

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 8 August 1989

Proposal for a
COUNCIL DIRECTIVE

on a second general system for the recognition of
professional education and training which
complements Directive 89/48/EEC

(presented by the Commission)

S U M M A R Y

The proposal complements and extends the approach adopted in the Council Directive of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least 3 years' duration.

It is the last in a set of measures giving every Community national the right to have qualifications acquired in another Member State recognized or taken into account by a host Member State which regulates a given activity. It applies to Community nationals who have received short higher education diplomas, holders of secondary education diplomas and certain persons without diplomas who have had professional experience.

EXPLANATORY MEMORANDUM

1. The Council Directive of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration¹ gives practical effect to an idea which itself stems from an observation.

This observation, made during the meeting of the European Council in Fontainebleau on 25 and 26 June 1984, was that innovative solutions had to be sought to the problems of the recognition of diplomas "in order to bring about the effective freedom of establishment within the Community".

The idea, put forward by the Heads of State and Government and subsequently developed by the Commission² and by the Committee for a People's Europe,³ was that there had to be a general recognition of diplomas without any prior harmonization either of the training courses required for the pursuit of the regulated occupations, or of the activities recognized by the Member States as forming part of those occupations, but that in return the migrant would have to satisfy certain compensatory conditions where the qualification he had obtained in the Member State of origin did not correspond to that required in the host Member State.⁴

¹ Directive 89/48/EEC, OJ L 19, 24.1.1989, p. 16.

² COM(84)446 final. A People's Europe - implementing the conclusions of the Fontainebleau European Council.

³ Report presented to the European Council in Brussels on 29 and 30 March 1985.

⁴ For a more detailed examination of the reasons for this approach, cf. COM(85)365 final, pages 1 to 5.

While giving practical effect to a new approach, Directive 89/429/EEC, which has recently been adopted, is nevertheless limited in the sense that, although it is described as a general system, it applies only to certain occupations, namely those for the pursuit of which the completion of a higher education course of studies lasting at least three years is required.

The European Parliament had already expressed its opinion, on 14 November 1985, in the first reading of the Commission proposal which was to become Directive 89/48/EEC, that it resolved only some of the problems associated with the recognition of diplomas, and had asked that the Commission should take the necessary measures to ensure "the recognition of all vocational proficiency certificates for the benefit of Community citizens who have not followed a course of higher education".¹

Similarly, the Economic and Social Committee, in its opinion of 29 January 1986,² had put forward its view that the Commission proposal was only a first step and had to be followed "by a similar approach in other instances where differences in education/training, and consequently diplomas, prevent the exercise of certain activities in accordance with the freedom of establishment".

Before the adoption of Directive 89/428/EEC, the Commission itself stated to the Council on 17 November 1988,³ and confirmed this intention in the work programme that it presented to the European Parliament for 1989,⁴

¹ Resolution of the European Parliament, OJEC C 345, 31.12.1985, pages 81 to 82.

² Opinion of the Economic and Social Committee, doc. 90/86, 29.1.1986, page 6.

³ Progress report required by Article 8b of the Treaty. Doc. COM(88)650 final, page 15.

⁴ Doc. SEC(89)1 final, page 27.

that it proposed to extend the principles contained in the general system for the recognition of higher education diplomas awarded on completion of professional or vocational education and training of at least three years' duration to all diplomas required for the pursuit of regulated occupations in the Member States.

Finally, the Informal meeting of Education Ministers at Segovia on 17 and 18 March 1989 produced a very broad consensus in favour of extending the horizontal approach to the recognition of diplomas and professional qualifications, an approach which is recognized as producing a greater feeling of awareness and of European citizenship.

There is, then, a broad measure of agreement on extending the approach adopted in Directive 89/48/EEC and thus facilitating the movement of all persons wishing to pursue a regulated profession in a State other than that in which they receive their training and who are not already covered by a system for the recognition of occupational qualifications.

This then is the background to the Commission proposal on a second general system for the recognition of professional and vocational training complementing that introduced by the Council Directive of 21 December 1988.

2. The complementary general system has the following main features:

2.1 Like the initial general system, it is based on the principle that courses which differ from one Member State to another but whose purpose is to train persons to carry out the same activity may as a general rule be presumed to provide the persons concerned with similar qualifications.

2.2 It is both complementary to and independent of the initial general system, since it contains all the provisions necessary for its operation, these being in most cases similar or even identical to those of the initial general system.

2.3 Like the initial general system, the complementary general system does not apply to occupations already covered by existing Directives as regards recognition of occupational qualifications. More specifically, it does not apply to regulated occupations

- which are the object of specific Directives introducing mutual recognition of training courses completed before taking up the occupation;

- which are the object of specific Directives whose main purpose is to introduce recognition of technical skills based on occupational experience acquired in a Member State which does not regulate

such occupations. In this case the Directives involved concern craft and commercial activities and some of them were adopted twenty years ago.¹

2.4 The complementary general system covers the two levels of professional and vocational education and training not caught by the initial general system:

- first, training acquired on a secondary course and
- second, training generally acquired on a so-called "short" post-secondary course of less than three years' duration.

