

**Proposal for a Council directive on procedure for introducing freedom  
of establishment and freedom to supply services in activities  
connected with the press**

**(submitted by the Commission to the Council on 6 July 1964)**

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EXECUTIVE SECRETARIAT OF THE COMMISSION  
OF THE EUROPEAN ECONOMIC COMMUNITY

**Proposal for a Council directive on procedure for introducing freedom  
of establishment and freedom to supply services in activities  
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(submitted by the Commission to the Council on 6 July 1964)

**EXPLANATORY  
MEMORANDUM**

**General**

*1. Subject of the directive*

The General Programmes for the removal of restrictions on freedom of establishment and freedom to supply services, adopted by the Council on 18 December 1961, lay down that restrictions on activities belonging to Group 839 of Schedule I of the General Programme for freedom of establishment must be removed before the expiry of the second year of the second stage. These activities embrace all business services not elsewhere classified in the schedules of the General Programme. On account of their special structure and character, activities connected with the press have been separated out from this group of activities and are the subject of the present directive.

*2. Aim of the directive*

In accordance with Articles 54(2) and 63(2) of the Treaty, the present directive is concerned with implementing the two

General Programmes in respect of these activities and also, in accordance with Article 57(1) of the Treaty, with arranging for reciprocal recognition of certificates issued by professional bodies. Under these articles of the Treaty, the Council adopts the directive by qualified majority vote, after the Economic and Social Committee and the European Parliament have been consulted.

**Commentary on the articles**

*3. Article 2*

*a)* During the preparatory work, the question was raised of whether the activities of press photographer belong to Group 839 of Schedule I of the General Programme on freedom of establishment or Group 856 of Schedule III of the same programme. Such activities are nowhere expressly mentioned in the UN International Standard Industrial Classification (ISIC) on which the schedules in the General Programme are based. Although doubts regarding interpretation are not thereby removed, the fact that Major Group 85 (Group 856) refers to "Personal Services" and that Major Group 83 (Group 839) concerns "Business Services" seems to indicate however that the

activities of press photographer belong to Group 839 under the heading "News picture collecting services". Furthermore, as there appears to be no reason why the activities of the free-lance press photographer should be liberalized after those of the free-lance journalist, they have been included in Article 2.

b) The preambular paragraph relating to news gathering and reporting agencies was drafted to avoid giving the impression that correspondents' bureaux are not covered by the directive.

#### 4. Article 3

The restrictions referred to in Article 3(2 a, ii and iii) have been listed pending the entry into force of a press law at present being prepared in the Federal Republic of Germany; this law will no longer contain these restrictions.

#### 5. Article 4

a) Article 4(1) implements Article 57(1) of the Treaty, which provides for the reciprocal recognition of diplomas, certificates and other qualifications. As long as certification of professional capacity is not required by law in all Member States and, consequently, it is not possible to introduce general recognition of the relevant certificates, it will suffice if, in respect of the activities covered by this article, a measure of reciprocal recognition is adopted in advance of general recognition.

b) The second paragraph was inserted in Article 4 in order to give paragraph 1 less of an abstract and somewhat theoretical character.

#### 6. Article 6

The system laid down in Articles 1 and 2 derives from the right to membership of the professional associations referred to in Title III (List 2, i) of the General Programme on freedom of establishment. The second paragraph refers to the application of Article 55 of the Treaty should this right to membership be used.

Because of the temporary character of services it appears unnecessary to oblige the supplier to enrol in a professional association, particularly as such enrolment might in certain cases involve financial obligations which would be out of proportion to the importance of the service supplied. However, to render it possible to maintain a check on professional qualifications, paragraph 3 lays down that prior notice must be given to the professional association by the person supplying the service.

#### 7. Article 7

This article is based on Article 54(3, h) of the Treaty and derives directly from Title VII of the General Programme on the freedom of establishment.

#### 8. Article 8

This provision is to allow beneficiaries of the directive to produce evidence of good character on arrival in the host country. The article deals, firstly, with the case where a certificate is required by law both in the host country and in the country of origin (paragraph 1) and, secondly, where such regulation exists only in the host country (paragraph 2).

