Council Directive 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 (74/556/EEC)

COUNCIL DIRECTIVE

of 4 June 1974

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(74/556/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 49, 54 (2), 57, 63 (2), 66 and 235 thereof;

Having regard to the General Programme for the abolition of restrictions on freedom of establishment[(1)] and in particular the second and third paragraphs of Title V thereof;

Having regard to the General Programme for the abolition of restrictions on freedom to provide services[(2)] and in particular the second and third paragraphs of Title VI thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament[(3)];

Having regard to the Opinion of the Economic and Social Committee[(4)];

Whereas, besides making provision for the abolition of restrictions, the General Programmes provide that it should be examined whether such abolition should be preceded, accompanied or followed by mutual recognition of diplomas, certificates and other formal qualifications, and by the coordination of laws, regulations and administrative provisions concerning the taking up and pursuit of the activities in question, and whether, if need be, transitional measures should be adopted pending such recognition or coordination; whereas in addition certain Council Directives concerning the attainment of freedom of establishment and freedom to provide services provide for the adoption of directives concerning mutual recognition as regards activities relating to trade in and distribution of toxic products and activities entailing the professional use of such products;

Whereas in particular Council Directive No 64/427/EEC[(5)] of 7 July 1964 laying down detailed provisions concerning provided measures in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23—40 (Industry and small craft industries) and as in Directive No 68/336/EEC[(6)] of 15 October 1968 laying down detailed provisions concerning provisional measures in respect of activities of self-employed persons in the food manufacturing and beverage industry (ISIC Major Groups 20 and 21) do not

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exclude the use of toxic products in the pursuit of the activities to which they apply; whereas the transitional measures provided in these Directives are accordingly also applicable to the use of such products where the pursuit of these activities so requires;

Whereas for activities relating to trade in and distribution of toxic products and activities entailing the professional use of such products including activities of intermediaries, certain Member States sometimes require persons engaged in any of these activities to possess certain abilities attested by formal qualifications or diplomas, whilst other Member States do not impose any specific requirements but merely subject the handling or storage of toxic products to certain special conditions; whereas it is not therefore possible to effect the coordination provided for at the same time as the abolition of discrimination; whereas such coordination must be effected at a later date;

Whereas, in the absence 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 by the adoption of transitional measures of the kind envisaged in the General Programmes, in particular 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 main 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 a Member State of the Community other than the host Member State 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 in view of the dangerous effect which toxic products may have on the health of man, animals and plants either directly or indirectly through the environment;

Whereas, in view of the different characteristics of toxic products and of their varying degrees of toxicity with respect to human, animal and plant health, knowledge of the effects of any one of these products or experience in handling it cannot reasonably be considered as proof of equivalent competence for the distribution or professional use of other such products or all such products; whereas, therefore, the host Member State must have the power to limit the scope of the transitional measures to products which consist of the same active materials or which have similar effects on human, animal and plant health, either directly or indirectly through the environment;

Whereas, in so far as in Member States the taking up or pursuit of the activity in question is also dependent in the case of paid employees on the possession of general, commercial or professional knowledge or 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[(7)] 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 main purpose of the 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,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1 Member States shall adopt the transitional 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 paragraph 2 of this Article.

2 The activities referred to are those covered by Council Directive No 74/557/EEC[8] of 4 June 1974 on the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons and of intermediaries engaging in the trade and distribution of toxic products.

This Directive also covers activities involving the professional use of toxic products in so far as such activities have been or will be liberalized by the following Directives:

— Council Directive No 65/1/EEC[9] of 14 December 1964 laying down detailed provisions for the attainment of freedom to provide services in agriculture and horticulture;

— Council Directive No 667/654/EEC[10] of 24 October 1967 laying down detailed provisions for the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in forestry and logging;

— Council Directive No 71/18/EEC[11] of 16 December 1970 laying down detailed provisions for the attainment of freedom of establishment in respect of self-employed persons providing agricultural and horticultural services;

— Council Directive No 74/.../EEC of ... concerning the attainment of freedom of establishment and the freedom to provide services in respect of various activities of self-employed persons (ex ISIC Major Group 01 to Major Group 85) as regards the activities covered by that Directive which fall within ISIC Group 859 and entail the use of toxic products.

3 The transitional measures shall also apply to persons pursuing as paid employees the activities referred to in paragraph 2, as shall Article 7 (1) to (4), of Council Directive No 74/557/EEC.

Article 2

Where, in a Member State, the taking up or pursuit of any activity referred to in the first subparagraph of Article 1 (2), is dependent on the possession of general, commercial or professional knowledge and ability, that Member State shall accept as sufficient evidence of such knowledge and ability the fact that the activity in question has been pursued in another Member State for any of the following periods:

(a) five consecutive years in an independent capacity or in a managerial capacity, such activity not having ceased more than two years before the date when the application referred to in Article 4 (2) is made;

(b) two consecutive years in an independent capacity or in a managerial capacity where the beneficiary possesses a certificate of ability and competence for the activity in question authorizing him to pursue the activities of trade in or distribution of toxic products in the Member State of origin or the Member State whence he comes;