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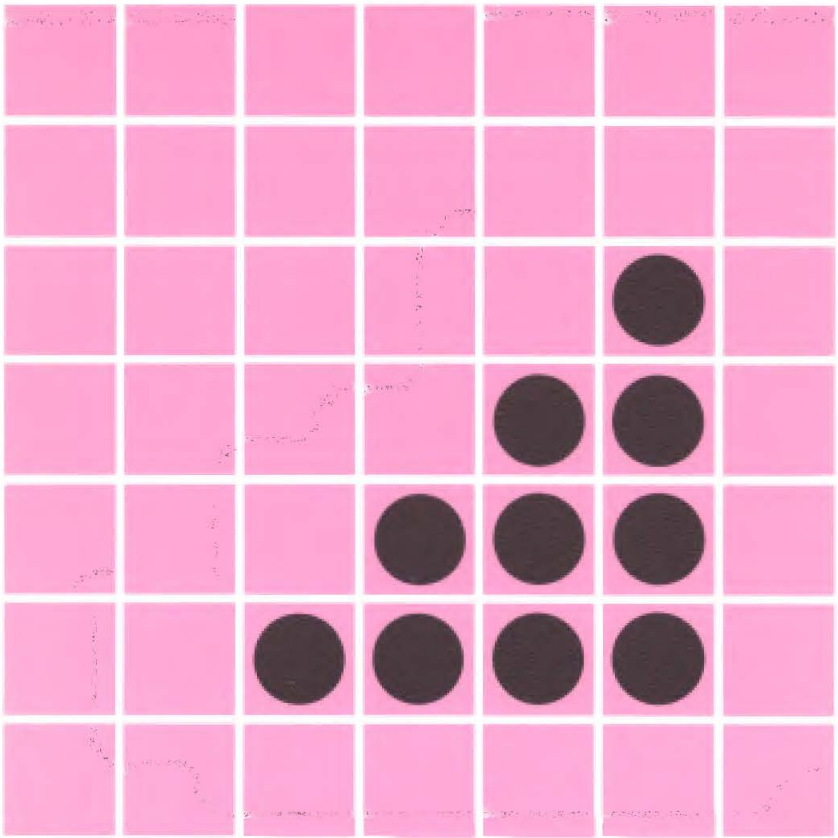
FREEDOM OF MOVEMENT FOR PERSONS IN THE EUROPEAN COMMUNITY



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Contents

Introduction

The creation of a larger economic area presenting the characteristics of a domestic market was among the main aims of the authors of the Treaties establishing the European Communities.

Their concern was to eliminate the many barriers of all kinds erected between European countries over the centuries, so as to establish freedom of movement for persons pursuing economic activities, for goods, for services and capital throughout the European Community.

The subject of this booklet is freedom of movement for persons within the Community.

A European Community worthy of the name is inconceivable without free movement. The right to go from one country to another is important on several levels.

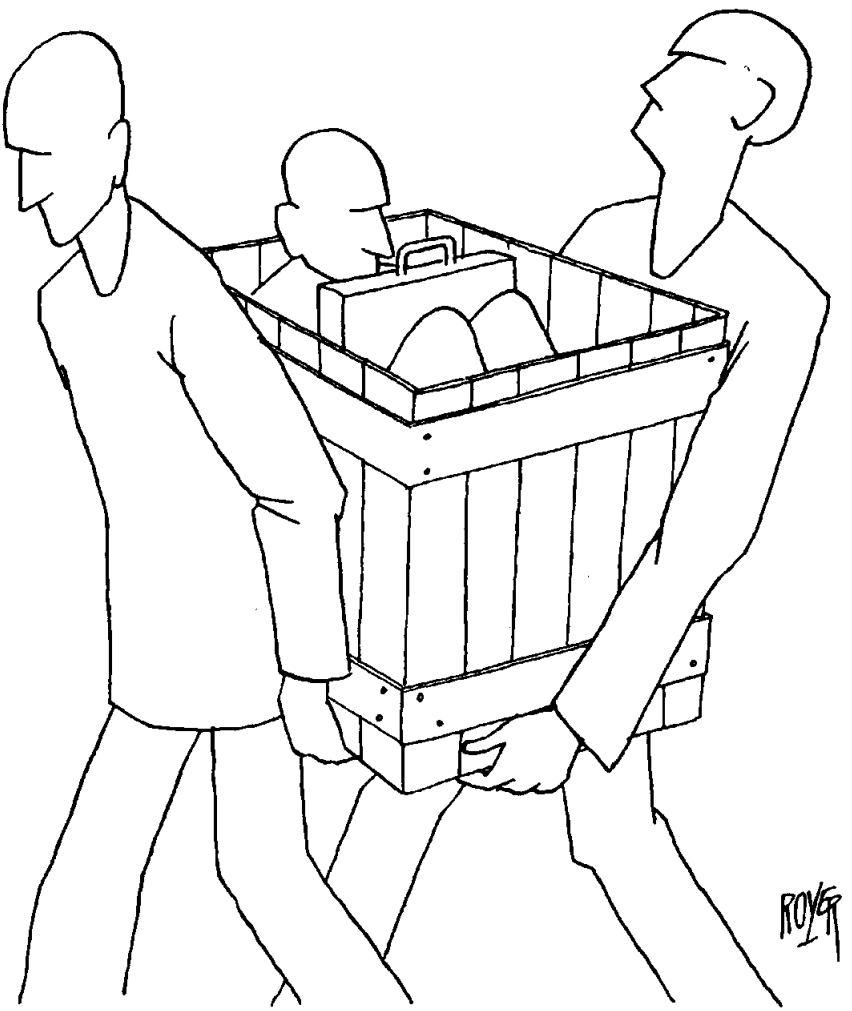
On the human level first of all. A citizen of one Member State of the Community who goes to live and work in a second Member State, enjoying the same economic rights as its nationals, is exercising a new freedom, a new personal right.

In economic and social terms freedom of movement is conducive to the proper functioning of the common market in that it affords every individual the opportunity to pursue his occupation anywhere in the Community. This freedom of choice is a major factor making for greater dynamism in economic life.

In the current state of the labour market, with its intolerable level of unemployment, freedom of movement can be one means of bringing improvements, albeit only slight ones, in the employment situation.

Mobility of labour can also be a contributory factor in harmonizing conditions of pay in a context of progress, which is another of the fundamental objectives of the Treaties.

Freedom of movement is a far from notional right in the Community, since it has thus far been exercised by almost two million workers, almost all of them employees rather than self-employed.



In the professions, the numbers moving from one Member State of the Community to another to exercise the right to set up practice have been and remain low. That little use has as yet been made of the new facilities does not detract from their merits. The essential point is that it is possible in a number of the professions to take advantage of freedom of movement and the right of establishment in any Member State.

The provisions on freedom of movement contained in the Treaties are not aimed at organizing Community-wide migratory movements, but seek to carry provide a wider area in which to carry on an occupation for those who wish to take advantage of it.

The EEC deals in turn, according to the same principles but with differences of approach, with freedom of movement for employees on the one hand and for self-employed persons on the other.

The provisions on the mobility of employees are contained in Articles 48 *et seq.* of the EEC Treaty, which establish the rights of individuals and call for the 'abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment'.

Freedom of movement for the self-employed comprises both the right of establishment (Articles 52 *et seq.* of the EEC Treaty) and the freedom to provide services (Articles 59 *et seq.).*

The right of establishment implies moving on a lasting basis from one Member State to another to the purposes of carrying on an economic activity.

The freedom to provide services, on the other hand, is akin to the free movement of both persons and goods. It is concerned essentially with a person's pursuit of an economic activity in a Member State other than that where he has his principal or secondary place of business.

The right of establishment and the freedom to provide services are applicable both to natural persons and to legal persons carrying on an economic activity. The EEC Treaty thus makes clear the intention to open up the Community to all economic operators from all Member States. It is concerned primarily with industrial and commercial enterprises. In addition, the free movement of persons needs to be accompanied by a measure of freedom in the movement of capital and provisions on this matter are included in the EEC Treaty.

For centuries past, the various Member States had generally restricted access to jobs in commerce and industry and practice in the professions to their own nationals, applying varyingly discretionary special conditions to foreign nationals.

In bringing about a fundamental change in such attitudes, the European Community has started a process which will take years to run its course. It will be all the more successful if ordinary citizens press for their rights, with the support of political will and the backing of trade unions and trade associations.

Application of these articles of the EEC Treaty is not enough in itself to remove all obstacles to the free movement of persons.

Following elimination of clear-cut forms of discrimination, a wide variety of obstacles still subsists. The many stipulations laid down by States regarding the training of employed and self-employed workers, custom and practice in industry and commerce, even if not discriminatory in themselves, can impede the free movement of persons, if only because they differ from one country to another. For instance, where a Member State does not recognize a diploma awarded in another Member State, the holder has to sit for a second examination, a requirement which can be a serious obstacle to free movement..

The Community will need to devote a great deal of time, patience and political will to the task of abolishing such obstacles, which it is tackling by a combination of abolition of discrimination on the ground of nationality or residence and adoption of legal acts harmonizing the conditions under which occupations are pursued.

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The following study is based on the nature of the obstacles that the European Community has eliminated or is endeavouring to eliminate. Following a brief outline of the rules contained in the Treaty (Chapter I) the various aspects of the problem are discussed in the following order:

(i) the right of entry and residence (Chapter II),

(ii) the right to take up and pursue economic activities (Chapter III),

(iii) equality of treatment in other spheres (Chapter IV),

(iv) other rules of conduct which could make for greater freedom of movement for persons in future (Chapter V).

Article 69 of Treaty establishing the European Coal and Steel Community and Articles 96 *et seq.* of the Euratom Treaty contain a number of general provisions on freedom of movement for workers in their respective industries, but these provisions are not discussed here.

The observations set out below refer to the rules on freedom of movement for persons, but it is important in practice that, by the terms of Articles 58 and 66 of the EEC Treaty, the rules on the right of establishment and freedom to provide services are equally applicable to 'companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community...'.

I — Brief outline of the rules contained in the Treaty

The Treaty's rules on the free movement of persons and services are contained in the first three chapters of Title III of Part 2 of the Treaty, entitled 'Foundations of the Community'. This demonstrates the importance attached to the matter by the authors of the Treaty.

The rules set out in these three chapters of the Treaty — on workers, the right of establishment and services respectively — are in part an expansion of the general ban on all discrimination on grounds of nationality stipulated in Article 7.

Each of these chapters lays upon the Member States the fundamental obligation to treat nationals of the other Member States on a basis of equality with their own nationals. Certain exceptions to the obligations laid down are specified. The Community institutions are authorized to issue directives harmonizing the Member States' laws. As experience has shown, uniform rules will help to make it easier in practice to move from one Member State to another for the purposes of carrying on an occupation.

Article 48 stipulates that 'freedom of movement for workers' entails the 'abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment', subject to 'limitations justified on grounds of public policy, public security or public health'. This article does not apply to 'employment in the public service'. Articles 49 and 51 authorize the Council to introduce its various additional rules as necessary to make equality of treatment effective in practice. These are rules aimed in particular at:

(i) ensuring that workers will not lose entitlement to social security benefits if they take up employment in another country;

(ii) organizing cooperation between national employment services;

(iii) abolishing national regulations and administrative practices which impose rules representing obstacles to foreign nationals' freedom of choice and equality of treatment with nationals in the sphere of employment.