The level covered by Directive 89/48/EEC, for its part, corresponds to training acquired on a so called "long" post-secondary course of at least three years' duration: this is the third level of education and training.

In other words, as the ceiling for the first level is made up of the diplomas, certificates or other evidence of formal qualifications attesting to the completion of a secondary course in the Member States, and the floor of the third level is made up of the diplomas, certificates or other evidence of formal qualifications attesting to successful completion of a post-secondary course of at least three years' duration at an establishment of higher education, everything between the two comes within the second level.

¹ They are often called "transitional" because it was originally intended that they would have to be replaced by 1970, the end of the transitional period laid down in Article 8 of the Treaty, by more advanced systems of recognition aimed at making the movement of persons easier.

2.5 The complementary general system provides for two separate legal systems for the recognition of education and training courses corresponding to the first and second levels. These two systems are, however, directly based on the initial general system.

Under one of the systems, "certificate" means all diplomas, certificates or other evidence of formal qualifications required for the pursuit of regulated occupations in the Member States and falling within the first level of education and training (secondary courses, cf. Article 1(b)). Under the other, "diploma" means a similar set of qualifications, but coming within the second level (so called short post-secondary courses, cf. Article 1(a)). A distinction has, then, to be made between the concept of "diploma" within the meaning of the complementary general system and the concept of "diploma" within the meaning of the initial general system, which attests to a post-secondary course of at least three years' duration.

Apart from the recognition, at each level, of the certificates (Article 5) and diplomas (Article 3), the complementary general system, like the initial general system, provides for the possibility of requiring compensatory measures from a migrant whose education and training differ substantially from that required in the host Member State

- solely by means of an adaptation period not exceeding two years, where the pursuit of a regulated occupation is subject to the possession of a certificate (Article 6);

- by means of either an adaptation period not exceeding three years or an aptitude test, where the pursuit of a regulated occupation is dependent upon the possession of a diploma (Article 4).

2.6 Because it covers two levels of education and training and the initial general system covers a third, the complementary general system has to provide for certain possibilities of recognition between these three levels, where for a particular occupation the training received by a migrant is not of the same level as that required by the host Member State:

- these possibilities are greatest between levels 2 and 3, and in both directions (Article 3);
- however, the opportunities for the mutual recognition of education and training courses belonging to levels 1 and 2 respectively are subject to different rules depending on the direction in question.
- In moving from level 2 to level 1, the applicant may be presumed to be over-qualified and will normally need only to possess a diploma within the meaning of the proposal (Article 5). In the other direction, i.e. from level 1 to level 2, he must normally possess a certificate and have undergone an adaptation period or aptitude test (Article 9). The effect of this Article is that a person pursuing an activity who possesses occupational experience

only cannot pursue his occupation in another Member State which requires a diploma.

2.7. The complementary general system, as the first general system, constitutes an innovation as concerns its philosophy as well as its mechanisms. After a few years of operation of the two general systems, it will be possible to evaluate their own effectiveness and the cohesion of all Community rules on the recognition of occupational qualifications. Thus the Commission is giving itself five years from the date of implementation of the complementary general system to make this evaluation and present to the Council as well as the European Parliament and the Economic and Social Committee a communication together with the necessary proposals for action.

3. It is not the sole object of the proposal for a Directive to introduce a complementary general system which would be purely and simply a replica of the initial general system and would cover diplomas, certificates and other evidence of formal qualifications attesting to courses coming within levels 1 and 2. Its broader aim is to enable a rapid response to be made to the principal requirements regarding the recognition of occupational qualifications not yet met by existing provisions, whether in the initial general system or in specific Directives. To this end, the proposal contains other provisions applicable in the following situations:

- A Member State which makes the pursuit of an occupational activity subject to the prior completion of education and training generally refers to courses provided on the national territory.

Nationals are thus able to obtain the qualifications required for the pursuit of the activity in question. However, that activity may not be regulated in another Member State; in that case, the qualifications needed to pursue such activity may be acquired either at a stroke through prior specific training or gradually through occupational experience in pursuing such activity. However, although it is apparent that for a number of decades "self-training" through the pursuit of an activity has tended to be less common than prior training, it nonetheless retains a certain significance for occupational activities requiring what are primarily manual skills. For this reason, the proposal provides for procedures for the recognition not only of training acquired through a structured programme but also self-training acquired through the pursuit of an occupational activity. The object of this latter procedure is to require a host Member State which makes the pursuit of an occupational activity dependent on completion of a course of studies at secondary level to recognize under certain conditions self-tuition acquired through the pursuit of the same activity in another Member State which does not regulate it.

- The initial general system, like most of the specific Directives, applies to the pursuit of the regulated activities both in a self-employed capacity or as an employed person. However, some of the Directives, adopted before 1976, facilitate pursuit of an occupation in a self-employed capacity only.

Although the pursuit of these activities in an employed capacity is not usually regulated, this anomaly should be removed and these Directives amended to enlarge their scope. Accordingly, all Community provisions on the recognition of occupational qualifications will facilitate the pursuit of regulated activities both as an employed person and in a self-employed capacity.

