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CONTENTS

- I. Right of establishment
- II. Mutual recognition of degrees and
 diplomas
- III. Present position

I. RIGHT OF ESTABLISHMENT

1. What is it all about?

There is a certain amount of misunderstanding about the term "right of establishment" that must be cleared up straight away: right of establishment is the right to follow one's trade or profession without let or hindrance, but this is not the same thing as unrestricted admission to the trade, the profession. That is quite a different matter: before a trade or profession such as that of agricultural engineer could be made open to all comers, all the various laws and regulations governing it would have to be abolished. The Treaty of Rome does not provide unrestricted access to all trades and professions but freedom for the nationals of one member country to practise them under the same conditions as nationals of any other member country to which they may move.

2. Difference between the right of establishment and freedom to supply services

When we talk of the supply of services, we are generally thinking of the tertiary sector. This is not so in the Treaty; the Treaty uses the concept of supplying a service to denote the activity of someone who, while maintaining his establishment in his own country, temporarily goes abroad to follow his calling and then returns home.

Will the conditions for attaining freedom of establishment be different from those for introducing freedom to supply services? This question will be examined in more detail later, but it may be affirmed here and now that as far as the professions are concerned the conditions for attaining these two objectives are much the same, though there may be some shades of difference.

3. Who is affected by right of establishment?

(a) The Treaty does not liberalize the agricultural engineer but agricultural engineering. So it is essential to know what a person wishing to be established actually does, irrespective of the diploma he holds.

(b) There are few regulations in the member countries governing the activities of agricultural engineers; certain of them are however subject to regulation, and this is sometimes very strict. The classic case is Italy, where not only the diploma but also the activity itself is regulated. At present, for instance, a Frenchman cannot go to Italy and work as an agricultural engineer without complying with the conditions imposed by Italian law; one of these is possession of an Italian diploma. In the other member countries, too, the degree which gives a person the right to call himself an agricultural engineer is subject to regulation. Before one can work as an agricultural engineer, therefore, one really has to obtain this qualification.

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- (c) The right of establishment concerns the non-wage-earning activities of self-employed persons. As however the agricultural engineer is in many Community countries a senior employee drawing a salary, it should be established whether the eventual results of mutual recognition of degrees and other qualifications for non-wage-earning activities will automatically apply to persons of professional standing who are in paid employment. The problem is there, and it is not easy to solve; an automatic transposition of the decisions concerning self-employed persons to those in paid employment is not necessarily the best solution.
- (d) The right of establishment covers both natural and legal persons, i.e. not only the individuals concerned but also corporate bodies, whether these work in the agricultural sphere or consist of a group of self-employed persons of professional standing.

Here we are only concerned with the second type of corporate body. The question is how far self-employed persons, while retaining full individual responsibility, can set up an association, and in what form. In France there is a bill before Parliament relating to "sociétés civiles professionnelles", (trade and professional organizations dealing with matters not falling within the relevant list in the Code de Commerce). Associations constituted by self-employed persons from different fields are without doubt an essential factor for the development of the professions and the improvement of their standing in a society that is becoming more and more industrialized.

4. How is the right of establishment made a reality?

There are two legal courses that may be followed:

- (i) The abolition of the restrictions embodied in the legislation of Member States, i.e. provisions which affect foreigners but not nationals of the State concerned. The classic type of restriction is the nationality requirement, but there are many other less absolute restrictions that must also be removed. Belgian law, for instance, requires all professional self-employed persons to hold a "carte professionnelle". This card constitutes a restriction and will have to be eliminated. Apart from legal restrictions, there are also administrative rules which sometimes have an indirect restrictive effect; these too will have to go.
- (ii) Even the removal of restrictions does not entirely solve the problem. In the case of Italy, for instance, discrimination on grounds of nationality will have to be abolished under the first directive to be issued. But since non-Italian nationals going to Italy are required to comply with Italian law, they are still obliged to hold an Italian

qualification. Removing the nationality requirement will therefore have little practical value.