Articles 52 defines 'freedom of establishment', which includes 'the right to take up and pursue activities as self-employed persons ... under the conditions laid down for its

own nationals by the law of the country where such establishment is effected'. Article 59 and the third paragraph of Article 60 stipulate that restrictions on "freedom to provide services' within the Community which are not applicable to nationals shall be 'abolished... in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended'. Under the terms of Articles 56 and 66, the prohibition of such restrictions does not apply to national provisions making arrangements for special treatment of foreign nationals on grounds of public policy, public security or public health. Under Articles 55 and 66, the provisions of the Treaty do not apply to activities which are connected, even occasionally, with the exercise of official authority. The Council is also empowered to rule that the provisions of the Treaty do not apply to such activities, although it has never done this.

Articles 57 and 66 empower the Council to issue directives on:

(i) mutual recognition of diplomas, certificates and other evidence of formal qualifications;

(ii) coordination of national provisions concerning the taking-up and pursuit of activities as self-employed persons.

The Treaty also contains a series of provisions which were important during the 'transitional' period, namely the 12 years following the entry into force of the Treaty. This was the period to be used by the institutions to implement the Treaty's various provisions within the time-limits laid down. These transitional measures which are now of only historical interest, are discussed here only in so far as they are particularly pertinent to an understanding of the rules currently in force.

In the case of Greece, the Member State to have joined the Community most recently, the provisions on the free movement of persons have been applicable since the date of accession, 1 January 1981, subject to the seven-year transitional period for workers.

The Treaty thus provides the Community institutions with the means of securing effective freedom for persons to move between the Member States. The Commission has a duty to ensure that Member States comply with the prohibition of all discrimination against nationals of other Member States. Article 169 authorizes it to deliver a reasoned opinion to a Member State which fails to comply with the prohibition imposed by the Treaty and, if necessary, to bring the matter before the Court of Justice. Action by the Commission can thus be an effective complement to the opportunities available to citizens to bring actions before their national courts so as to prevail upon the national authorities to comply with the prohibition of restrictions.

In addition, the Council has at its disposal a broad legal base on which to found rules aimed at harmonizing national laws where necessary for the purposes of putting the principle of free movement of persons into practice. The machinery is therefore available for bringing about a legal situation which, ideally, is none other than that which used to prevail in Europe, when craftsmen and other workers had no difficulty in plying their trade in the country of their choice.

The task assigned to the Community institutions by the Treaty is not an easy one to accomplish, however. The barriers to free movement of persons which were erected

after the First World War were not solely attributable to a desire on the part of States to protect their own peoples against competition from foreign nationals. They derive equally from the increasingly extensive regulations applied in virtually all areas of economic life for the purposes of protecting consumers and savers, maintaining public security and so on, in the context of structures which are becoming increasingly complex while at the same time more and more political pressure is being brought to bear in terms of regulations and protection. The prohibitions laid down in the Treaty are not enough in themselves to remove the obstacles represented by the various conditions governing the pursuit of economic activities. Further action is needed to eliminate them by way of harmonization of the Member States' laws.

II — The right of entry and residence

The right of nationals of Member States to work or pursue activities as self-employed persons anywhere in the Community necessarily entails the right to enter and reside in the Member State where they wish to work or pursue such activities. This right is also conferred by the Treaty. The implementing rules for the abolition of restrictions on movement and residence within the Community for nationals of Member States are laid down in Council Directive 68/360 of 15 October 1968 in the case of employed persons and Council Directive 73/148 of 21 May 1973 in the case of self-employed workers. The provisions of the two directives are identical in all their essentials.

The following hold the right of entry and residence:

(i) any national of a Member State wishing to enter another Member State in order to take up paid employment there, to establish himself or herself there for the purposes of pursuing a self-employed occupation, or to provide or receive a service;

(ii) his or her spouse, their children and other members of their family, as specified in the directives mentioned above; these relations do not have to be nationals of a Member State.

The right of entry is subject only to production of a valid identity card or passport.

As proof of the right of residence, a 'residence permit for a national of a Member State of the European Community' is issued by the authorities in the country of residence. (The residence permit is not, however, required for certain short periods of residence.) The residence permit is issued on production by the person concerned of the document needed to enter the country. An applicant for a residence permit is also required to show proof that he or she comes within one of the classes of persons referred to in the directives. The permit is valid throughout the territory of the country of residence, and for a period of at least five years, renewable automatically on request. However, special rules are applicable in the case of residence permits issued for shorter periods, for instance to suppliers of services, or persons taking up jobs for limited periods.

The Court of Justice has established that the right of residence is not subject to issue of the residence permit. Issue of the permit is no more than an administrative measure. The right of residence derives directly from the rules of the Treaty. Persons

failing to apply for a residence permit are liable to sanctions, but these should be commensurate with the offence, which would not in itself justify a prison sentence or expulsion, as witness the judgment of 8 April 1976 in Case 48/75 *Royer*.

The right of residence and, ipso facto, a valid residence permit cannot be withdrawn from an employed or self-employed person solely on the ground that he is temporarily unfit for work as a result of illness or accident or, in the case of an employed person, because he is involuntarily unemployed.

Member States can, however, refuse the right of entry and residence where such a decision is 'justified' on grounds of public policy, public security or public health. This possibility available to a Member State of turning away nationals of other Community countries at its border or expelling them after they have entered its territory could give rise to abuses, particularly since the concept of 'public policy and public security' has no clearly defined content, so that it is open to different interpretations by different countries. A broad interpretation of this concept could lead to restrictions on the free movement of persons which would be contrary to the aims of the Treaty. It is necessary to define the circumstances under which this derogation option can be invoked by Member States. The Court of Justice will frequently give such definitions. The Court has recognized that the concept of considerations of public policy can vary from one country to another or from one period to another and that Member States can be left some scope for assessment when applying it, but it has at the same time stressed that this concept should be interpreted narrowly and always be applied within the limits drawn by the Treaty and Community law, under monitoring by the Community institutions (see the judgment of 4 December 1974 in Case 41/74 *Van Duyn*).

A much earlier definition of the scope for invoking this derogation option which has proved equally important in practice was given in Council Directive 64/221 of 25 February 1964. This directive contained, on the one hand, an enumeration of the circumstances which cannot be invoked as justification for refusing entry or for expulsion and, on the other hand, a series of rules on the procedure to be followed when nationals of Member States are liable to refusal of entry or expulsion. It states that economic reasons — such as the financial circumstances of such a national — cannot be regarded as grounds of public policy, public security or public health justifying refusal of entry or expulsion, and that measures taken on the grounds of public policy or public security must be based exclusively on the personal conduct of the individual concerned; they cannot therefore rely on presumptions of actions that can be expected from the person, or category of person, in question. It also stipulated that a criminal conviction does not in itself constitute grounds for taking such measures.

It follows from consistent rulings by the Court that the right of entry and residence of nationals of Member States can be founded directly on the rules of the Treaty and the directives adopted to implement it. This means that in the event of a dispute a person can have recourse to national courts to have his right of entry and residence upheld. The national courts are obliged to enforce the provisions of the Treaty and the directives referred to above. This was one of the points established in the judgment delivered in Case 41/74 *Van Duyn*. This direct applicability of Community

law in the Member States not only affords considerable legal protection to the Community nationals concerned, but also ensures that Community law is applied uniformly and upheld in all Member States.

The Court of Justice has had to interpret the content of these provisions in several of its judgments. For instance, in its judgment of 26 February 1975 in Case 67/74 *Bonsignore*, it established that a Member State could not expel a national of another for the sole purpose of discouraging other foreigners from committing offences, or in other words that expulsion could not be justified purely on general preventive grounds.

In its judgment of 28 October 1975 in Case 36/75 *Rutili*, it held, *inter alia*, that the issue of whether or not there was a sufficiently serious threat to public order had to be judged in each individual case in the light of the personal conduct of the individual concerned rather than on the basis of a generalization.

The judgment delivered on 27 October 1977 in Case 30/77 *Bouchereau,* deals with the scope of the provision according to which criminal convictions do not in themselves constitute grounds for expulsion. In it the Court maintains that the authorities are required on each occasion to make a specific assessment from the standpoint of the considerations inherent in the maintenance of public order. This assessment does not necessarily coincide with those on which the criminal conviction was founded. It follows that a conviction serves as grounds only in so far as the circumstances leading up to it provide evidence of personal conduct representing an actual threat to public order. Thus, in addition to the disruption of public order associated with any breach of the law, there must be a sufficiently serious and real threat to a fundamental interest of society.

The directive also provides an explicit list of the diseases providing legal grounds for the refusal of the right of entry to nationals of Member States; these are serious contagious diseases and a number of other diseases or like conditions, such as drug addiction or profound mental disturbance.

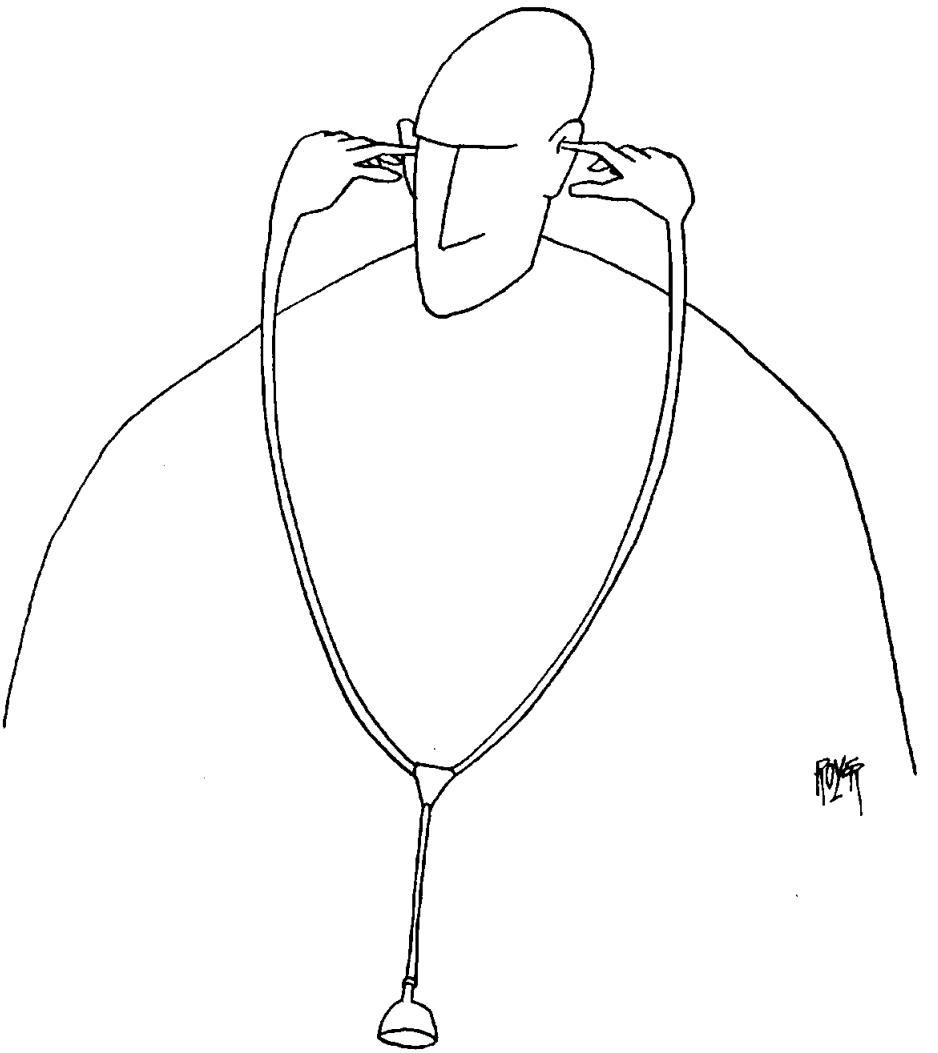
The main requirements imposed by the directive on Member States handling such matters are as follows:

(i) The decision to grant or refuse a residence permit must be taken as soon as possible and not later than six months from the date of application.