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The Council of the European Communities,
Having regard to the Treaty establishing the European Economic Community,
and in particular Articles 49, 57(1) and 66 thereof,
Having regard to the proposal from the Commission¹,
In cooperation with the European Parliament²,
Having regard to the opinion of the Economic and Social Committee³,

Whereas, pursuant to Article 8a of the Treaty the Internal market shall
comprise an area without internal frontiers and pursuant to Article 3(c) of
the Treaty the abolition, as between Member States, of obstacles to freedom
of movement for persons and services constitutes one of the objectives of
the Community; whereas, for nationals of the Member States, this means in
particular the possibility of pursuing an occupation, whether in a
self-employed or employed capacity, in a Member State other than that in
which they acquired their professional or vocational qualifications;

Whereas, for those occupations for the pursuit of which the Community has
not laid down the necessary minimum level of qualification, Member States
reserve the option of fixing such a level with a view to guaranteeing the
quality of services provided in their territory; whereas, however, they may
not, without infringing their obligations laid down in Articles 5, 48, 52
and 59 of the Treaty, require a national of a Member State to obtain those
qualifications which in general they determine only by reference to
diplomas issued under their own national education systems, where the
person concerned has already acquired all or part of those qualifications
in another Member State; whereas, as a result, any host Member State in
which an occupation is regulated is required to take account of

1 OJ No C ...
2 OJ No C ...
3 OJ No C ...

qualifications acquired in another Member State and to determine whether those qualifications correspond to the qualifications which the Member State concerned requires;

Whereas Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration¹ helps to ensure that these obligations are met, but is limited to higher education;

Whereas in order to facilitate the pursuit of all those occupational activities which in a host Member State are dependent on the completion of a certain level of education and training, a second general system should be introduced to complement the first;

Whereas this complementary system must cover the two levels of education and training not caught by the initial general system, namely secondary education and post-secondary courses of less than three years' duration at an establishment of higher education or another establishment of similar level;

Whereas the complementary general system must be based on the same principles and contain mutatis mutandis the same rules as the initial general system;

Whereas since it covers two levels of education and training and since the initial general system covers a third level, the complementary general system must lay down whether and under what conditions a person possessing a certain level of education and training may pursue, in another Member State, an occupation the qualifications for which are regulated at a different level.

Whereas since it covers occupations the pursuit of which is dependent on the possession of professional or vocational education and training qualifications of secondary level and generally requires manual skills, the complementary general system must also provide for the recognition of such qualifications even if they have been acquired solely through occupational experience in a Member State which does not regulate such occupations.

¹ OJ No L 19, 24.1.1989, p. 16.

Whereas in addition the scope of a number of previous Directives on the recognition of professional and vocational qualifications should be extended to cover the pursuit of regulated activities in both an employed and a self-employed capacity.

Whereas the complementary general system is entirely without prejudice to the application of Article 48(4) and Article 55 of the Treaty;

Whereas, like the initial system, such a system, by strengthening the right of a Community national to use his occupational skills in any Member State, supplements and reinforces his right to acquire such skills wherever he wishes;

Whereas the two systems should be evaluated, after being in force for a certain time, in order to determine how efficiently they operate and in particular how they can both be improved,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive the following definitions shall apply:

(a) diploma: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence:

- which has been awarded by a competent authority in a Member State, designated in accordance with its own laws, regulations or administrative provisions;

- which shows that the holder has successfully completed a post-secondary course of less than three years' duration or of equivalent duration on a part-time basis, at a university or establishment of higher education or another establishment of similar level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course, and

- which shows that the holder has the professional qualifications required for the taking up or pursuit of a regulated profession in that Member State,

provided that the education and training attested by the diploma, certificate or other evidence of formal qualifications were received mainly in the Community, or the holder thereof has three years' professional experience certified by the Member State which recognized a third-country diploma, certificate or other evidence of formal qualifications.

The following shall be treated in the same way as a diploma, within the meaning of the first subparagraph: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence awarded by a competent authority in a Member State if it is awarded on the successful completion of education and training received in the Community and recognized by a competent authority in that Member State as being of an equivalent level and if it confers the same rights in respect of the taking up and pursuit of a regulated profession in that Member State;

(b) certificate: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence:

- which has been awarded by a competent authority in a Member State, designated in accordance with its own laws, regulations or administrative provisions;
- which shows that the holder has successfully completed a course of secondary studies in a general education or vocational training establishment, and
- which shows that the holder has the professional qualifications required for the taking up or pursuit of a regulated profession in that Member State,

provided that the education and training attested by the diploma, certificate or other evidence of formal qualifications were received mainly in the Community, or the holder thereof has two years' professional experience certified by the Member State which recognized a third-country diploma, certificate or other evidence of formal qualifications.