### Proposal for a directive on procedure for introducing freedom of establishment and freedom to supply services in activities connected with the press

*The Council of the European Economic Community,*

*Having regard to the Treaty establishing the European Economic Community and in particular Articles 54(2), 57(1) and 63 thereof;*

*Having regard to the General Programme for removal of restrictions on freedom of establishment<sup>(1)</sup> and in particular Title IV-A thereof;*

*Having regard to the General Programme for removal of restrictions on freedom of supply services<sup>(2)</sup> and in particular Title V-C thereof;*

*Having regard to the proposal of the Commission;*

*Having regard to the opinion of the European Parliament;*

*Having regard to the opinion of the Economic and Social Committee;*

(1) See official gazette of the European Communities, No 2, 15 January 1962, p. 36/62.

(2) See official gazette of the European Communities, No 2, 15 January 1962, p. 32/62.

*Whereas* the General Programmes provide for the removal, before the expiry of the second year of the second stage, of all discrimination based on nationality affecting establishment and supply of services in respect of business services not elsewhere classified;

*Whereas* the Group "Business services not elsewhere classified" covers certain press activities which, being governed by a specific set of rules on account of their interdependence and particular structure, are treated in the legislation of several Member States as a special class; and whereas the other activities in this group have a rather commercial and artisan character and it is therefore fitting that press activities should be the subject of a special directive;

*Whereas* in the sphere of press activities self-employment as a press photographer is covered by this directive, this activity belonging to the group of business services not elsewhere classified;

*Whereas* self-employment in a news gathering and reporting agency, being also covered by this directive, must be interpreted broadly, so that all news agencies, including correspondents' bureaux, are covered;

*Whereas*, the legal status of the proprietor of a newspaper being distinct, in certain Member States, from that of the publisher, it must be specified that self-employment in the activity of publishing a newspaper or periodical includes the activity of the proprietor thereof;

*Whereas*, besides the removal of restrictions, the General Programmes also provide for an enquiry to decide whether the lifting of restrictions should be preceded, accompanied or followed by the reciprocal recognition of diplomas, certificates and other qualifications and by the co-ordination of legislative and administrative provisions concerning access to and pursuit of the activities in question;

*Whereas* not all Member States impose conditions of access to and pursuit of press activities, and where such conditions do exist they generally take the form of requiring possession of certification of professional capacity or an equivalent diploma, issued in accordance with legislative provisions;

*Whereas*, in view of the importance of such conditions in certain Member States and the absence thereof in others, it did not appear necessary to start co-ordinating at the same time as removing discrimination; and whereas such co-ordination must be undertaken later wherever progress in the introduction of freedom of establishment and freedom to supply services makes this necessary; and whereas the same applies to the reciprocal

recognition of diplomas, certificates and other qualifications on which access to the said activities in certain Member States depends;

*Whereas*, nevertheless, it is desirable to facilitate introduction of the right of establishment and freedom to supply services in the activities concerned by adopting in advance a measure concerned with recognition, mainly to prevent undue hardship to nationals of Member States where access to these activities is not subject to conditions;

*Whereas* the purpose of the measure introduced in advance must therefore be principally to ensure that in the States where certification of professional capacity or an equivalent diploma is a condition of access to the activities in question, proof of effective pursuit of the profession in the country of origin for a reasonable and not too distant period shall be recognized as sufficient evidence that the beneficiary possesses professional qualifications equivalent to those demanded of nationals;

*Whereas* the advance measure to which this directive refers will have ceased to be necessary once reciprocal recognition of diplomas, certificates and other compulsory qualifications is fully implemented;

*Whereas*, in accordance with the provisions of the General Programme for the removal of restrictions on freedom of establishment, restrictions on the right to join a professional association must be removed wherever the professional activities of the individual concerned necessitate the exercise of this right;

*Whereas* the system applicable to employed workers accompanying the supplier of services or acting on his account is governed by the provisions implementing Articles 48 and 49 of the Treaty;

*Whereas*, for the application of provisions relating to right of establishment and freedom to supply services, treatment of companies on the same footing as persons who are nationals of Member States is subject only to the conditions laid down in Article 58 and, where applicable, to that of a continuous and effective link with the economy of a Member State and consequently no additional condition, such as a special licence which is not required of national companies in order to pursue an economic activity, can be required of them before they benefit from such provisions; whereas however such treatment does not deprive Member States of the right to require that in their country legal persons established under the law of another Member State shall operate under the designation used in the legislation of that Member State;

Whereas, moreover, special directives<sup>(1)</sup> concerning provisions relating to the entry and residence of beneficiaries and payment for services, applicable in general to all self-employment, have been or will be issued as well as any directives needed to co-ordinate the guarantees which Member States require of companies in order to protect the interests of the members of the company and of third parties,

Has adopted the present directive:

#### Article 1

The Member States shall remove, in respect of the persons and companies referred to in Title 1 of the General Programmes for the removal of restrictions on freedom of establishment and freedom to supply services, hereinafter called beneficiaries, the restrictions listed in Title III of the said programmes in respect of access to and pursuit of the activities listed in Article 2.

#### Article 2

The provisions of the present directive shall apply to self-employment:

- a) As free-lance journalist;
- b) As free-lance press photographer;
- c) In a news gathering and reporting agency;
- d) As publisher of a newspaper or other periodical;
- e) A newspaper distributor.

#### Article 3

1. The Member States shall remove restrictions which:

- a) Prevent beneficiaries from setting up in business or supplying services under the same conditions and with the same rights as its own nationals;
- b) Result from an administrative practice the effect of which is to discriminate between such persons and its own nationals;
- c) Hamper the activities of companies because of the nationality of their members, the members of their managements or boards of directors, or their shareholders.

2. Particularly important among the restrictions to be removed are those contained in provisions forbidding or limiting establishment or supply of services by beneficiaries in the following manner:

#### a) In the Federal Republic of Germany:

i) By requiring that legal persons established under the legislation of a foreign state who wish to pursue a professional activity on Federal territory shall hold a licence (§ 12 of the Trading and Industrial Code [*Gewerbeordnung*] and § 292 of the Law on Limited Companies [*Aktiengesetz*]);

ii) By laying down that those concerned shall possess the right to vote, as in § 3 (d) of the Law of 17 November 1949 of North Rhine-Westphalia (*Gesetz- und Verordnungsblatt* 1949, page 293);

iii) By imposing the condition of eligibility laid down in § 2 (1) of the Law of 27 September 1949 of Schleswig-Holstein (*Gesetz- und Verordnungsblatt* 1949, page 199).

#### b) In Belgium:

By laying down that those concerned shall hold a "carte professionnelle" (*Arrêté royal* No. 62 of 16 November 1939, *Arrêté ministériel* of 17 December 1945 and *Arrêté ministériel* of 11 March 1954).

#### c) In France:

i) By laying down that those concerned shall hold a "carte spéciale d'étranger" (*Décret-loi* of 12 November 1938, Law of 8 October 1940, Law of 10 April 1954, Decree No. 59-852 of 9 July 1959);

ii) By requiring that the opinion of the Ministry of Information shall first have been obtained (Article 5 of Decree of 17 January 1936, *Journal officiel* of 20 and 21 January 1936, amended by Decree of 2 June 1954 *Journal officiel* of 9 June 1954);

iii) By the prohibition of the Ministry of Internal Affairs (Article 14 of the Law of 29 July 1881, *Journal officiel* of 30 July 1881, amended by *Décret-loi* of 6 May 1939, *Journal officiel* of 17 May 1939), except on grounds of public policy, public security or public health;

iv) By the condition of French nationality (Article 3 of the Ordinance of 26 August 1944, *Journal officiel* of 30 August 1944, and Article 4 of the Law of 16 July 1949, *Journal officiel* of 19 July 1949, amended by the Law of 29 November 1954, *Journal officiel* of 1 December 1954, Ordinance of 23 December 1958, *Journal officiel* of 24 December 1958, and Decree of 15 July 1960, *Journal officiel* of 16 July 1960).

#### d) In Italy:

i) By imposing the condition of Italian nationality for the responsible editor (*diret-*

(1) See official gazette of the European Communities, No. 56, 4 April 1964, p. 845/64 and p. 850/64.

torre responsabile) and for the publisher and proprietor (Articles 3 and 4 of Law No. 47 of 8 February 1948, *Gazzetta Ufficiale* No. 43 of 20 February 1948);

ii) By imposing the condition of nationality (Articles 31, 33 and 35 of Law No. 69 of 3 February 1963, *Gazzetta Ufficiale* No. 49 of 20 February 1963).

e) *In Luxembourg:*

By limiting the time during which licences granted to foreigners are valid (Article 21 of the Luxembourg Law of 2 June 1962, *Mémorial A* No. 31 of 19 June 1962).

*Article 4*

1. Where a Member State restricts access to or pursuit of any of the activities listed in Article 2 to persons with given general or professional qualifications, that Member State shall accept proof that beneficiaries have actually and lawfully pursued this activity, on their own account or in a managerial capacity, in another Member State for at least two years immediately preceding the date of the application referred to in Article 5 as sufficient evidence that they have these qualifications.

2. Paragraph 1 refers mainly to the qualifications required:

*In Belgium:*

Under Article 4 of the *Arrêté royal* of 24 October 1961 (*Moniteur belge* of 2, 3 and 4 November 1961, 8255) for access to and pursuit of activity as self-employed press photographer;

*In Luxembourg:*

Under Article 4(2) of the Law of 2 June 1962 (*Mémorial A* No. 31 of 19 June 1962) for access to and pursuit of self-employed activity of the nature of a news agency, as newspaper distributor, or as publisher of a newspaper or other periodical;

*In Italy:*

Under Article 32 of Law No. 69 of 3 February 1963 (*Gazzetta Ufficiale* No. 49 of 20 February 1963) for access to and pursuit of activity as self-employed journalist.

*Article 5*

1. Any person shall be considered to be acting in a managerial capacity within the meaning of Article 4 who, in an enterprise belonging to the sector concerned, has held the position of:

a) head of the enterprise or head of a branch;

b) assistant to the entrepreneur or head of the enterprise, if the position carries with it responsibility corresponding to that of the entrepreneur or head of the enterprise so represented.

2. Proof that the conditions laid down in Article 4 have been fulfilled shall be provided by a certificate issued by the authority or competent body of the country of origin and submitted by the person concerned in support of his application to pursue in the host country the activity or activities in question.

3. Member States shall designate within the time-limit laid down in Article 9 the authorities and bodies competent to issue the above certificates and shall immediately inform the other Member States and the Commission.

*Article 6*

1. Where a Member State requires its nationals to be members of a professional association before they can take up any of the activities listed in Article 2, it must ensure that the beneficiaries of this directive are entitled, should they wish to set up business in that State, to joint these professional associations with the same rights and duties as its own nationals.

2. The right of membership shall include the right to be elected or appointed to executive positions in the association. However, such positions may be reserved to nationals where the association concerned participates, by virtue of some legislative or administrative provision, in the exercise of public authority.

3. Where a Member State requires its nationals to be members of a professional association before they can take up any of the activities listed in Article 2, it must ensure that, if a service is being supplied, the beneficiaries of this directive may replace such requirement by a prior notice of the supply of the service, addressed to the professional association concerned.

4. In Luxembourg, membership of the Chamber of Commerce does not imply, for beneficiaries of this directive, the right to participate in the election of the executive bodies.

*Article 7*

The Member States shall not grant to any of their nationals who move to another

Member State in order to pursue one of the activities listed in Article 2 any aid which might distort the conditions of establishment.

#### *Article 8*

1. Where a Member State requires its nationals to produce evidence of good character or professional integrity or a statement of their financial position before they can take up one of the above professions, it must, in the case of the nationals of another Member State, accept the equivalent document required by that State.

2. Where the Member State of immediate or ultimate origin does not demand such a proof, the host Member State may require an extract from the person's police record or, failing this, an equivalent document issued by a competent judicial or administrative authority in the country of immediate origin which provides evidence that such requirements have been satisfied.

3. Where certificates of freedom from bankruptcy are not delivered by the country of origin, they can be replaced by a declaration by the person concerned, sworn before a judicial or administrative authority, a notary or an appropriate professional body in the country of origin.

4. The documents issued in accordance with paragraphs 1 and 2 must not, when submitted, be more than three months old.

5. The Member States shall designate within the time-limit laid down in Article 9 the authorities and bodies competent to issue the above documents and shall immediately inform the other Member States and the Commission.

#### *Article 9*

The Member States shall implement the necessary measures to bring their regulations into line with the present directive within six months of its notification and shall immediately inform the Commission thereof.

#### *Article 10*

The Member States shall inform the Commission of any further projects for legislative or administrative provisions which they intend to adopt in the field covered by the present directive. This information shall be so given that the Commission may submit its observations in good time.

#### *Article 11*

The present directive is addressed to the Member States.