(ii) The grounds for refusal of entry or expulsion must be stated, unless this is contrary to the interests of the security of the State involved.

(iii) Notification of the decision must be given to the person concerned, stating the period allowed for leaving the territory; except in urgent cases, this period must not be less than 15 days if the person concerned has not yet been granted a residence permit and not less than one month in other cases.

(iv) The person concerned must have the same legal remedies against such a decision as are available to nationals of the State concerned in respect of acts of the administration.



(v) The holder of a residence permit must have certain remedies, defined in the directive, against such a decision and must always have the assurance that the administration will not take any decision refusing to renew his residence permit or ordering his expulsion, except in special cases, until an opinion has been obtained from a competent authority, before which he must be allowed to submit his defence in person or, if he wishes, through a representative.

The Court of Justice has also had occasion to interpret the scope of these provisions, for instance in its judgment, mentioned above, in Case 36/75 *Rutili*, and others delivered on 5 March 1980 and 22 May 1980 in Cases 98/79 *Pecastaing* and 139/79 *Santillo* respectively. In its judgment in the *Rutili* case, it established that Member States are required to ensure that the persons concerned enjoy a twofold guarantee, first that they will be notified of the grounds of decisions affecting them and secondly that they will have a right of appeal. Consequently a Member State applying a restrictive measure is obliged to notify the person concerned, giving a full and detailed explanation of the grounds so that he is in a position to make proper arrangements for his defence.

III — The right to take up and pursue economic activities

1. *Economic activities and the persons entitled to pursue them*

The right to take up employment and to pursue self-employed activities on an equal footing with nationals is applicable to all jobs and self-employed occupations of an economic nature, which are not subject to the reservations discussed in Section 5 of this Chapter.

This principle is also applicable to sportsmen and sportswomen, for instance, whether employed or self-employed, seeking the right of establishment or wishing to provide services. This was established by the Court of Justice in the judgments that it delivered on 12 December 1974 in Case 36/74 *Walrave*, which was concerned with professional racing cyclists, and on 14 July 1976 in Case 13/76 *Dona*, dealing with professional footballers. Following these judgments it is no longer possible to oppose the transfer of a footballer on the ground that he is a national of another Member State. The ban on discrimination does not, however, apply to the formation of a national team to represent its country.

The Treaty's rules on the free movement of persons are also applicable to employment in sea and air transport, even though it may be possible to argue that Article 84(2) of the Treaty is to be interpreted as making an exception in the case of these two fields until such time as the Council should decide otherwise.

In its judgment of 4 April 1974 in Case 167/73 *Commission* v *French Republic*, the Court of Justice held that, given the general system of the Treaty, the general body of its provisions is applicable to all areas of economic life unless they are specifically excluded. Such an exclusion is contained in Article 61(1) in the case of the freedom to provide services — but not freedom of movement for workers or the right of establishment — in the field of transport.

The position is not affected decisively according to whether a case is concerned with an employee, a self-employed activity or the provision of a service. The Court of Justice has emphasized on numerous occasions that the fundamental principle embodied in Article 7, namely the obligation laid on each Member State to refrain from all discrimination against nationals of other Member States, or to afford the same treatment to nationals of other Community countries as to its own nationals, is valid in

all three fields (see, for instance, the judgment delivered on 12 December 1974 in Case 36/74 *Walrave*).

The fact that these three fields are covered by three separate chapters of the Treaty was of some importance during the transitional period, when certain time-limits and procedures had to be observed in the process of putting the principle of equality of treatment into practice.

The distinction made between the three fields still retains some significance, not least because there are objective differences between suppliers of services on the one hand and employees and persons wishing to exercise the right of establishment on the other hand. These differences can make for differences in the legal solutions adopted for the purposes of applying the principle of equality of treatment.

In addition to this, some of the directives on harmonization of laws adopted by the Council for the purposes of attainment of the free movement of persons are concerned with the right of establishment only, while others are confined to the provision of services.

There is also reason to suppose that objective differences in circumstances lead to the adoption of different rules according to circumstances.

Normally, definition of the concept of 'worker' within the meaning of the Treaty should not pose problems. The manner in which it has been defined in the various countries can be taken as a basis, as long as it is consistent with Article 48(2) of the Treaty. One of the points made by the Court in its judgment in Case 75/63 was that the Treaty in mentioning certain aspects of the concept of 'worker', in such terms as of employment and remuneration, in Article 48(2), attributes a Community meaning to this concept, so that it falls within the scope of Community law. The decisive criterion is that the worker must be employed in an employer/employee relationship to carry out work for payment.

The right of establishment covers the taking-up and pursuit of activities as a self-employed person. The term 'establishment' is to be taken as meaning the setting-up in the country concerned of a permanent place of business to be the centre of the self-employed person's economic activity, as when an individual decides to sever his links with his country of origin and set up in another Member State of the European Community.

Such a place of business is called the principal place of business. However, the Treaty's rules on establishment also sanction the right to set up agencies, branches or subsidiaries in other Member States. Here again, a permanent place of business is set up in the country of establishment, but in this case it is not the centre of the person's economic activity and is defined as a secondary place of business. It should be remembered in this connection that rules on establishment apply to companies or firms, and this is where the right to set up secondary places of business is particularly important.

The difference between employment and establishment lies in the fact that the activity is pursued for payment in the service of another person in the former case, and in the interest of the person concerned himself and on his own responsibility in the latter case. The main difference between establishment and the provision of services is that the former entails the setting-up of a permanent place of business whereas the latter does not.

According to Article 60 of the Treaty, services are considered to be 'services' within the meaning of the Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. This definition shows that the authors of the Treaty were concerned to ensure that the provisions on the free movement of persons cover all activities. A definition which is framed in a purely negative form — stating that services are forms of self-employed activity which are not governed by other provisions in the Treaty — is lacking in clarity. However, a definition in positive terms would be very difficult to formulate.

The following would be among the main criteria recommending themselves for incorporation in such a definition: the activity should be limited in time, it should normally be undertaken for remuneration, and it should involve some form of trans-frontier movement. The importance of limitation in time of the provision of services should not be exaggerated; it is far from difficult to think of cases in which large-scale contract work undertaken outside the country of establishment involves a lengthy time-scale, or indeed one in which the scale of the service is such that it necessitates acquisition of real estate property in the country where it is to be provided. The most important feature in such cases is the crossing of a frontier. The service is characterized by the fact that the person providing it remains established in his own country. Only his services cross the frontier.

The situation envisaged primarily in Article 60 of the Treaty is that in which the person providing the service himself crosses the frontier between his own country and the country where the service is to be provided. However, the rules of the Treaty also cover the situation in which the person for whom the service is to be provided crosses the frontier and that in which both parties remain in their respective countries and only the service crosses the frontier. To give examples of these three situations, in the first case a lawyer may himself go to see a client in another country, in the second he may be visited in his chambers by a foreign client, and in the third he may give advice by correspondence across the frontier.

If the Treaty concentrates on laying down rules for cases in which the person providing a service travels to another country, it is because such cases present that other country with problems in that it is obliged to apply its laws to the person providing the service on the same basis as to its own nationals operating locally so that no loopholes are left open for the person providing the service. At the same time, such cases offer the authorities in the country where the service is provided practical opportunities for discriminating against a foreign provider of services, so that they would probably have a greater propensity to do so. On the other hand, the person providing the service will find it burdensome to have to comply with the laws of both his country of establishment and the other country where the service is to be provided.

The task of clearly defining what is to be understood by 'establishment' and 'services' within the meaning of the Treaty can be problematical. The position of a person exercising the right of establishment is characterized by the fact that he forms durable ties with the country of establishment, in contrast with a person providing a service, who maintains his ties with another country. Because of this, it is possible for the prohibition on all discrimination to lead to different results in the case of establishment on the one hand and that of provision of services on the other. Such differences are discussed in Section 3, where the content of the ban on all discrimination is examined.

2. *Attainment of freedom of movement for persons during the transitional period*

Article 48 of the Treaty stipulated that freedom of movement for workers was to be secured by the end of the transitional period at the latest, i.e. by 1 January 1970. Similarly, Articles 52 and 59 required that restrictions on the freedom of establishment and freedom to provide services were to be progressively abolished during the transitional period.

The first steps towards the freedom of movement for workers were taken in 1961 and 1964, with the adoption of Council Regulations which were subsequently replaced by Council Regulation No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community. This third regulation contained the definitive provisions for freedom of movement for workers and their families. It is stated in the recitals of the regulation that freedom of movement constitutes a fundamental right of workers and at the same time one of the means which help to satisfy the requirements of the economies of the Member States and afford workers the opportunity to improve their living and working conditions, thus promoting upward social mobility. This Regulation is still in force. However, as will be seen in Section 3, the prohibition on all discrimination embodied in Article 7 of the Treaty has remained directly applicable since the end of the transitional period, so that a worker can still invoke this article as such before national authorities and courts.

The legal importance of the Regulation therefore lies in the additions it makes to the provisions on workers in the Treaty. The provisions of the Regulation are also directly applicable in the Member States. National measures to incorporate them into national legislation are not required, nor indeed is such action authorized. They are applicable in the various countries in the form and with the content adopted by the Council. The contents of the Regulation spell out detailed provisions on application of the principle of equality of treatment (which are examined in the following sections), and special provisions concerning the setting-up of close cooperation between central employment services in the Member States by measures aimed at creating a balance between supply and demand on the labour market.

The provisions of the Regulation are based on the principle that vacancies notified to the employment services in a Member State which it has not been possible to fill from

the national labour market must be communicated to the employment services in a Member State which has indicated that it has manpower available in the appropriate occupations.

When this is done, job applicants from other Member States are given priority for a certain period of time over applicants from third countries.

As regards the right of establishment and freedom to supply services, the Treaty had stipulated that the abolition of restrictions would be organized progressively by the adoption, during the transitional period, of Council directives covering the various fields of activity.

In Articles 54 and 63 it had stipulated that the Council, acting on proposals from the Commission, would draw up programmes for the abolition of restrictions in these two fields.

This was done on 18 December 1961, when the Council adopted two general programmes for the abolition of restrictions on the freedom of establishment and freedom to provide services respectively. These programmes define the persons and companies or firms eligible to 'benefit' from the liberalization of the movement of persons, giving a series of examples of discriminatory national provisions and practices to be abolished and fixing the time-limits within which freedom of movement is to be attained in the various fields of activity.