The following shall be treated in the same way as a certificate, within the meaning of the first subparagraph: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence awarded by a competent authority in a Member State if it is awarded on the successful completion of education and training received in the Community and recognized by a competent authority in that Member State as being of an equivalent level and if it confers the same rights in respect of the taking up and pursuit of a regulated profession in that Member State;

- (c) **host Member State:** any Member State in which a national of a Member State applies to pursue a profession subject to regulation in that Member State, other than the State in which he obtained his diploma or certificate or first pursued the profession in question;
- (d) **a regulated profession:** the regulated professional activity or range of activities which constitute this profession in a Member State;

(e) regulated professional activity: a professional activity, in so far as the taking up or pursuit of such activity or one of its modes of pursuit in a Member State is subject, directly or indirectly by virtue of laws, regulations or administrative provisions, to the possession of a diploma or certificate. The following in particular shall constitute a mode of pursuit of a regulated professional activity:

- pursuit of an activity under a professional title, in so far as the use of such a title is reserved to the holders of a diploma or certificate governed by laws, regulations or administrative provisions,
- pursuit of a professional activity relating to health, in so far as remuneration and/or reimbursement for such an activity is subject by virtue of national social security arrangements to the possession of a diploma.

Where the first subparagraph does not apply, a professional activity shall be deemed to be a regulated professional activity if it is pursued by the members of an association or organization the purpose of which is, in particular, to promote and maintain a high standard in the professional field concerned and which, to achieve that purpose, is recognized in a special form by a Member State and:

- awards a diploma to its members,
- ensures that its members respect the rules of professional conduct which it prescribes, and
- confers on them the right to use a title or designatory letters, or to benefit from a status corresponding to that diploma.

Whenever a Member State grants the recognition referred to in the second subparagraph to an association or organization which satisfies the conditions of that subparagraph, it shall inform the Commission thereof, which shall publish this information in the Official Journal of the European Communities;

- (f) professional experience: the actual and lawful pursuit of the profession concerned in a Member State;
- (g) adaptation period: the pursuit of a regulated profession in the host Member State under the responsibility of a qualified member of that profession, such period of supervised practice possibly being accompanied by further training. This period of supervised practice shall be the subject of an assessment. The detailed rules governing the adaptation period and its assessment as well as the status of a migrant person under supervision shall be laid down by the competent authority in the host Member State;

- (h) aptitude test: a test limited to the professional knowledge of the applicant, made by the competent authorities of the host Member State with the aim of assessing the ability of the applicant to pursue a regulated profession in that Member State.

In order to permit this test to be carried out, the competent authorities shall draw up a list of subjects which, on the basis of a comparison of the education and training required in the Member State and that received by the applicant, are not covered by the diploma, certificate or other evidence of formal qualifications possessed by the applicant.

The aptitude test must take account of the fact that the applicant is a qualified professional in the Member State of origin or the Member State from which he comes. It shall cover subjects to be selected from those on the list, knowledge of which is essential in order to be able to exercise the profession in the host Member State. The test may also include knowledge of the professional rules applicable to the activities in question in the host Member State. The detailed application of the aptitude test shall be determined by the competent authorities of that State with due regard to the rules of Community law.

The status, in the host Member State, of the applicant who wishes to prepare himself for the aptitude test in that State shall be determined by the competent authorities in that State.

Article 2

This Directive shall apply to any national of a Member State wishing to pursue a regulated profession in a host Member State in a self-employed capacity or as an employed person.

This Directive shall not apply to professions which are the subject of a separate Directive establishing arrangements for the mutual recognition of diplomas by Member States, nor to activities covered by a Directive listed in Annex A.

Article 3

Where, in a host Member State, the taking up or pursuit of a regulated profession is subject to possession of a diploma, as defined in this Directive or in Directive 89/48/EEC, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals:

- (a) If the applicant holds the diploma, as defined in this Directive or in Directive 89/48/EEC, required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State; or

(b) if the applicant has pursued the profession in question full-time for two years during the previous ten years in another Member State which does not regulate that profession, within the meaning of Article 1(c) and the first subparagraph of Article 1(d), and possesses evidence of one or more formal qualifications:

- which have been awarded by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of that State,
- which show that the holder has successfully completed a part-time or full-time post-secondary course at a university or establishment of higher education or another establishment of similar level in a Member State and, where appropriate, that he has successfully completed the professional training required in addition to post-secondary studies, and
- which have prepared the holder for the pursuit of his profession.

The following shall be treated in the same way as the evidence of formal qualifications referred to in the first subparagraph: any formal qualifications or any set of such formal qualifications awarded by a competent authority in a Member State if it is awarded on the successful completion of education and training received in the Community and is recognized by that Member State as being of an equivalent level, provided that the other Member States and the Commission have been notified of this recognition.

Article 4:

1. Notwithstanding Article 3, the host Member State may also require the applicant:

(a) to provide evidence of professional experience, where the duration of the education and training adduced in support of his application, as laid down in Article 3(a) and (b), is at least one year less than that required in the host Member State. In this event, the period of professional experience required:

- may not exceed twice the shortfall in duration of education and training where the shortfall relates to post-secondary studies and/or to a period of probationary practice carried out under the control of a supervising professional person and ending with an examination,

- may not exceed the shortfall where the shortfall relates to professional practice acquired with the assistance of a qualified member of the profession concerned.

In the case of diplomas within the meaning of the last subparagraph of Article 1(a), the duration of education and training recognized as being of an equivalent level shall be determined as for the education and training defined in the first subparagraph of Article 1(a).

When applying these provisions, account must be taken of the professional experience referred to in Article 3(b).

