accompanying certified copies of the Judgement of the Court (Recipient: Minister for Foreign Affairs, Dublin)	Court of Justice Registrar	58015	1
Doc 116	Letter accompanying certified copies of the Judgement of the Court (Recipient: Permanent Representative of Denmark to the European Communities in Brussels)	Court of Justice Registrar	58016	1
Opinion				
Doc 117	Notification of Public Hearing of AG Opinion (Recipient: Royal Courts of Justice)	Court of Justice Registrar	57350	1
Doc 118	Notification of Public Hearing of AG Opinion (Recipient: Anthony McClellan)	Court of Justice Registrar	57351	1
Doc 119	Notification of Public Hearing of AG Opinion (Recipient: Stephen Bird)	Court of Justice Registrar	57352	1
Doc 120	Notification of Public Hearing of AG Opinion (Recipient: W H Godwin)	Court of Justice Registrar	57353	1
Doc 121	Notification of Public	Court of Justice	57354	1

	Hearing of AG Opinion (Recipient: President and Members of the Council of the EC)	Registrar		
Doc 122	Opinion of the Advocate General (translation)	Henri Mayras	Op 41/74	14

Annex 2: Key paragraphs for MaxQDA Analysis

Legal issue	Key paragraph
Direct effect of Directives	'It would be incompatible with the binding effect attributed to a directive by Article 189 to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned. In particular, where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the useful effect of such an act would be weakened if individuals were prevented from relying on it before their national courts and if the latter were prevented from taking it into consideration as an element of Community law'. (p.1348, para 12)
Direct effect of directives	'Article 3 (1) of Council Directive No 64/221 of 25 February 1964 confers on individuals rights which are enforceable by them in the courts of a Member State and which the national courts must protect'. (p.1338, para 3)
Public policy and personal conduct	'Although a person's past association cannot in general, justify a decision refusing him the right to move freely within the Community, it is nevertheless the case that present association, which reflects participation in the activities of the body or of the organization as well as identification with its aims and its designs, may be considered a voluntary act of the person concerned and, consequently, as part of his personal conduct within the meaning of the provision'. (P.1349, para 17)
Public policy and personal conduct	'The particular circumstances justifying recourse to the concept of public policy may vary from one country to another and from one period to another, and it is therefore necessary in this matter to allow the competent national authorities an area of discretion within the limits imposed by the Treaty'. (p.1350, para 18)
Public policy and personal conduct	'Where the competent authorities of a Member State have clearly defined their standpoint as regards the activities of a particular organization and where, considering it to be socially harmful, they have taken administrative measures to counteract these activities, the Member State cannot be required, before it can rely on the concept of public policy, to make such

	activities unlawful, if recourse to such a measure is not thought appropriate in the circumstances'. (p.1350, para 19)
Public policy and personal conduct	'A Member State, in imposing restrictions justified on grounds of public policy, is entitled to take into account, as a matter of personal conduct of the individual concerned, the fact that the individual is associated with some body or organization the activities of which the Member State considers socially harmful but which are not unlawful in that State, despite the fact that no restriction is placed upon nationals of the said Member State who wish to take similar employment with these same bodies or organizations'. (p.1338, para 5)