These programmes would not have been enough in themselves, however, and the abolition of restrictions etc., required the issue of Council directives. Indirectly, though, the programmes have a certain legal importance, since many Council directives refer to them and it can be assumed that the examples of discriminatory provisions and practices given in the programmes will continue to be deemed prohibited forms of discrimination by the Court of Justice.

During the transitional period the Council adopted a series of directives, which are legal acts, setting down rules which the Member States were required to incorporate into their national laws within prescribed time-limits. The directives issued during this period were of two types: directives on liberalization, the aim of which was to oblige Member States to abolish provisions and restrictive practices which discriminated against nationals of other Member States, and directives on harmonization of national laws regulating economic activities, such as the directives on mutual recognition of diplomas.

The Council adopted more than 30 directives abolishing restrictions during the period prior to the judgment delivered on 21 June 1974 by the Court of Justice in Case 2/74 *Reyners*. They each indicate the field or fields in which they are applicable. They laid down general prohibitions on the practice of discrimination, but also contain indicative lists of national provisions which conflict with the ban on all discrimination. In addition, they stipulate that persons taking advantage of their provisions must have the same rights as nationals to join professional, economic and commercial organizations and take part in their management. Finally, the directives contained rules on

the recognition of certificates issued by other Member States in cases where a certificate of good conduct or solvency is required of nationals.

Adoption of these directives enabled the Community to abolish restrictions in a wide range of important fields. However, a number of fields, in which the Member States' laws were particularly extensive, were not liberalized. This was the legal situation early in 1974, when a Belgian court referred to the Court of Justice the question of whether or not the prohibition of all discrimination contained in Article 52 of the Treaty was directly applicable after the end of the transitional period, or in other words whether or not citizens could invoke this article directly in cases between themselves and the national authorities heard by national courts, notwithstanding the existence of a conflicting national law.

The background of the case was as follows: Mr Reyners, a Dutch national, wished to set up in practice as a lawyer in Belgium. He held a Belgian diploma in law, but the Belgian authorities nevertheless refused to authorize him to practice. He did not have Belgian nationality, as was required under Belgian law, and the Community had not issued any directive abolishing discrimination based on nationality in his profession. Mr Reyners had submitted that, after the end of the transitional period, the issue of directives on liberalization was superfluous. The Council should have fulfilled its obligation to adopt directives abolishing discrimination during the transitional period. After expiration of the transitional period, there were no practical or legal reasons why the prohibition of all discrimination clearly stated in the Treaty could not be invoked directly.

The Court of Justice found in favour of Mr Reyners. After 1 January 1970 any interested party could directly claim equality of treatment with nationals on the basis of Article 52 of the Treaty. The Court of Justice stressed that the prohibition in question was not a source of difficulty for national courts, which could determine which law was applicable to nationals of other Member States, basing their findings directly on provisions of the Treaty. Following this judgment, there was no longer any doubt that the Belgian judge would have to find for Mr Reyners, recognizing that he had the right to practice as a lawyer in Belgium. The provision in the Treaty takes precedence over national provisions, whatever their form. Strictly speaking, therefore, there was absolutely no need in law for rules of the types at issue to be formally abolished. It was no longer possible to enforce them against nationals of Member States. Nevertheless, the Member States were required to abolish them so as to clarify the legal situation for interested parties, as witness the judgment delivered on 4 April 1974 in Case 167/73 *Commission* v *French Republic*.

The judgment in the *Reyners* case was confined to the rules on the right of establishment. However, in the judgment that it delivered on 3 December 1974 in Case 33/74 *Van Binsbergen*, the Court of Justice established that the prohibition of all discrimination in the area of the provision of services was also directly applicable. The background to this case was as follows: the Dutch authorities had refused to authorize a Dutch national to represent another in a case to be heard before a Dutch court, purely on the ground that the representative was not resident in the Netherlands as was required by national law. The Court of Justice, in its interpreta-

tion of the rules of the Treaty on the provision of services, found that Articles 59 and 60 were directly applicable in all cases of discrimination based on the nationality of the person providing a service or on the fact that he was resident in a Member State other than that in which the service was provided and that a residential qualification which was not part of the general regulations governing the profession in question could not be kept in force.

These two judgments removed the need for directives on liberalization. The process of liberalization, interpreted as the abolition of discrimination, can be based directly on the provisions of the Treaty and the Council accordingly no longer issues such directives. However, those which have already been adopted remain important for their provisions on recognition of foreign certificates of good conduct etc. This does not mean that the Council has completely stopped issuing directives aimed at attainment of freedom of movement for persons. There is a considerable need for directives on harmonization. The work done in this field will be discussed in Section 4, but before that it is desirable to make a more detailed examination of the implications of the principle of equality of treatment.

3. *The obligation to grant equality of treatment to nationals of Member States*

In the majority of cases no difficulties arise over application of the principle of equality of treatment, which can also be defined as the prohibition of all differential treatment based on nationality or residence. It was clear in the *Reyners* case that the nationality requirement conditioning eligibility to practice as a lawyer in Belgium (Belgian nationality was required) conflicted with the principle of equality of treatment. However, application of the principle of equality of treatment is not free from problems in all cases. This is primarily because the Treaty proscribes not only manifest forms of discrimination — i.e. those based explicitly on application of a nationality criterion — but also those which are given effect indirectly by application of other criteria, giving the same result as explicit application of the nationality criterion, as witness th judgment given on 12 February 1974 in Case 152/73 *Sotgiu*.

For instance, in the *Sotgiu* case, and the *Van Binsbergen* case, it was clearly stated that a residence requirement could constitute a prohibited form of discrimination. The same applies to a requirement for a thorough knowledge of the language of the country. Nationals are generally able to meet requirements regarding residence and knowledge of the language, whereas many foreign nationals are not. On the other hand, such requirements can sometimes be justified on practical grounds. In some extreme cases, difficulties can arise over establishing whether a rule affecting nationals and foreign nationals differently constitutes a case of prohibited discrimination or the legal exercise of its prerogatives by a Member State.

This problem of drawing the dividing line is discussed in this section on the bases of the legal acts of the Community institutions and the case-law of the Court of Justice. Some examples which have no bearing on equality of treatment in regard to the right to take

up and pursue economic activities are quoted because they illustrate the distinction between illegal discrimination and legitimate national regulations. The question of the scope of the prohibition on all discrimination, in other words the matter of whether or not it is also applicable in situations having no connection with the actual pursuit of an occupation, is held over until Section 4.

Article 3 of Regulation No 1612/68 on freedom of movement for workers within the Community mentioned as examples of illegal discrimination: national provisions or national administrative practices in Member States which limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment, or subject these to conditions not applicable in respect of their own nationals, or which, though applicable irrespective of nationality, have the exclusive or principal aim or effect of obstructing access by nationals of other Member States to employment offered. This provision does not, however, apply to conditions relating to linguistic knowledge required by reason of the nature of a post to be filled. The question as to whether nationals of other Member States can be required to meet such conditions must always be assessed in individual cases. Such assessment must be guided by the extent to which it is important to possess actual linguistic knowledge in order to function satisfactorily in a job. It should not be forgotten, however, that requirements as to linguistic competence cannot be used as a means of substantially limiting the fundamental right to freedom of movement within the Community embodied in the Treaty.

The general programmes on the abolition of restrictions on freedom of establishment and freedom to provide services also give examples of illegal discrimination. These include restrictions which, in respect of foreign nationals only, make the taking-up or pursuit of an activity as a self-employed person more costly through taxation or other financial burdens, such as a requirement that the person concerned shall lodge a deposit or provide security in the host country, or prohibit or hinder access to any vocational training which is necessary or useful for the pursuit of an activity as a self-employed person. They also stress that the prohibition of all discrimination applies to requirements which, although applicable irrespective of nationality, have the exclusive or principal effect of hindering the taking-up or pursuit of an activity as a self-employed person or the provision of services by foreign nationals.

The prohibition of discrimination is not applicable exclusively to national authorities, but also, to a certain extent, to private organizations, companies and so on. Article 7 of Regulation No 1612/68 on freedom of movement for workers within the Community stipulates that any clause of a collective or individual agreement or of any similar agreement concerning eligibility for employment, remuneration and other conditions of work or dismissal shall be null and void if it lays down or authorizes discriminatory conditions in respect of workers who are nationals of the other Member States.

In its judgment of 14 July 1976 in Case 13/76 *Donà*, the Court of Justice established that the prohibition of discrimination is also applicable to private employers. In the judgment that it delivered on 12 December 1974 in Case 36/74 *Walrave*, concerned with a discriminatory provision in the rules of an international cycling organization, it established that the prohibitions laid down in Articles 48 and 59 — and undoubtedly

Article 52 in consequence — 'are not only applicable to action by the public authorities, but also extend to regulations of other kinds aimed at collectively regulating paid employment and the provision of services', i.e. regulations which have the same general effect as the laws and administrative provisions of the State.

In several of its judgments, the Court of Justice has had occasion to define the content of the principle of equality of treatment embodied in the Treaty.

It has established that it is not applicable to situations which can be defined as 'purely internal'. For instance, as was established in the judgment delivered on 28 March

1979 in Case 175/78 *Saunders*, it cannot be applied in a case concerned with the legality of a ban on residing in certain parts of the country imposed on a national of that country under its domestic criminal law.

In its judgment of 12 February 1974 in Case 152/73 *Sotgiu*, the Court of Justice recognized the legality of a provision under which, for the purposes of calculating a special separation allowance granted to postal workers, special treatment was given in the case of residence abroad, on the grounds of 'objective differences between the circumstances of workers according to whether, at the time of appointment, they have their domicile on national territory or abroad'.

In its judgment of 24 October 1978 in Case 15/78 *Koestler*, the Court of Justice established that a national ban on recovery by legal action of debts incurred in speculative transactions remains valid even where such debts arise from actions which are legal according to the relevant laws in force in the country where they were contracted. The Court of Justice has also established, in a judgment delivered on 18 March 1980 in Case 52/79 *Coditel*, that Belgium, which maintains a ban on television advertising, could also ban re-transmission by cable television companies of television advertisements legally broadcast in other Member States. Such national provisions are not contrary to the obligation to abolish restrictions on freedom to provide services. Member States are entitled to protect the interests served by such bans, which would not be effective if they did not also apply to foreign services, even where such services are legal in the country of origin, and despite the fact in this particular case that a majority of the Belgian population can legally receive the broadcasts in question without cable distribution.

The Court of Justice also recognized in its judgment delivered on 28 November 1978 in Case 16/78 *Choquet* that a national of a Member State who had been resident in another for more than one year could be required to obtain a driving licence issued by the host country, even if he held a valid licence issued in his home country. Such a requirement is not in principle an illegal restriction of freedom of movement for persons, but it could become one if it was apparent that the conditions governing the issue of a national licence to foreign nationals bore no reasonable relationship to the road traffic safety needs on which they were based.