At all events, the professional experience required may not exceed four years;

(b) to complete an adaptation period not exceeding three years or take an aptitude test:

- where the matters covered by the education and training he has received as laid down in Article 3(a) and (b) differ substantially from those covered by the diploma, as defined in this Directive or in Directive 89/48/EEC, required in the host Member State, or
- where, in the case referred to in Article 3(a), the profession regulated in the host Member State comprises one or more regulated professional activities which do not form part of the profession regulated in the Member State from which the applicant originates or comes and that difference corresponds to specific education and training required in the host Member State and covers matters which differ substantially from those covered by the diploma, as defined in this Directive or in Directive 89/48/EEC, adduced by the applicant, or
- where, in the case referred to in Article 3(b), the profession regulated in the host Member State comprises one or more regulated professional activities which do not form part of the profession pursued by the applicant in the Member State from which he originates or comes, and that difference corresponds to specific education and training required in the host Member State and covers matters which differ substantially from those covered by the evidence of formal qualifications adduced by the applicant.

Should the host Member State make use of this possibility, it must give the applicant the right to choose between an adaptation period and an aptitude test. Where the host Member State, which requires a diploma as defined in Directive 89/84/EEC, intends to introduce derogations as regards an applicant's right to choose, the procedure laid down in Article 15 shall apply.

2. However, the host Member State may not apply the provisions of paragraph 1(a) and (b) cumulatively.

Article 5

Where, in the host Member State, the taking up or pursuit of a regulated profession is subject to possession of a certificate, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals:

- (a) If the applicant holds the diploma, as defined in this directive or the directive 89/48/EEC, or the certificate required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma or certificate having been awarded in a Member State; or
- (b) If the applicant has pursued the profession in question full-time for two years during the previous ten years in another Member State which does not regulate that profession, within the meaning of Article 1(d) and the first subparagraph of Article 1(e), and possesses evidence of one or more formal qualifications:
 - which have been awarded by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of that State, and
 - which show that the holder has successfully completed a post-secondary course at a university or establishment of higher education or another establishment of similar level of a Member State and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course or which show that the holder has successfully completed a part-time or full-time course of secondary studies in a general education or vocational training establishment, and
 - which have prepared the holder for the pursuit of the profession in question.

The following shall be treated in the same way as the evidence of formal qualifications referred to in the first subparagraph: any formal qualifications or any set of such formal qualifications awarded by a competent authority in a Member State if it is awarded on the successful completion of education and training received in the Community and is recognized by that Member State as being of an equivalent level, provided that the other Member States and the Commission have been notified of this recognition.

Article 6

Without prejudice to Article 5, a host Member State may require the applicant to complete an adaptation period not exceeding two years maximum when the training he received in accordance with Article 5(a) or (b) relates to matters that differ substantially from those covered in the course leading to the certificate required in the host Member State.

Article 7

Where, in the host Member State, the taking up or pursuit of a regulated profession or its exercise is subject only to possession of general knowledge of primary or secondary school level, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals, if the applicant has a training certificate of the correspondent level, which has been awarded in another Member State and which gives access in that Member State to secondary school of higher education level.

This training certificate must have been awarded by a competent authority in that Member State, designated in accordance with its own laws, regulations or administrative provisions.

Article 8

Where, in the host Member State, the taking up or pursuit of a regulated profession or its exercise is subject to possession of a vocational training certificate, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals:

- (a) If the applicant who does not hold a diploma, certificate or other evidence of formal qualifications has pursued the profession in question full-time for three consecutive years during the previous ten years in another Member State which does not regulate that profession within the meaning of Article 1(d) and the first subparagraph of Article 1(e), and
- (b) If the applicant has undergone an adaptation period not exceeding two years maximum.

Article 9

Where, in a host Member State, the taking up or pursuit of a regulated profession is subject to possession of a diploma, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals:

- (a) If the applicant holds the certificate required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State; or

If the applicant has pursued the profession in question full-time for two years during the previous ten years in another Member State which does not regulate that profession, within the meaning of Article 1(d) and the first subparagraph of Article 1(e), and possesses evidence of one or more formal qualifications:

- which have been awarded by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of that State,
- which show that the holder has successfully completed a course of secondary studies in a general education or vocational training establishment, which have prepared the holder for the pursuit of his profession,

- (b) and if the applicant has completed an adaptation period not exceeding three years maximum or has taken the aptitude test. The host Member State must give the applicant the right to choose between an adaptation period and an aptitude test.

Article 10

Without prejudice to Articles 3 to 9, a host Member State may allow the applicant, with a view to improving his possibilities of adapting to the professional environment in that State, to undergo there, on the basis of equivalence, that part of his professional education and training represented by a professional practice, acquired with the assistance of a qualified member of the profession concerned, which he has not undergone in his Member State of origin or the Member State from which he has come.

Article 11

1. Where the competent authority of a host Member State requires of persons wishing to take up a regulated profession proof that they are of good character or repute or that they have not been declared bankrupt, or suspends or prohibits the pursuit of that profession in the event of serious professional misconduct or a criminal offence, that State shall accept as sufficient evidence, in respect of nationals of Member States wishing to pursue that profession in its territory, the production of documents issued by competent authorities in the Member State of origin or the Member State from which the foreign national comes showing that those requirements are met.

