COUNCIL DIRECTIVE

of 16 June 1975

on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of itinerant activities and, in particular, transitional measures in respect of those activities

(75/369/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 49, 57, 66 and 235 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament (1);

Having regard to the Opinion of the Economic and Social Committee (2);

Whereas, pursuant to the Treaty, all discriminatory treatment based on nationality with regard to establishment and provision of services is prohibited as from the end of the transitional period; whereas the principle of such treatment based on nationality applies in particular to the right to join professional organizations where the professional activities of the person concerned necessarily involve the exercise of this right;

Whereas, moreover, Article 57 of the Treaty provides that, in order to make it easier for persons to take up and pursue activities as self-employed persons, directives are to be issued for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States;

Whereas, in the absence of mutual recognition of diplomas or of immediate coordination, it nevertheless appears desirable to make it easier to attain freedom of establishment and freedom to provide services for the activities in question, in particular by the adoption of transitional measures of the kind envisaged in the General Programmes (3) in order to avoid causing exceptional difficulties for nationals of Member States in which the taking up of such activities is not subject to any conditions;

Whereas, in order to prevent such difficulties arising, the object of the transitional measures should be to allow, as sufficient qualification for taking up the activities in question in host Member States which have rules governing the taking up of such activities, the fact that the activity has been pursued in the Member State whence the foreign national comes for a reasonable and sufficiently recent period of time to ensure that the person concerned possesses professional knowledge equivalent to that required of the host Member State's own nationals;

Whereas activities relating to retail trade from established premises and to the selling of goods in covered markets from permanently fixed installations are covered by Directives No 68/363/EEC and No 68/364/EEC (4) concerning the retail trade; whereas, accordingly, selling in markets other than from permanently fixed installations and in open-air markets should be covered by this Directive;

Whereas, moreover, Council Directives No 64/222/EEC and No 64/224/EEC (5) concerning the activities of intermediaries in commerce, industry and small craft industries already apply to the activities of intermediaries who go from door to door seeking orders;

Whereas this Directive is to cover not only trading activities which are necessarily itinerant but also other economic activities pursued on an itinerant basis where such activities are not covered by previous Directives;

Whereas this Directive does not apply in any Member State to itinerant activities which are prohibited in that Member State;

Whereas the activities of fairground operators, where they are of an itinerant nature, fall within the scope of this Directive;

Whereas the purpose of the transitional measures provided for in this Directive will disappear once the coordination of conditions for the taking up and pursuit of the activities in question and the mutual

(1) OJ No C 11, 5. 2. 1971, p. 43.
(2) OJ No C 42, 30. 4. 1971, p. 10.
(3) OJ No 2, 15. 1. 1962, pp. 32/62 and 36/62.
(4) OJ No L 260, 22. 10. 1968, pp. 1 and 6.
(5) OJ No 56, 4. 4. 1964, pp. 857/64 and 869/64.

recognition of diplomas, certificates and other formal qualifications have been achieved;

Whereas this Directive does not affect the provisions laid down by law, regulation or administrative action in the Member States which prohibit companies or firms from pursuing itinerant activities or impose on them certain conditions for such pursuit;

Whereas, in so far as in Member States the taking up or pursuit of the activities referred to in this Directive is also dependent in the case of paid employees on the possession of professional knowledge and ability, this Directive should also apply to this category of persons in order to remove an obstacle to the free movement of workers and thereby to supplement the measures adopted in Council Regulation (EEC) No 1612/68 (1) of 15 October 1968 on freedom of movement for workers within the Community;

Whereas, for the same reason, the provisions laid down in respect of proof of good repute and proof of no previous bankruptcy should also be applicable to paid employees;

Whereas the activity in question must have been pursued and any vocational training received in the same branch of trade as that in which the beneficiary wishes to establish himself in the host Member State, where the latter imposes this requirement on its own nationals,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall adopt the measures defined in this Directive in respect of establishment or provision of services in their territories by natural persons and companies or firms covered by Title I of the General Programmes (hereinafter called 'beneficiaries') wishing to pursue the activities referred to in Article 2.

2. This Directive shall also apply to nationals of Member States who, as provided in Regulation (EEC) No 1612/68, wish to pursue as paid employees activities referred to in Article 2.

Article 2

This Directive shall apply to the following itinerant activities:

(a) the buying and selling of goods:

— by itinerant tradesmen, hawkers or pedlars (ex ISIC Group 612);

— in covered markets other than from permanently fixed installations and in open-air markets;

(b) activities covered by transitional measures already adopted that expressly exclude or do not mention the pursuit of such activities on an itinerant basis.

Article 3

1. Where a host Member State requires of its own nationals wishing to take up any activity referred to in Article 2 proof of good repute and proof that they have not previously been declared bankrupt, or proof of either one of these, that State shall accept as sufficient evidence, in respect of nationals of other Member States, the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the Member State of origin or the Member State whence the foreign national comes showing that these requirements have been met.

2. Where a host Member State imposes on its own nationals wishing to take up one of the activities referred to in Article 2, certain requirements as to good repute, and proof that such requirements are satisfied cannot be obtained from the document referred to in paragraph 1, that State shall accept as sufficient evidence in respect of nationals of other Member States, a certificate issued by a competent judicial or administrative authority in the country of origin or in the country whence the foreign national comes, showing that the requirements in question have been met. Such certificate shall relate to the specific facts regarded as relevant by the host country.

3. Where the country of origin or the country whence the foreign national comes does not issue the document referred to in paragraph 1 or the certificate referred to in paragraph 2 furnishing proof of good repute or proof of no previous bankruptcy, such proof may be replaced by a declaration on oath — or, in a State where there is no provision for declaration on oath, by a solemn declaration — made by the person concerned before a competent judicial or administrative authority, or where appropriate, a notary, in the country of origin or the country whence that person comes; such authority or notary will issue a certificate attesting the authenticity of the declaration on oath or solemn declaration. The declaration in respect of no previous bankruptcy may also be made before a competent professional or trade body in the said country.

(1) OJ No L 257, 19. 10. 1968, p. 2.