This problem was further clarified in an important judgment delivered on 18 January 1979 in Joined Cases 110 and 111/78, *Van Wesemael and Others*. In the Member States, it is often necessary to obtain a licence in order to pursue various occupations. The purpose of such a requirement may be to ensure that persons pursuing a given occupation have the necessary professional qualifications and are honourable and solvent. A licence may be granted subject to the condition that the applicant is resident in the country. This is primarily because it is desirable for it to be possible to check at all time that the requisite conditions are being fulfilled. In Belgium employment agencies for entertainers were required to hold such a licence. It was an offence to place entertainers in employment without a licence, or to use foreign employment agencies. These provisions had been infringed by a Belgian who had used a French employment agency. The Court of Justice first of all recognized that Member States were as a matter of principle entitled to impose requirements

'motivated by application of professional rules, justified by the public interest or by the need to protect the entertainer, as behoves any person established on the territory of the State'. However, it went on to make the important point that it was not possible to invoke such rules againt providers of services established in another Member State who held licences issued on conditions comparable to those required in the State where the service was provided and were subject to appropriate supervision.

The Court thus left the authorities and courts in Member States to determine whether or not there were comparable rules and suitable supervision in the country of the person providing a service and, where they found that there were, to refrain from applying their own professional rules, which retained all their legal validity for other purposes, to enterprises providing their services from that country.

The legality of another national requirement which was at all events generally applicable irrespective of nationality was a vital consideration in the judgment delivered on 28 April 1977 in Case 71/76 *Thieffry*. Mr Thieffry, a Belgian advocate, wished to be admitted to practice the profession of advocate in France. The Sorbonne had recognized the equivalence of his Belgian diploma to the corresponding French diploma. He had also obtained the *certificat d'aptitude à la profession d'avocat* (qualifying certificate for the profession of advocate), which is required in France. Despite this, the Paris Bar Council had rejected his application to practice as a French advocate on the ground that he did not possess a French diploma in law, as required under French legislation. No Community directive had been issued on the subject of mutual recognition of diplomas in law.

Notwithstanding this, the Court of Justice held that a refusal to admit a candidate to the profession of advocate on the ground of his failure to produce a national diploma could be contrary to the requirements of the Treaty regarding abolition of restrictions on the free movement of persons. The competent national authority was required to examine whether or not the diplomas of other Member States were equivalent to the other national diplomas. Where it found that they were, admission to the profession of advocate could not be refused on the ground that no Community directive had been adopted on the mutual recognition of diplomas. The Court also pointed out that Article 5 of the Treaty obliges Member States, even in the absence of Community directives, to use all opportunities offered by national provisions or national practice for recognition of the equivalence of foreign diplomas where such recognition appears possible in the light of an objective assessment of their content and quality.

4. *Harmonization of national provisions with a view to promoting free movement of persons*

Only obstacles to equality of treatment for nationals of Member States are abolished by the provisions of the Treaty which laid down directly applicable prohibitions. Although the Court of Justice has interpreted these provisions as also providing a basis on which to establish — up to a point — an obligation of national authorities to

recognize the equivalence of other Member States' rules and diplomas with their own, there nevertheless remain various national rules which differ in content and therefore represent serious obstacles to the free movement of persons. These differences, in the area of conditions governing eligibility to pursue various activities, have to be eliminated by mutual approximation of national rules. In addition to removing obstacles confronting persons wishing to take up the occupations in question, directives on harmonization also make for better standards of performance in those occupations.

Many such directives have been adopted in the EEC; they can be divided into three broad categories, as follows:

(i) 'transitional' directives;

(ii) directives on mutual recognition of diplomas etc., including those concerned with harmonization of the content of training;

(iii) directives on harmonization of company law and more especially of national requirements governing the right to take up and pursue activities.

(a) 'Transitional' directives

In many activities and occupations, requirements are laid down regarding the possession of diplomas or other evidence of professional qualifications, good repute and solvency. These requirments, which often differ from one country to another, can represent serious obstacles affecting the chances of persons wishing to seek employment, to establish themselves or to provide services in a country other than that in which they have obtained their diplomas and have hitherto worked. The most effective way of eliminating these obstacles is to carry out real harmonization of national requirements. Since this process can take time, the general programmes stated that transitional systems could be applied until harmonization was completed. The principle underlining these systems is as follows: Member States which require evidence of certain knowledge or abilities recognize that effective pursuit of the activity in another Member State for a specified period — generally between three and six years — constitutes adequate evidence. The directives adopted since the judgment delivered in 1974 by the Court of Justice in the *Reyners* case also contained provisions on certificates and other means whereby a national of a Member State can furnish evidence in another Member State of his good repute and solvency. Rules of this type were also contained in the directives on liberalization, which have now become superfluous. Altogether 10 transitional directives were adopted; a complete list is provided in an annex.

(b) Directives on mutual recognition of diplomas and qualifications

It is not as a general rule contrary to the Treaty for Member States to make the right to take up an activity condition upon the possession of diplomas or production of similar evidence of professional qualifications. Article 57(1) of the Treaty nevertheless

authorizes the Council to issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications. Such directives often presuppose some harmonization of the training on which such diplomas are based. Article 57(2) of the Treaty provides the Council with the necessary legal basis for this purpose.

The Community institutions have done important work in this field, particularly over mutual recognition of the diplomas of members of the professions: doctors, dentists, veterinarians, etc. It had been proposed originally that mutual recognition of diplomas should be based on detailed harmonization of courses of training. However, it became clear that such an approach involved serious technical difficulties, while there were also doubts as to the desirability of the limitation, implicit in harmonization, of the various countries' possibilities for developing their own training methods etc. These considerations have since led to the adoption of a different principle, according to which the various directives list the diplomas awarded in each country which the other countries are required to recognize, while at the same time general definitions are given of certain minimum requirements regarding the duration or content of courses, so that each Member State retains a large measure of freedom to determine the content of training courses and the others are given reasonable guarantees regarding the quality of diplomas. This principle is embodied in the Council Resolution of 6 June 1974 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications, which called for advisory committees covering the various fields to be set up to deal with any difficulties arising in practice in connection with problems of equivalence of training.

The main result achieved in this field was marked by the adoption in 1975 of Council Directives 75/362 and 75/363 of 16 June 1975 concerned respectively with mutual recognition of diplomas etc. in medicine, and coordination of national provisions in respect of activities of doctors. Under these directives, both general practitioners and specialists are able to practice in all Member States, either as employees or in a self-employed capacity. Mutual recognition of doctors' training is based on a minimum of a six-year high-level course or 5 500 hours of theoretical and practical instruction. In the case of specialists, additional training of between three and five years is required. On a general view, the health field is the area in which the Community has so far gone furthest. Similar directives have been issued for nurses, dentists, veterinarians and midwives.

In the case of the profession of lawyer, there have not yet been any proposals aimed at mutual recognition of diplomas for the purposes of establishment in another country, and there is reason to doubt that there ever will be. There are very wide differences between national legal systems, and lawyers' training is so closely geared to these systems that any mutual recognition of diplomas would have to be viewed with circumspection. On the other hand, by adopting Directive 77/249 of 22 March 1977, the Council has succeeded in establishing a degree of freedom to provide services for lawyers. Lawyers are allowed to give legal advice in Member States other than their own. In addition, they can represent clients in legal proceedings in other countries, although it may be stipulated that a foreign lawyer must be assisted by a lawyer who practices before the judicial authority in question.

A number of directives of importance to admission to occupations outside the field of the professions have also been adopted. A particular example is provided by those dealing with certain aspects of the occupation of road transport operator. The aim in the first instance, as may be seen from Council Directives 74/561 and 74/562, was limited to establishing a measure of correspondence between the conditions to which admission to this occupation is subject in the various countries. A few years later, agreement was reached on a directive aiming at the mutual recognition of documents attesting to fulfilment of the conditions of admission (Council Directive 77/296).

A list of the directives adopted in this field is given in an annex.

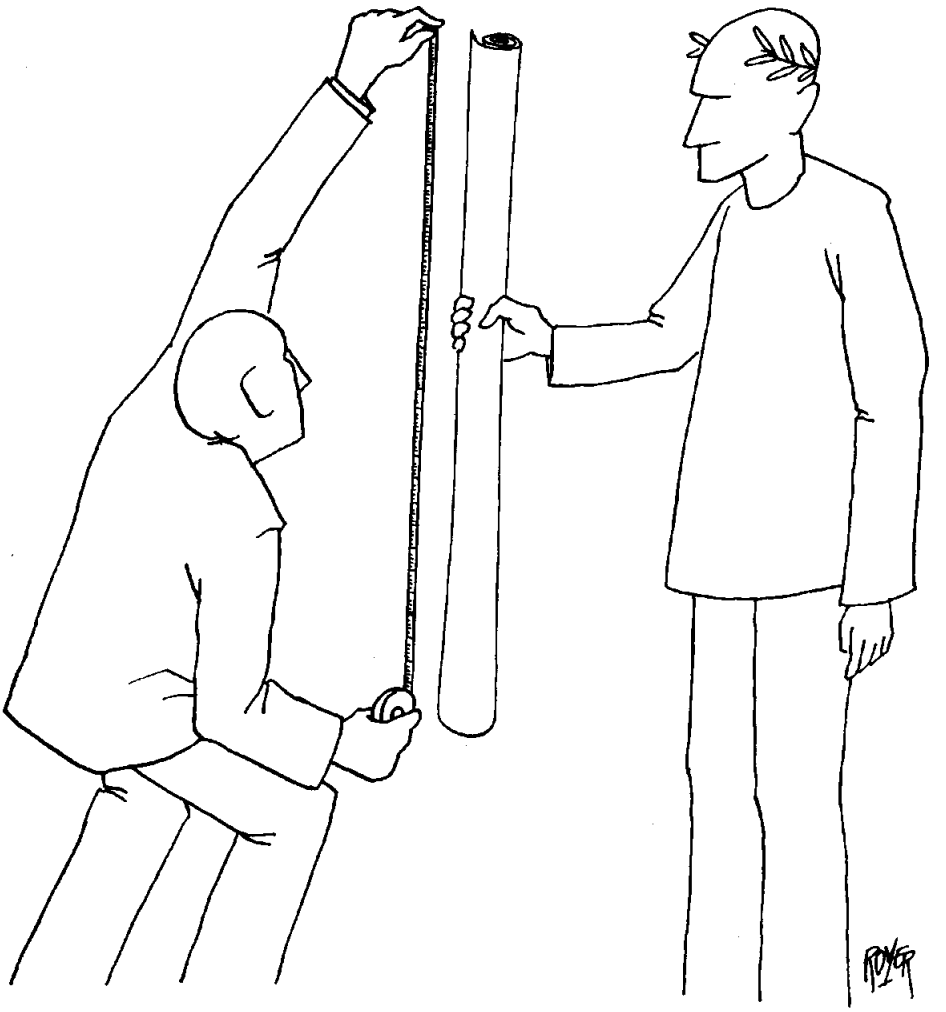
(c) Harmonization of company law and of rules concerning certain activities

Approximation of Member States' rules on the right to take up and pursue activities will in itself have the effect of facilitating freedom of movement across national frontiers. Ignorance of other Member States' rules and fear of unpleasant surprises will always lessen the interest shown in opportunities for establishment in those countries and trade in services. More specifically, however, approximation of national rules can also be a prerequisite for effective exercise of the rights embodied in the Treaty. For instance, as long as the pursuit of insurance activities is not subject to the same conditions protecting the interests of the policy holder in all Member States, any country may be justified in continuing to confine the pursuit of insurance activities to companies which are established on its territory and are therefore required to comply with national rules. Such a restriction would prevent companies established in other countries from providing insurance services in the country concerned. Any company wishing to avoid such exclusion by setting up a subsidiary could well be faced with an obligation to establish technical reserves etc. according to the laws both of its own country and of the other country.

The Community institutions are currently engaged on important work, on a very large scale, aimed at harmonizing national rules on the various types of activity. Hitherto, the directives harmonizing substantial areas of Member States' provisions in the field of company law have yielded the most important results. Other important work is in progress on harmonization of Member States' laws on banking, stock-exchange transactions, insurance, etc.

Since company law is of outstanding importance among the various fields in which harmonization is required, we propose to examine it in some detail so as to illustrate the efforts made by the Community towards attainment of the objectives of harmonization.

In Article 54(3)(g), the Treaty calls for harmonization of company law to the extent necessary in order to make the safeguards afforded to members and others 'equivalent' throughout the Community. Such harmonization seeks to achieve a number of aims. Safeguards for shareholders, creditors or potential investors create more propitious conditions both for establishment in other Member States and for



investment across national frontiers; they promote the formation of a European share market and the conduct of credit transactions across national frontiers. Some aspects of harmonization influence the structures of economic and commercial life and as such make up a component of common industrial policy. Provisions on protection of 'small savers' and workers' representatives on company boards represent an element of social policy and are part of the efforts being made to give the Community a 'human face'. A final aspect of the harmonization programme should be mentioned: the need, when new fields are about to be tackled by the legislators of the various Member States, for these fields to be approached in a harmonized fashion.

Table 1

Numbers of doctors from one Member State trained in medicine in another who were authorized to practice in 1979; breakdown by Member State of the Community

		Belgium	Denmark	FR of Germany	France	Ireland	Italy	Luxembourg	The Netherlands	United Kingdom
Total	±	14	7	381	39	31	33	13[3]	76	415
Nationals of:	Belgium	1	—	51	19	—	1	3	40	10
	Denmark	—	1	23	1		1		—	2
	FR of Germany	2	1	11	5	—	9	2	4	34
	France	8	—	44	5	—	9	5	2	9
	Ireland	—	1	6	0	—	—	—	4	290[2]
	Italy	1	1	79	1	—	6	2	2	46
	Luxembourg	1	—	37	1	—	—	—	1	1
	The Netherlands	—	—	78	1	1	1	1	13	17
	United Kingdom	1	3	52	6	30[1]	6	—	10	6
Trained in:	Belgium	—	—		23	—	1	3	46	11
	Denmark	—	—		1	—	1	—	—	2
	FR of Germany	2	2		6	—	8	2	9	35
	France	9	—			—	11	5	4	9
	Ireland	—	1		0	—	—	—	4	290
	Italy	1	1		2	—	4	2	2	50
	Luxembourg	1	—		1	—	—	—	—	—
	The Netherlands	—	—		1	1	1	1	—	18
	United Kingdom	1	3		5	30	7	—	11	—

[1] Some doctors who are not nationals of the United Kingdom may be included in this figure, since such persons are registered under the 1927 agreement with the United Kingdom authorities concerning the registration and control of doctors, which takes no account of nationality, but only of entry in the United Kingdom population register.

[2] Some doctors who are not nationals of Ireland may be included in the figure, since such persons are registered under the 1927 agreement with the Irish authorities concerning the registration and control of doctors, which takes no account of nationality, but only of entry in the Irish population register.

[3] All Luxembourg medical students have to obtain their training abroad: the number of Luxembourg students who have established themselves in their home country after receiving training abroad has therefore not been included in the table.

NB: This table does not include Community citizens who have received their basic training and authorization to practice in a Member State of which they are not nationals, since they are not immigrant doctors, but immigrant students.

All immigrant doctors are included in the table, including those who undergo additional training in another Member State, if they have received authorization to practice there.

Table 2

Numbers of nurses from one Member State trained in nursing in another who were authorized to practice in 1979; breakdown by Member State of the Community

		Belgium	Denmark	FR of Germany	France	Ireland	Italy	Luxembourg	The Netherlands	United Kingdom
Total	±	63	7[2]	85		577	—	35	334	16
Nationals of:	Belgium	49		8		2			40	
	Denmark	—		1		—			9	
	FR of Germany	3		1		1			105	
	France	3		8		1			18	
	Ireland	—		1		572			4	
	Italy	—		—		—			2	
	Luxembourg	—		—		—			—	
	The Netherlands	8		43		1			—	
	United Kingdom	—		23		—			156	
Trained in:	Belgium	—				2			40	2
	Denmark	—				—			9	0
	FR of Germany	7				1			105	3
	France	3				1				1
	Ireland	—				572[1]			4	5
	Italy	—				—			2	0
	Luxembourg	—				—			—	0
	The Netherlands	53				1			—	5
	United Kingdom	—							156	0

[1] 572 Irish nationals who had trained in the United Kingdom were registered in Ireland during 1979, but the actual number of those who took up employment in Ireland is not known.
[2] 7 nurses from Member States whose training did not meet the requirements of the directives on the nursing profession received authorization to practice in Denmark following additional training conforming with the recommendations of the health service authorities.

NB: This table does not include Community citizens who have received their basic training and authorization to practice in a Member State of which they are not nationals, since they are not immigrant nurses, but immigrant students.
All immigrant nurses are included in the table, including those who undergo additional training in another Member State, if they have received authorization to practice there.

The matter of group accounts or the more general area of law on groups are prime cases of fields in which it would quite clearly be damaging to the interests of the Community if the Member States each went their separate ways and introduced divergent laws.

Harmonization of company law differs from all other areas of harmonization in that it is not approached on a sector-by-sector basis. Most of the directives on harmonization are concerned with a clearly defined field of activity, such as that of midwives or that of life insurance companies. Directives on company law deal with industrial and commercial activity as a whole, without distinguishing between branches, so that they have far-reaching effects on economic life in the Community.

The overall programme for harmonization of company law is very ambitious. It involves a combination of very wide-ranging plans capable of bringing profound changes in the legal environment in which companies operate, and more limited and technically often very complex forms of action. The four directives already adopted represent only a very small part of the programme, but in the fields that they cover, they have already led to significant changes in the Member States and have generally brought about improvements in the protection afforded by law to shareholders, creditors and third parties.

Work on harmonization began with the types of company which are most important in economic life, namely the public company (Aktieselkab, Aktiengesellschaft, société anonyme) and the private company (Anpartsselskab, GmbH, société à responsabilité limitée). The first directive (68/151 of 9 March 1968) and especially the fourth directive (78/660 of 25 July 1978) brought considerable harmonization on the information that companies of both these types are required to make available to the public.

The first directive laid down a harmonized system for compulsory publication of documents recording the main events in the life of a company and defined the legal effects of registration.

The fourth directive achieved a much more ambitious aim: a first major step towards harmonized accounting law. This directive contains detailed provisions on the annual accounts of companies with share capital. It contains a blend of the accounting laws of the English-speaking countries and those of a more legalistic tradition, specifying very detailed models for balance sheets and profit and loss accounts, and laying down rules for valuation of the various items. In addition this directive serves as a basis and point of reference for the work being done currently to supplement this Community accounting law, which is now in operation.

The two main items in this work are the proposals for a seventh directive (on group accounts) and the proposal for an eighth directive (on the qualifications of persons who audit company accounts), which are currently going through the procedure leading to adoption by the Council. Another development is the proposal for a specific directive adapting the fourth directive to the particular case of banks.

The two other directives which have already been adopted contain provisions on public companies, the main reasons for this being that these are the most important companies and are the ones which most regularly finance their operations by raising funds from the public. The main purpose of the second directive (77/91 of 13 December 1976) is to ensure that the capital of public companies throughout the Community is truly representative, since a company's capital is the guarantee that it offers to third parties. The directive accordingly stipulates that Member States fix the minimum capital subscription at no less than 25 000 ECU;[1] it also lays down very clear rules on subscriptions and increases or reductions in capital. In addition, it contains provisions aimed at preventing abusive reduction of a company's capital through the distribution of unwarranted dividends or acquisition of excessive numbers of its own shares. Finally, it sets up a procedure for alerting interested parties in the event of a serious loss of capital.

The third directive (78/855 of 9 October 1978) harmonizes the rules on the procedure for mergers between public companies of the same nationality. It will be followed by a directive extending these rules, with some adjustments, to de-mergers of public companies. Rules on mergers of public companies between Member States are currently being drafted in the form of a convention pursuant to Article 220 of the EEC Treaty.

Meanwhile, the work on a thorough reform of public companies initiated by the proposal for a fifth directive is proceeding in the European Parliament. The intention is to modify the structure of these companies, with emphasis on the two-tier system of administration (management board and supervisory board), linking this problem to that of worker participation, notably through representation on the supervisory board. The proposal also contains clear rules on general meetings and incompatible responsibilities. The Parliament's opinion on this proposal, which was submitted to it in 1972, is now expected soon, but there must be doubts as to the outcome of the negotiations that will follow in the Council, given the political implications of the proposal.

A proposal for a ninth directive on the law applicable to groups of companies, on the drafting of which the Commission has been working for many years, completes the range of action undertaken in the field of the law on public companies. This proposal would legalize the relations existing between member companies of a group by giving the parent company the right to impose its policy and administration regularly and effectively. In exchange for this, minority shareholders, creditors and employees of subsidiaries would receive guarantees appropriate to their respective situations.

In parallel with this harmonization and in the context of industrial policy, the Commission for its part has made great efforts to create a uniform law, i.e. provisions under which companies could be incorporated and governed directly by Community

[1] European currency unit. The ECU is made up of amounts of the national currencies. 1 ECU (1 November 1981) =BFR/LFR 40.80 / DKR 7.83 / DM 2.43 / DR 61.77 / FF 6.12 / IRL 0.68 / LIT 1 301.22 / HFL 2.69 / UKL 0.58 / USD 1.099.

law and would have the whole EEC territory as their 'country of origin'. Its ideas are contained in the proposal for a Council regulation on the statute for European companies (submitted in 1970, amended in 1975), which sets out a modern and exhaustive body of company law in some 350 articles. The Council began its examination of this document in 1976, but it is impossible, in view of the scale of the proposal itself and the problems that it raises, to predict when this procedure might be completed. For companies wishing to use a much more flexible means of trans-frontier cooperation, in 1973 the Commission submitted its proposal for a regulation on the European cooperation grouping (which was amended in 1978). This flexible legal structure is particularly suited to the requirements of small and medium-sized businesses.

Harmonization of laws on stock exchanges is closely connected with the work in the field of company law. The Council adopted Directive 79/279 on 5 March 1979 on the conditions for the admission of securities to official stock-exchange listing and Directive 80/390 on 17 March 1980 on the contents of prospectuses intended to provide information on securities quoted on stock exchanges. The latter directive contains very detailed provisions. A proposal under which half-yearly accounts would be required from quoted companies is currently under scrutiny by the Council and will in all probability be adopted within the next few years.

Among its other activities in this field, the Commission is working on provisions aimed at combating 'insider dealing', but such activities have proved so difficult to regulate in several Member States that it is scarcely possible to submit a proposal at this stage.

Harmonization of provisions on banking and insurance is particularly significant, since these fields are of importance to the creation of a common market but at the same time they are difficult areas for harmonization, both politically and technically. Like the corresponding national provisions, harmonized conditions must take account of a wide variety of partly conflicting considerations, such as protection of savings and consumers, flexibility and adaptability of structures in industry and commerce, or Member States' balance-of-payments positions. This last consideration is particularly important in the cases of life assurance, deposits in banks and bank loans, since the provisions of the EEC Treaty on the movement of capital allow Member States to maintain certain restrictions on transactions involving capital movements and payments within the Community.

A very short directive on credit institutions ('first directive on harmonization of banking', 77/780) was adopted on 12 December 1977. This text is applicable to all institutions which take deposits from the public and engage in lending, not only commercial banks in the strict sense, but also institutions such as savings banks and credit cooperatives. Its provisions deal with the authorization which has to be obtained before opening a credit institution, and with withdrawal of authorization. Its main usefulness lies in the framework that it provides for future harmonization. This directive, like those on mutual recognition of diplomas, attributes great importance to cooperation between Member States, which is promoted by the work done in an advisory committee.

In the field of insurance, there is a whole series of directives and proposals for directives. The most important are those concerned with the right to take up the business of non-life insurance and life assurance ('the first directive on non-life insurance', 73/239 of 24 July 1973, and 'the first directive on life assurance', 79/267 of 5 March 1979). These directives require Member States to make the right to take up the business of insurance subject to authorization by the administration and set down clear conditions for the granting of such approval (and its possible withdrawal) to companies governed by their own laws and to subsidiaries of companies and branches from other Member States. They also stipulate specific requirements regarding the solvency of companies and, finally, invite cooperation by the supervisory authorities in the Member States, which have in fact jointly drawn up a series of implementing provisions.

These directives are concerned with organizing coordination needed to promote freedom of establishment. A proposal aimed at promoting freedom to provide services in non-life insurance was forwarded to the Council at the end of 1975.

An insurance company is deemed to be providing a service when it is not established in the country where the insured is resident and/or the insured risk is situated. The proposal for a directive contains a series of rules, the main intention of which is to make controls on insurance companies providing services as effective as those on companies which are established in a given Member State. It therefore makes for equality of competitive conditions between insurance companies and protection against abusive practices for policy holders, particularly private consumers turning to a foreign insurance company. With a view to increasing further the safeguards afforded to consumers, the Commission submitted a proposal for a directive on the coordination of Member States' provisions on insurance contracts to the Council in 1979.

The specific harmonization of provisions on motor-vehicle third-party liability insurance contained in Directive 72/166 of 24 April 1972 is of practical importance to Community citizens. It means that all Community vehicles are insured and eliminates the need for control of green cards at border crossing-points.

A list of the directives issued in this field is given in an annex.

5. *Activities not covered by the rules on liberalization*

As has been mentioned earlier, the Treaty's provisions on the free movement of persons cover all forms of economic activity, except that the obligations imposed do not apply to 'employment in the public service' or to 'activities which ... are connected, even occasionally, with the exercise of official authority'.

These exceptions allow Member States to reserve certain jobs and functions for their own nationals by way of derogation from Articles 48, 52 and 59 of the Treaty.

Difficulties arise when it comes to defining employment in the public service and activities connected with the exercise of official authority.

However, it has been established by the Court of Justice, for instance in its judgment of 12 February 1974 in Case 152/73 *Sotgiu*, that exceptions could be invoked by Member States in cases of absolute necessity only and, moreover, that the intentions of the provisions containing these exceptions should be taken into account. Thus, the exceptions are not applicable to the whole of the public sector and it is immaterial whether the status of the worker concerned is that of civil servant, clerical worker or manual worker. In the judgment that it delivered on 17 December 1980 in Case 149/79 *Commission* v *Belgium*, the Court established in more positive terms that the concept of public service was confined to jobs involving direct or indirect exercise of public authority and functions whose object was to safeguard the general interests of the State, particularly those connected with internal and external security.

In its judgment of 21 June 1974 in Case 2/74 *Reyners*, the Court of Justice emphasized that the concept of official authority contained in Article 55 was to be interpreted narrowly. Whether or not an activity was connected with the exercise of official authority had to be decided according to Community law, that is in a uniform manner for all Community countries. It was necessary, but not sufficient in itself, that the function was connected with official authority under national law. The fact that some aspects of a profession involved the exercise of official authority did not justify making the whole of that profession an exception to the obligations on liberalization imposed by Community law, as long as it was possible to isolate that part of the profession which was connected with the exercise of official authority.

IV — Treatment of Community citizens in fields other than those affecting employment and self-employment

It is natural that the Community institutions should have concentrated hitherto on affording EEC citizens equality of treatment in the conditions which directly or indirectly affect employment or the pursuit of self-employed activities. Article 48 refers only to employment, remuneration and other conditions of work and employment when discussing equality of treatment. Similarly, Regulation No 1612/68 on freedom of movement for workers also concentrates largely on forms of differential treatment affecting working conditions. The same is true of the list of prohibited forms of discrimination given in the general programmes on freedom of establishment and freedom to provide services. It should not be inferred from this, however, that Community citizens benefiting under the rules of the Treaty on freedom of movement are not also entitled to equality of treatment in areas which do not affect their work or the pursuit of their self-employed activities. This is made clear by Article 51 of the Treaty, which calls for the adoption of such Community measures in the field of social security as are necessary to provide freedom of movement for workers, and by Regulation No 1612/68, Article 7(2) of which requires Member States to allow workers who are nationals of other Member States the same social and tax advantages as those granted to their respective national workers. A more general principle on equality of treatment is also to be found in the case-law of the Court of Justice based, *inter alia*, on the general prohibition contained in Article 7 of the Treaty on any discrimination on grounds of nationality; the basic line here is that nationals of a Member State who are established in another on the basis of the provisions of the Treaty must enjoy the same rights and be bound by the same obligations as nationals of the host country. There are nevertheless limitations to the principle of equality of treatment: it cannot be applied to rights which attach specifically to the status of national of a given country, such as the right to vote and to stand for election to political assemblies or other bodies connected with the exercise of official authority; at the same time, nationals of other Member States are not bound by the same obligations as nationals, such as compulsory military service in the host country.

A number of fields in which Community rules affect the general legal position of nationals of Member States in other Member States are examined in the following sections.

1. *Social security*

Differences between Member States' social security laws can represent serious barriers to the free movement of workers. Removal from one country to another can entail a loss of

entitlements in the country of origin unless equivalent entitlements are granted in the host country.

Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community deals with problems of this type.

This Regulation does not aim to harmonize the social security laws of Member States, but merely to coordinate application of national laws in force so as to ensure that movements of workers within the Community do not entail losses of social security benefits for the workers themselves or their families. It is not possible here to make a detailed examination of the many provisions of this Regulation, some of which are highly technical, or of the very large body of relevant Court of Justice case-law. We shall therefore confine ourselves to a brief outline of the main principles established by the Regulation and the benefits that it covers.

The Regulation establishes the principle of equality of treatment, stating that workers to whom it applies employed in a Member State have the same rights and obligations in regard to social security as the nationals of that State.

The most important principle embodied in the Regulation is the principle of aggregation of periods of employment. Although no problem arises when a worker has completed the number of years in a Member State needed to qualify for special benefits in that State, a migrant who has worked in various Member States may not have completed the qualifying period in any of those States. In the latter case, according to the principle of aggregation, a Member State to which the worker applies for social benefits must take account of the total period worked on its own territory and in other Member States when calculating the amount of benefits payable.

Another principle is that of exportability, according to which social security benefits can be paid in any country of the Community, irrespective of the Member State where entitlement has been acquired. This means that a worker can return to his country of origin having completed a period of work in another Member State without fear of losing entitlements earned there.

The final main principle in the Regulation is the *pro rata temporis* principle, according to which pensions and certain other benefits for which entitlement is normally acquired on completion of a specified period of insurance or residence are payable by the authorities in the countries where the person concerned has been employed, in proportion to the period of employment in each such country. For instance, if he has worked for 25 years in one country and for 25 years in another, he will be entitled to 50% of the pensions that he would have received in each country if he had been employed there throughout the period. This is only a notional example, however, and the provisions in force in the various countries may result in more generous terms for workers in such circumstances.

The Regulation applies to all legislation concerning the following branches of social security:

(i) sickness and maternity benefits;

(ii) invalidity benefits, including those intended for the maintenance or improvement of earning capacity;
(iii) old-age benefits;
(iv) survivors' benefits;
(v) benefits in respect of accidents at work and occupational diseases;
(vi) death grants;
(vii) unemployment benefits;
(viii) family benefits.

The Regulation is not applicable to benefits other than those listed above. However, nationals of one Member State resident in another Member State receive equality of treatment with the nationals of the host country for the purposes of entitlement to other social benefits, including social assistance benefits. The principle of equality of treatment is not confined to the field covered by Regulation No 1408/71, but is applied generally, to persons exercising the right of establishment or the freedom to provide services as well as to employed workers.

In addition to the above, it is worth noting that the Regulation gives unemployed workers the right under certain circumstances to travel to other countries in the Community for a short period in order to seek work without losing their entitlement to unemployment benefits in the country where they have lost their jobs.

The Court of Justice has established that application of the Regulation can never result in the loss or reduction of entitlements acquired directly under national laws, i.e. those which would be due without any recourse to the Regulation.

Although the Regulation covers only employed persons and their families as yet, it has been decided to extend its provisions to self-employed persons and preparations for this are now in hand.

2. *'Current payments' and capital movements*

There is a certain relationship between the rules on freedom of movement for persons and those concerned with free movement of capital within the EEC. The former freedom would in practice be less attractive to Community citizens if it were not possible to move funds across national frontiers for the purposes of necessary investments and payments, remittance of wages, payment for services or transfer of trading profits.

The rules on the transfer of 'capital' and 'payments' are contained in very detailed provisions in Articles 67 to 73, 106 and 221 and Annex 3 of the EEC Treaty. Further clarification of these rules is given in three Council directives, dated 12 July 1960, 31 May 1963 (63/340) and 30 July 1963 (63/474) respectively.

These rules can be summarized as follows: Community law guarantees citizens the right to carry out all payments and capital movements connected with the provision of

services and free movement of workers; the same is true, to a large extent, of transfers of capital connected with establishment ('direct investments').

Some restrictions still survive, however. For instance, Member States are not obliged to allow life assurance to be taken out from companies not established on their territory. In addition, restrictions can be placed on the financing of life assurance through the sale of shares or debentures in other Member States. In view of the economic difficulties of recent years, it is likely that such restrictions will remain in force until further notice.

3. *Equality of treatment over housing, training and other rights*

Employed and self-employed persons wishing to remove to another Community country in order to work or establish themselves there have the same rights to housing for themselves and their families as nationals of that country. These include both the right to rent accommodation and the right to buy one's own home. This right is explicitly stated, in the case of employees, in Article 9 of Regulation No 1612/68.

Migrant workers are entitled to vocational training under the same conditions as nationals. So too are self-employed persons who have established themselves in another Member State and members of the families of both employed and self-employed persons. In the judgment that it delivered on 11 April 1973 in Case 76/72 *Michel S.*, the Court of Justice held that the handicapped son of a worker who was a national of another Community country was entitled to re-training according to Article 12 of Regulation No 1612/68, which provides that the children of a worker from another Member State are entitled to be admitted, in the country of residence, to general educational, apprenticeship and vocational training courses under the same conditions as nationals of that country. In its judgment of 3 July 1974 in Case 9/74 *Casagrande*, the Court of Justice found that this right extends not only to education as such, but also to general measures intended to facilitate educational attendance, including financial assistance.

On 25 July 1977 the Council issued Directive 77/486 on the education of the children of migrant workers. This directive is based on recognition of the fact that mere legal application of equality of treatment to the education of foreign children will not always result in effective equality of treatment. Foreign children require special help. The directive therefore lays an obligation on Member States to give these children special tuition in the language of the host country. In addition, the authorities in the host country are required to make appropriate arrangements, in cooperation with their counterparts in the country of origin, for teaching of the mother tongue and culture of the country of origin.

The right to equality of treatment extends to yet other social benefits. Interpreting the Treaty, the Court of Justice, in its judgment of 30 September 1975 in Case 32/75 *Christini*, concluded that Article 7 of Regulation No 1612/68 was also applicable to reduced-fare passes issued to large families by national railway boards. Although these passes were issued as part of a campaign to boost the national birth rate, the

families of migrant workers should also benefit. In other words, equality of treatment is applicable even where there is no connection between use of such a pass and a contract of employment. Moreover, the right to the pass still holds good when the applicant is the widow of a migrant worker from another Member State, if she has the right to remain (see Section 4 below).

4. *The right to remain in the territory of a Member State after having been employed or established there*

Article 48 of the Treaty made provision for the right to remain in a Member State after having been employed there, subject to conditions to be laid down by the Commission. These conditions were defined in Commission Regulation No 1251/70 of

29 June 1970. Workers and members of their families as defined in Regulation No 1612/68 enjoy this right under the following conditions: workers who leave off work at retirement age must have been employed in the Member State for the past 12 months and must have resided there for the past three years; workers obliged to leave off work as a result of permanent incapacity to work must have resided continuously in the Member State for the past two years. The conditions for family members are based on those applicable to workers themselves. Members of a deceased worker's family are allowed to remain in the host country as long as the right to remain was acquired before his death and, in certain circumstances, even if he should die during his working life.

Council Directive 75/34 of 17 December 1974 extended the right to remain to self-employed persons and their families. The principles governing acquisition of this right are the same as for employed persons.

Persons who have acquired the right to remain enjoy the same right to equality of treatment as employed and self-employed persons. Conversely, they are also subject to the special provisions on the powers of expulsion available to Member States laid down in Directive 64/221 (see Chapter II above).

V — Future work aimed at securing and facilitating free movement of persons within the Community

The case-law of the Court of Justice and the decisions of the Council during the 1970s, coupled with the process of enlarging the European Communities to include a number of Mediterranean countries, provide good grounds for claiming that the beginning of the 1980s marked the start of a new period as far as the free movement of persons within the Community is concerned. In broad terms, the direct objectives of the Treaty have been attained and a 'first series' of harmonization problems have been resolved. Although further progress is still required in some areas of this field, it will be necessary over the years ahead to select options and define priorities according to adapted principles. This will involve considerable work, especially for the Commission, if it exercises its exclusive right to submit proposals to the Council.

This transition to a new period is also evidenced by the changes in the situation in important sectors of economic activity brought about by the economic crisis.

The work to be undertaken over the coming years can be classified in three broad areas:

(i) continuation of the policy on harmonization in various fields where it has already been initiated;

(ii) harmonization where required in new spheres;

(iii) initiatives aimed at creating a European identity and building up a feeling of solidarity among Community citizens.

In a number of fields, difficulties have been encountered which have prevented the harmonization plans drawn up so far from being implemented to the full extent necessary. In banking and insurance, for instance, various matters should have been the subject of harmonization measures by now, but this has not been possible, partly because of developments within the Community and partly because these are very sophisticated fields. This subject is discussed in Chapter III, Section 4. Company law is another sphere in which new legal acts will be introduced, although in all probability at a slower pace.

At the same time, the economic and legal developments that have occurred thus far, drawing the countries of the Community closer together, have pointed to the need to face new tasks. This has also been found in a number of areas which come quite close

to the sphere of civil law, but it is more difficult to visualize the potential practical results, since the problems of harmonization are much more complex.

Policy on education and training, where the extent of cooperation has been limited hitherto, is another field in which problems will have to be tackled over the coming period. In some fields of education, the question of whether or not the Treaty gives authority for cooperation remains open to doubt on legal grounds, while, where there are no such doubts, considerations of autonomy and flexibility in the various national educational systems have prevented the adoption of precisely formulated specific criteria. It may be that it will be necessary to make certain adjustments in order to secure lasting acceptance from educational circles in the Member States.

The desire to strengthen the feeling of solidarity and identity among Community citizens was one of the essential motivations behind various proposals that were put forward during the 1970s. Of these, the only one to have been adopted so far is the proposal for a common driving licence, on the subject of which a directive was issued in 1980. However, several other efforts are being made along these lines, including proposals for a uniform passport, 'special rights for the citizens of the European Community' (such as the right to take part in local elections), and the right for nationals of Member States to reside in other Member States, even if their reasons for wishing to do so are not directly connected with the pursuit of an economic activity. Mention should also be made here of the continuing work on mutual recognition of diplomas, since measures of this type help psychologically to create a feeling of solidarity. Action along these various lines will serve to give Community citizens an assurance that, should they choose to pursue their occupations in other Member States, they will not be hindered in their day-to-day lives by meaningless formalities.

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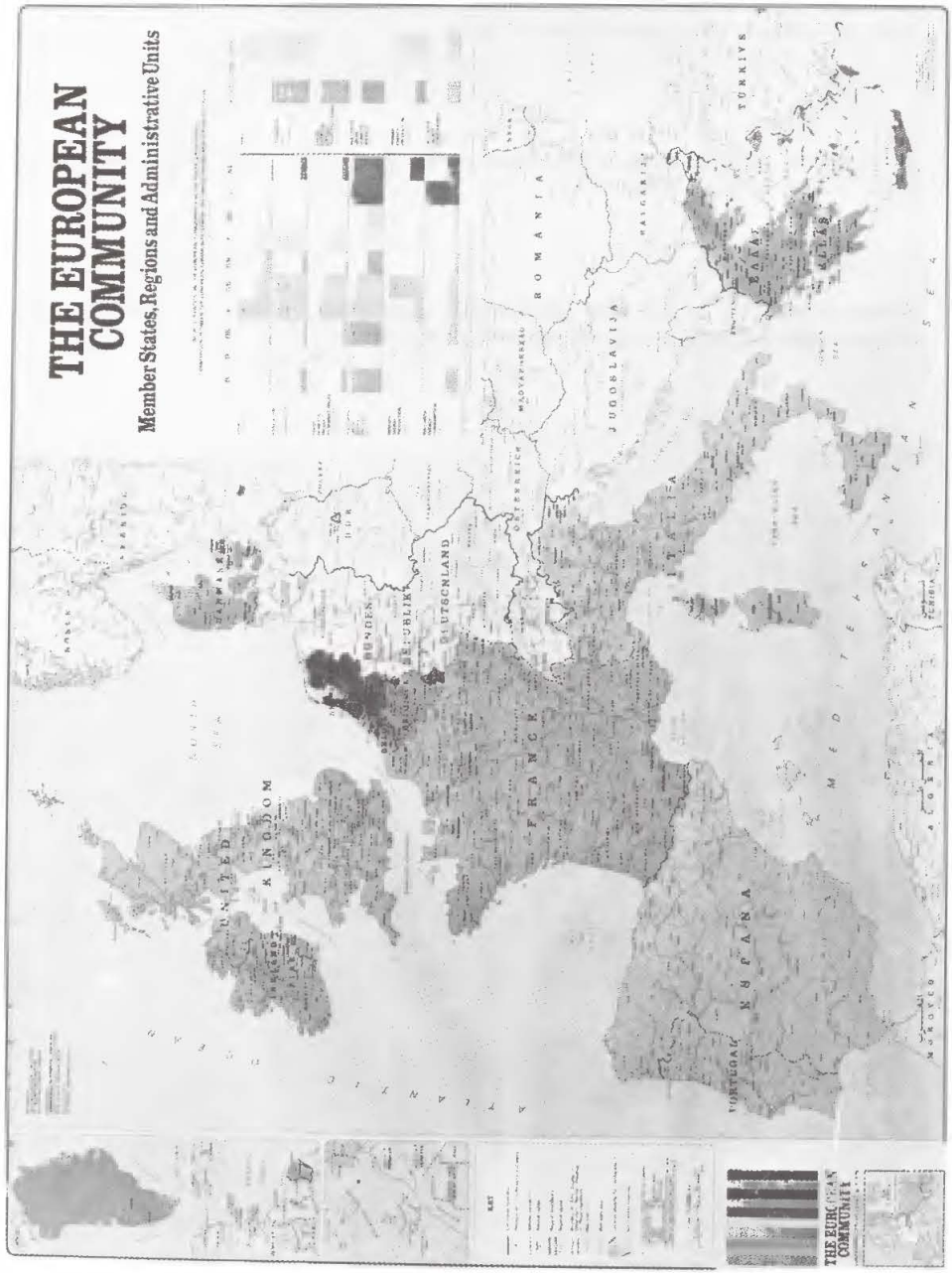
MAP OF THE EUROPEAN COMMUNITY

(1981 edition)



To mark the second enlargement of the European Community with the accession of Greece on 1 January 1981 a new map has been published. It shows the new Community with its ten member countries (Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, The Netherlands and the United Kingdom) and two applicant countries (Spain and Portugal).

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European Communities — Commission

Freedom of movement for persons in the European Community

Luxembourg: Office for Official Publications of the European Communities

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This publication sets out the principles underlying the free movement of persons within the European Community and describes what has been done to facilitate freedom of movement for workers and the self-employed in the ten Member States.

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The free movement of persons between the Member States of the Community is one of the four basic freedoms instituted by the Community. The relevant rules are set out in Part Two of the EEC Treaty — 'Foundations of the Community'. There is every reason to emphasize this, for without free movement of persons there could be no European Community.

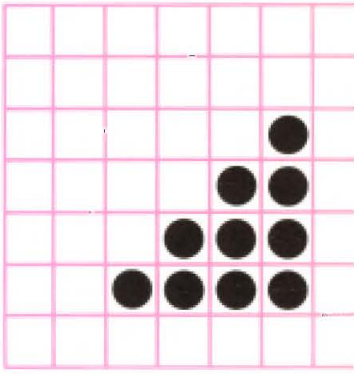
Under Community law each Member State must afford workers from another Member State the same treatment as its own nationals. And it can no longer reserve occupations in trade and industry for its own nationals. These are now facts of Community life.

There are still, however, more than a few barriers in the way of free movement. Member States make many stipulations in the matter of vocational training for workers and the self-employed.

Though the conditions to be satisfied before anyone may engage in industrial or commercial activity are not discriminatory in themselves, they can nevertheless impede free movement, if only because they vary from country to country.

Quite a number of barriers of various kinds need to be removed before complete freedom of movement is attained. This means that the European Community is facing an extended task, requiring initiative, patience, perseverance and support.

The citizens of the Member States, and especially young people, to whom this is of particular concern, can do much to help bring about free movement if they are mindful of their rights under Community law. Community law applies directly to them and confers upon them rights which they can exercise in dealings with the authorities and can enforce in the courts of the ten Member States, for, here too, Community law takes precedence over national law.



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