Where the competent authorities of the Member State of origin or of the Member State from which the foreign national comes do not issue the documents referred to in the first subparagraph, such documents shall 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 or qualified professional body of the Member State of origin or the Member State from which the person comes; such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.

2. Where the competent authority of the host Member State requires of nationals of that Member State wishing to take up or pursue a regulated profession a certificate of physical or mental health, that authority shall accept as sufficient evidence in this respect the production of the document required in the Member State of origin or the Member State from which the foreign national comes.

Where the Member State of origin or the Member State from which the foreign national comes does not impose any requirements of this nature on those wishing to take up or pursue the profession in question, the host Member State shall accept from such nationals a certificate issued by a competent authority in that State corresponding to the certificates issued in the host Member State.

3. The competent authorities of host Member States may require that the documents and certificates referred to in paragraphs 1 and 2 are presented no more than three months after their date of issue.

4. Where the competent authority of a host Member State requires nationals of that Member State wishing to take up or pursue a regulated profession to take an oath or make a solemn declaration and where the form of such oath or declaration cannot be used by nationals of other Member States, that authority shall ensure that an appropriate and equivalent form of oath or declaration is offered to the person concerned.

Article 12

1. The competent authorities of host Member States shall recognize the right of nationals of Member States who fulfill the conditions for the taking up and pursuit of a regulated profession in their territory to use the professional title of the host Member State corresponding to that profession.

2. The competent authorities of host Member States shall recognize the right of nationals of Member States who fulfill the conditions for the taking up and pursuit of a regulated profession in the territory to use their lawful academic title and, where appropriate, the abbreviation thereof deriving from their Member State of origin or the Member State from which they come, in the language of that State. Host Member States may require this title to be followed by the name and location of the establishment or examining board which awarded it.

3. Where a profession is regulated in the host Member State by an association or organization referred to in Article 1(e), nationals of Member States shall be entitled to use the professional title or designatory letters conferred by that organization or association only on proof of membership.

Where the association or organization makes membership subject to certain qualification requirements, it may apply these to nationals of other Member States who are in possession either of a diploma within the meaning of Article 1(a) or a certificate within the meaning of Article 1(b) or a formal qualification within the meaning of Article 3(b), Article 7 or Article 9(a) only in accordance with this Directive, in particular Articles 3, 4 and 9.

Article 13

1. The host Member State shall accept as proof that the conditions laid down in Articles 3 to 9 are satisfied the certificates and documents issued by the competent authorities in the Member States, which the person concerned shall submit in support of his application to pursue the profession concerned.

2. The procedure for examining an application to pursue a regulated profession shall be completed as soon as possible and the outcome communicated in a reasoned decision of the competent authority in the host Member State not later than four months after presentation of all the documents relating to the person concerned. A remedy shall be available against this decision, or the absence thereof, before a court or tribunal in accordance with the provisions of national law.

Article 14

1. Member States shall designate, within the period provided for in Article 18, the competent authorities empowered to receive the applications and take the decisions referred to in this Directive. They shall communicate this information to the other Member States and to the Commission.

2. The person responsible for coordination appointed by each Member State in accordance with Article 9(2) of Directive 89/48/EEC shall also be responsible for promoting uniform application of this Directive to all the professions concerned.

The coordinating group set up under this same Article of Directive 89/48/EEC shall also be required :

- to facilitate the implementation of this Directive,
- to collect all useful information for its application in the Member States.

The group may be consulted by the Commission on any changes to the existing system that may be contemplated.

3. The Member States shall take measures to provide the necessary information on the recognition of diplomas and certificates within the framework of this Directive. They may be assisted in this task by the information centre on the academic recognition of diplomas and periods of study established by the Member States within the framework of the Resolution of the Council and the Ministers of Education meeting within the Council of 9 February 1976,¹ and, where appropriate, the relevant professional associations or organizations. The Commission shall take the necessary initiatives to ensure the development and coordination of the communication of the necessary information.

Article 15

1. If, pursuant to the second sentence of the second subparagraph of Article 4(1)(b), or the second sentence of Article 9(b), a Member State proposes not to grant applicants the right to choose between an adaptation period and an aptitude test in respect of a profession within the meaning of this Directive, it shall immediately communicate to the Commission the corresponding draft provision. It shall at the same time notify the Commission of the grounds which make the enactment of such a provision necessary.

The Commission shall immediately notify the other Member States of any draft it has received; it may also consult the coordinating group referred to in Article 14(2) on the draft.

2. Without prejudice to the possibility for the Commission and the other Member States of making comments on the draft, the Member State may adopt the provision only if the Commission has not taken a decision to the contrary within three months.

3. At the request of a Member State or the Commission, Member States shall communicate to them, without delay, the definitive text of any provision arising from the application of this Article.

Article 16

The Directives listed in Annex B shall also apply to the nationals of Member States who, pursuant to Council Regulation (EEC) No 1612/68¹, wish to pursue the activities covered by these Directives as paid employees.

¹ OJ No L 257, 19.10.1968, p. 2.

Article 17

Following the expiry of the period provided for in Article 18, Member States shall communicate to the Commission, every two years, a report on the application of the system introduced.

