No L 260/6 Official Journal of the European Communities 22.10.68

COUNCIL DIRECTIVE

of 15 October 1968

laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in retail trade (ISIC ex Group 612)

(68/364/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 54 (2), 57, 63 (2) and 66 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 evidence of formal qualifications, and by the co-ordination of provisions laid down by law, regulation or administrative action 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 co-ordination;

Whereas not all Member States impose conditions for the taking up and pursuit of activities in retail trade; whereas, while in some cases there is freedom to take up and pursue such activities, in other cases there are stringent provisions making the taking up and pursuit thereof subject to possession of formal qualifications;

Whereas the Council, at the time of approving the General Programmes, found that in respect of retail trade co-ordination and recognition pose problems the solution of which requires detailed preparation;

Whereas it is therefore not possible to effect the co-ordination provided for at the same time as the abolition of restrictions; whereas such co-ordination must be effected at a later date;

Whereas, in the absence of immediate co-ordination, it nevertheless appears desirable to make it easier to attain freedom of establishment and freedom to provide services in respect of the activities in question by the adoption of transitional measures of the kind envisaged in the General Programmes; whereas this should be done primarily 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 States which have rules governing the taking up of such activities, the fact the occupation has been pursued in a Community country other than the host country for a reasonable period of time, such period being, in cases where no previous training is required, sufficiently recent to ensure that the person concerned possesses professional knowledge equivalent to that required of the host country's own nationals;

Whereas the rules of the host country will apply for the purpose of delimiting the branch of trade referred to in the last subparagraph of Article 4 (1) of this Directive;

Whereas the transitional measures already adopted cover *inter alia* the professional activities of intermediaries who carry out wholesale selling by auction on behalf of others; and whereas the provisions of

[1] OJ No 2, 15.1.1962, p. 36/62.
[2] OJ No 2, 15.1.1962, p. 32/62.
[3] OJ No 187, 9.11.1965, p. 2919/65.
[4] OJ No 199, 20.11.1965, p. 3014/65.

those transitional measures may be made to apply to retail selling by auction;

Whereas the transitional measures provided for in this Directive apply to activities of self-employed persons in retail trade covered by Article 2 of the Council Directive of 15 October 1968[1] concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in retail trade (ISIC ex Group 612);

Whereas, owing to differences in the views taken by the various Member States of certain activities, it can happen that an activity which in one State is regarded as falling within retail trade may in another be regarded as falling within the food manufacturing and beverage industries; whereas, to resolve any difficulties caused by such differences, the definitions given in the laws of the host country should be referred to in each case in order to determine which Directive on transitional measures should be applied;

Whereas, as regards States which do not make the taking up of the activities in question subject to any rules, in order to avoid a disproportionate influx into those States of persons who are unable to satisfy the conditions laid down in respect of the taking up and pursuit of such activities in the country whence they come, provision should be made for those States to be authorised, where appropriate and in respect of one or more activities, to require nationals of other Member States to furnish proof that they are qualified to pursue the activity in question in the country whence they come;

Whereas, however, considerable caution should be exercised in granting such authorisations, for, if too generally applied, they might hinder freedom of movement; whereas they should therefore be limited, both as to their period of validity and as to their scope, and, as is generally provided in the Treaty in respect of the administration of protective measures, the granting of such authorisations should be entrusted to the Commission;

Whereas the main purpose of the measures provided for in this Directive will disappear once the co-ordination of conditions for the taking up and pursuit of the activities in question and the mutual recognition of diplomas, certificates and other formal evidence of qualifications has been achieved;

HAS ADOPTED THIS DIRECTIVE:

[1] OJ No L 260, 22.10.1968, p. 1.

Article 1

1. Member States, acting in accordance with the provisions hereinafter laid down, shall adopt the following transitional measures in respect of establishment or provision of services in their territories by natural persons or companies or firms covered by Title I of the General Programmes (hereinafter called 'beneficiaries') wishing to engage in the activities of self-employed persons referred to in paragraph 2.

2. The activities in question are those covered by the Council Directive of 15 October 1968 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in retail trade (ISIC ex Group 612), with the exception of activities of intermediaries who carry out retail selling by auction on behalf of others.

3. The professional activities of intermediaries who carry out retail selling by auction on behalf of other persons are governed, as regards transitional measures, by the provisions of Article 2 *et seq* of the Council Directive of 25 February 1964 laying down detailed provisions concerning transitional measures in respect of activities in wholesale trade and activities of intermediaries in commerce, industry and small craft industries.

Article 2

Where, according to the laws of a Member State, certain activities fall not within retail trade but rather within the food manufacturing industry or the beverage industry, the appropriate Directive laying down detailed provisions concerning transitional measures in the field in question shall apply to those activities in that Member State.

Article 3

Member States in which the taking up or pursuit of any activity referred to in Article 1(2) 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 4

1. Where, in a Member State, the taking up or pursuit of any activity referred to in 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: