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 various activities (ex ISIC Division 01 to 85) and, in particular, transitional measures in respect of those activities

(75/368/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 acivities 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 this Directive covers two categories of activity, namely:

— activities which can be pursued only after fairly extensive professional training and which are therefore subject to stringent regulations in the various Member States of the Community;

— activities the pursuit of which does not require such extensive professional training,

and provision should therefore be made for two types of transitional measures adapted to these two categories of activity;

Whereas the activities of patent buying and licensing companies are conducted as part of the exploitation of inventions and are distinct from the activities usually conducted by banks and other financial institutions; whereas, therefore, although falling within Group 620 of the ISIC Nomenclature, such activities do not come within the scope of Council Directive No 73/183/EEC (4) of 28 June 1973 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of self-employed activities of banks and other financial institutions;

Whereas neither the activities of consultant engineers (ISIC Group 833) nor those of industrial property consultants or patent attorneys (ISIC Group 831) are covered by this Directive;

(1) OJ No C 45, 10. 5. 1971, p. 12.
(2) OJ No C 93, 21. 9. 1971, p. 19.
(3) OJ No 2, 15. 1. 1962, pp. 32/62 and 36/62.
(4) OJ No L 194, 16. 7. 1973, p. 1.

Whereas the activities in ISIC Major Group 73 (communications) usually come under public postal and telecommunications services and most of the activities in that major group do not therefore come within the scope of this Directive; whereas, however, a few of these activities in ISIC Major Group 73 may be conducted in a private capacity and should therefore be included in this Directive;

Whereas services in the field of passenger and goods transport are governed by the provisions of the Treaty relating to transport and this Directive therefore does not concern provision of services in respect of the transport activities listed therein;

Whereas pending the adoption of Community rules, the existing provisions differentiating between inland waterway, coastal and sea transport remain in force;

Whereas, in respect of the activities falling within ISIC Group 859, beauty facial massage is the only activity within the category of the activities to which this Directive applies, since the activity of 'masseur-kinesitherapist' (massage for medical and sports purposes) is to be covered by another Directive;

Whereas lottery and similar activities which come under ISIC Group 859 often belong to the field of public services, either directly or through public bodies, or are prohibited, and some of these activities do not therefore come within the scope of this Directive; whereas, however, in certain Member States such activities can be conducted by private persons and should be included in this Directive;

Whereas certain activities in ISIC Group 859, such as rodent extermination, which require the use of toxic products, are governed by Council Directive No 74/556/EEC [1] of 4 June 1974 laying down detailed provisions concerning transitional measures relating to activities, trade in and distribution of toxic products and activities entailing the professional use of such products including activities of intermediaries;

Whereas the activities of tourist guides are pursued in certain Member States within fixed territorial limits and are subject to detailed rules; whereas they should therefore be excluded from this Directive with the exception of the activities of couriers and interpreter-guides;

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

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 [2] 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 (1).

Article 2

1. This Directive shall apply to the activities listed in the Annex.

[1] OJ No L 307, 18. 11. 1974, p. 1.

[2] OJ No L 257, 19. 10. 1968, p. 2.

2. Activities falling within ISIC Group 859 and involving the use of toxic products shall be governed by Directives No 74/556/EEC and No 74/557/EEC (1).

3. This Directive shall not apply to freedom to provide services in respect of the activities falling within Major Group 71 listed in the Annex.

4. This Directive shall not apply to activities carried on by way of itinerant trade.

5. This Directive shall not apply to the activities of tourist guides (ex ISIC Group 859) with the exception of the activities of couriers and interpreter-guides listed in the Annex.

Article 3

1. Where a host Member State requires of its own nationals wishing to take up any activity referred to in Article 2 (1) 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 certain activities falling within ISIC Groups 843 and 859, in particular gaming, 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 States 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.

4. For the gaming activities falling within ISIC Groups 843 and 859, and notwithstanding paragraphs 1, 2 and 3, the Member State shall have the right to make a final appraisal of all relevant facts, so long as the criteria do not differ according to whether the person concerned is a national of that State or a national of another Member State.

5. Documents issued in accordance with paragraphs 1, 2 and 3 may not be produced more than three months after their date of issue.

6. Member States shall, within the time limit laid down in Article 12, designate the authorities and bodies competent to issue the documents referred to in paragraphs 1, 2 and 3 of this Article and shall forthwith inform the other Member States and the Commission thereof.

7. Where in the host Member State proof of financial standing is required, that State shall regard certificates issued by banks in the Member State of origin or in the country whence the foreign national comes as equivalent to certificates issued in its own territory.

Article 4

Member States in which the taking up or pursuit of any activity referred to in Article 2 (1) is subject to possession of certain qualifications shall ensure that any beneficiary who applies therefor be provided, before he establishes himself or before he begins to pursue any activity on a temporary basis, with information as to the rules governing the occupation which he proposes to pursue.

Article 5

1. Where, in a Member State, the taking up or pursuit of any activity listed in the Annex and specified below:

(1) OJ No L 307, 18. 11. 1974, pp. 1 and 5.