In addition to general remarks, this report shall contain a statistical summary of the decisions taken and a description of the main problems arising from application of the Directive.

Article 18

Member States shall take the measures necessary to comply with this Directive by 1 July 1991 at the latest. They shall forthwith inform the Commission thereof.

The provisions adopted pursuant to the first paragraph shall make express reference to this Directive.

Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 19

Five years at the latest following the date specified in Article 18, the Commission shall report to the European Parliament and the Council on the state of application of this Directive.

After conducting all necessary consultations, the Commission shall present its conclusions as to any changes that need to be made to this Directive. At the same time the Commission shall, where appropriate, submit proposals for improving the existing rules in the interests of facilitating freedom of movement, right of establishment and freedom to provide services.

Article 20

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

Annex A List of the Directives referred to in the second paragraph of Article 2

Annex B List of the directives referred to in Article 16

ANNEX A

List of the directives referred to in the second paragraph
of Article 2

- 1) **64/429/EEC¹**
Council Directive of 7 July 1964, concerning the attainment of freedom of establishment and freedom to provide services 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)

- 64/427/EEC²**
Council Directive of 7 July 1964, laying down detailed provisions concerning transitional 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)

- 2) **68/365/EEC³**
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 the food manufacturing and beverage industries (ISIC Major Groups 20 and 21)

- 68/366/EEC⁴**
Council Directive of 15 October 1968, laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in the food manufacturing and beverage industries (ISIC Major Groups 20 and 21)

1 OJ No 117, 23.7.1964, p. 1880.

2 OJ No 117 du 23.7.64, p. 1863. Amended by Directive of 4 March 1969 (69/77/EEC), OJ No 059, 10.3.1969.

3 OJ No L 260, 22.10.68, p. 9.

4 OJ No L 260 of 22.10.68, p. 12.

3) 64/223/EEC⁵

Council Directive of 25 February 1964, concerning the attainment of freedom of establishment and freedom to provide services in respect of activities in wholesale trade

64/224/EEC⁶

Council Directive of 25 February 1964, concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of intermediaries in commerce, industry and small craft industries.

64/222/EEC⁷

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

4) 68/363/EEC⁸

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)

68/364/EEC⁹

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)

5) 70/522/EEC¹⁰

Council directive of 30 November 1970, concerning the attainment of freedom to provide services in respect of activities of self-employed persons in the wholesale coal trade and activities of intermediaries in the coal trade (ISIC EX Group 6112)

5 OJ No 56, 4.4.64, p. 863.

6 OJ No 56, 4.4.64, p. 869.

7 OJ No 56, 4.4.64, p. 857.

8 OJ No L 260, 22.10.68, p. 1.

9 OJ No L 260, 22.10.68, p. 6.

10 OJ No L 267, 10.12.70, p. 14.

70/523/EEC¹¹

Council Directive of 30 November 1970, laying down detailed provisions concerning transitional measures in respect of activities of intermediaries in the coal trade (ISIC ex Group 6112)

6) 74/557/EEC¹²

Council Directive 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

74/556/EEC¹³

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

7) 68/367/EEC¹⁴

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 the personal services sector (ISIC ex Major Group 85) :

1. restaurants, cafés, taverns and other drinking and eating places (ISIC Group 852)
2. hotels, rooming houses, camps and other lodging places (ISIC Group 853)

68/368/EEC¹⁵

Council Directive of 15 October 1968, laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in the personal services sector (ISIC ex Major Group 85)

1. restaurants, cafés, taverns and other drinking and eating places (ISIC Group 852)
2. hotels, rooming houses, camps and other lodging places (ISIC Group 853)

11 OJ No L 267, 10.12.70, p. 18.

12 OJ No L 307, 18.11.74, p. 5.

13 OJ No L 307, 18.11.74, p. 1.

14 OJ No L 260, 22.10.68, p. 16.

15 OJ No L 260, 22.10.68, p. 19.

- 8) **77/92/EEC¹⁶**
Council Directive of 13 December 1976, on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex ISIC Group 630) and, in particular, transitional measures in respect for those activities
- 9) **82/470/EEC¹⁷**
Council Directive of 29 June 1982, on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in certain services incidental to transport and travel agencies (ISIC Group 720)
- 10) **82/489/EEC¹⁸**
Council Directive of 19 July 1982, laying down measures to facilitate the effective exercise of the right of establishment and freedom to provide services in hairdressing
- 11) **75/368/EEC¹⁹**
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
- 12) **75/369/CEE²⁰**
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

Note

Some of the Directives listed above have been supplemented by the Acts of Accession of Denmark, Ireland and the United Kingdom (OJ No L 73, 27.3.1972), of Greece (OJ No L 291, 19.11.1979) and of Spain and Portugal (OJ No L 302, 15.11.1985).

16 OJ No L 26, 31.01.1977, p. 14.

17 OJ No L 213, 21.07.82, p. 1.

18 OJ No L 218, 27.07.82, p. 24.

19 OJ No L 167, 30.06.75, p. 22.

20 OJ No L 167, 30.06.75, p. 29.

A N N E X B

List of the directives referred to in Article 16

These are the directives listed under headings 1 to 7 of Annex A, with the exception of the second directive listed under heading 6.

ANNEX TIMETABLE

| | |
|--|-----------------|
| Opinion of the Economic and Social Committee | December 1989 |
| Opinion of the European Parliament | December 1989 |
| Common position of the Council | June 1990 |
| Statement by the European Parliament on this common position (cooperation procedure provided for in Article 149 of the Treaty) | within 3 months |
| Re-examination by the Commission | November 1990 |
| Council Decision | December 1990 |

Apart from the 3 months period allowed under Article 149 of the Treaty, there is no time limit for delivering these opinions or adopting the common position or the Council Decision.

The time allowed is by way of indication.

However, this proposal would complete the Council Directive of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least 3 years duration.

It is thus to some extent the last of a set of measures giving every Community national the right that professional qualifications acquired in another Member State should be recognized by any host Member State regulating a given activity on its territory.

It is therefore a central component for the completion of the internal market; for this reason, in its fourth report to the Council and the European Parliament on the implementation of the White Paper on the completion of the internal market the Commission provided for the adoption of this Directive in 1990.

Financial record

1. Budget item concerned: new Item B 7750.
Operations concerning the completion of the Internal market.

Introduction and operation of a second general system for the recognition of professional training which completes that introduced by the Council Directive of 21 December 1988 (OJ L 19, 24.1.1989).

2. Legal basis: Articles 49, 57(1) and 66 of the EEC Treaty.

3. Proposed classification: non-compulsory expenditure.

4. Description of the action:

- 4.1 General objective:

To facilitate freedom of movement of persons, a fundamental liberty enshrined in the Treaty.

Specific objective:

The proposed system, complementing the first general system, should facilitate freedom of movement for all persons who wish to practice a regulated profession in a place other than the one in which they were trained and which is not already covered by a system for the recognition of professional qualifications.

- 4.2 Persons concerned:

Although persons whose professions are covered by a specific directive recognizing qualifications and persons who are covered by the first general system are not concerned, the complementary system concerns many individuals who wish to migrate.

Assessment: 5 to 7 000 persons per year.

5. Grounds for the action:

The Directive of 21 December 1988 is generally limited because it applies to certain professions for the practice of which a long period of higher education is required.

In 1985 the European Parliament and Economic and Social Committee considered that that Directive was no more than a first step which should be followed by a Directive adopting the same approach but applying to professionals with a lower level of training than was required by the first Directive.

The Commission included this action in its work programme for 1989 (SEC(89)1 final).

6. Nature of expenditure and calculation:

- 6.1 In applying Article 3(2) of the proposal the Commission will need to coordinate the action of the national coordinators.

This vital task will call for general information meetings of the coordinators (2 each year), payment of travel expenses (12 persons) and explanatory and information meetings in the various capitals (12 in the year).

- 6.2 The Commission must also adopt the necessary measures pursuant to Article 13(3) of the proposal to ensure the development and coordination of communication by the Member States of the necessary information relating to the recognition of diplomas and certificates.

These measures should take the form of the organization of annual meetings of the national agents responsible (2 each year) and payment of travel expenses (12 persons).

At the same time, information missions in the various capitals will be necessary (12 in the year).

- 6.3 Part of the work of preparation for these coordination and information meetings should be entrusted under contract to an outside organization.

The basis for the calculation should include not less than:
1 expert, 1 assistant, 1 secretary
which would amount to a total annual expenditure of ECU 140 000.

- 6.4 In the current state of information, and subject to what might be produced by an invitation to tender with a view to concluding a contract for the provision of services with an outside organization, estimated expenditure (point 6.1, 6.2, 6.3) would be as follows:

| | ECU |
|------------------------------------|---------|
| Contract with outside organization | 140 000 |
| Meetings | 145 600 |

- 6.5 To facilitate the management of the numerous data resulting from the application of the system by the Member States and the Commission, it would be advisable to promote the implementation of a homogeneous and interconnected computer system (of the personal type with printer and auxiliary memory facilities) and to assist the Member States with its establishment.

The total cost of this computerized network is estimated at ECU 200 000.

This would be a one-off expense.

This expenditure would be covered by appropriations regulated under the general title of completion of the internal market.

6.6

The essential operations, coordination, management of the procedure, national reports and any disputes constitute substantial, specific and new tasks for the competent division.

More staff would therefore be needed to carry out the action:

One grade A 5/4 official
One grade B 3/2 official
One grade C 5/4 official.

Appropriations covering these expenses are contained in titles 1 and 2 of part A of the budget.

Assessment of the Impact on the SMEs

Subject: Draft proposal for a Council Directive on a second general system for the recognition of professional training which completes the general system established by the Council Directive of 21 December 1988.

The second general system for the recognition of professional training completes the Council Directive of 21 December 1988 on a general system for the recognition of higher education diplomas.

Its aim is to facilitate the movement of all those who wish to practise a regulated profession in a country other than the one in which they were trained and which are not already covered by a system for the recognition of professional qualifications.

As an action aimed at persons who have completed secondary level or short post secondary training, it should constitute an advantage for employers and their employees who can thus enlarge their opportunities to practise a regulated profession at Community level.