The second means of making a reality of the right of establishment is through co-ordinating legislation in the Member States. Essentially, this comes down to two things: the mutual recognition of degrees and diplomas, and the co-ordination of the conditions, other than those relating to training, which govern access to and the exercise of a profession.

5. Procedure

Draft directives are prepared by government officials and Commission staff collaborating in working parties which then submit the drafts to the Commission itself. Once the Commission has agreed on a text, it is submitted to the Council of Ministers as a formal proposal for a directive. The Council consults the European Parliament and the Economic and Social Committee, and then adopts the directive.

Voting in the Council is by qualified majority for directives concerning the removal of restrictions and the mutual recognition of degrees and diplomas, but unanimity is required when Member States' legislation has to be co-ordinated.

It should be added that while the directives are being worked out, the Commission's staff consult the recognized trade organizations in the Member States, meeting as a European liaison committee.

II. MUTUAL RECOGNITION OF DEGREES AND DIPLOMAS

1. There is an important difference between a directive for the mutual recognition of degrees and other qualifications within the context of right of establishment and the academic equivalence of degrees. The purpose of the provisions on right of establishment is to make it easy for people to practise a given profession. The object of comparing curricula with a view to mutual recognition is to ensure that the people concerned really have put an equivalent amount of effort into their training. It certainly has to be a serious comparison, but the main purpose is to get an overall picture. One has to weigh up all the conditions governing training - and these can vary considerably from one country to the next. In one country, for instance, training on the job may be considered the important factor, in others diplomas or university degrees; in some places there are competitive entrance examinations, elsewhere there are not; some countries have state examinations after the university examinations, while others do not. At Community level, what matters is whether the total requirements are equivalent from one country to the next. Mutual recognition does not necessarily imply strict equivalence between academic qualifications alone.

2. Certain objectives are no concern at all of Community efforts to attain mutual recognition of degrees; they may well be important, but they are irrelevant to the task in hand.

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- (a) Reform of what is taught, for instance, is not a prior condition. If decisions on the mutual recognition of degrees for purposes of right of establishment were to be subordinated to the execution of educational reforms, it might be a long while before the objective could be reached.
- (b) Extension of mutual recognition to include all types of training and all technicians at all levels in agriculture is quite another matter. One day, however, it will have to come, even at the technical level.
- (c) There can be no mutual recognition of degrees unless at least one Member State requires a specific qualification for practising the profession. Italy does make such a stipulation. The Community has begun its work at university level. However, the mutual recognition of degrees in agricultural engineering must not be allowed to lead to any confusion between educational levels.

3. Method of work

The six Member States have supplied the appropriate Community departments with documentation on the training given in their countries. Comparative studies are now proceeding.

If, after thorough examination of this information, the experts consider the different courses of study to be equivalent, a directive for the mutual recognition of the degrees and diplomas can be drafted. This was the case in respect of general practitioners.

For agricultural engineers the situation is more complicated, and there are two possible solutions. Either a standard programme acceptable to all six Member States could be drawn up, and Member States whose programmes were below this standard would agree to modify their own legislation accordingly. This is the more difficult procedure because the law applying to nationals of the countries concerned would also have to be amended. Otherwise, instead of modification of national legislation, complementary examinations could be instituted to bring qualifications to equivalent level.

There is also a third possibility - transitional measures, for which provision is made in the General Programme for the removal of restrictions on freedom of establishment. The objective here would be to make the existing diploma the requirement, together with a certificate showing that the holder had in fact practised the profession for a certain number of years.

Activities in the technical type of profession, including agricultural engineering, were to have been liberalized by the end of 1965. In view of the complexity of the problem and the time taken up by consultation procedures, there will be some delay in giving effect to these plans.

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III. PROGRESS TO DATE

A special working party has been set up to deal with agricultural engineers, quite apart from the working party on engineers proper.

Preparation of directives

- A. The first text to be finished relates to the elimination of restrictions. The other texts are being awaited before this is sent on to the Commission. There are no restrictions in Germany, the Netherlands or France. Points to be covered in the directive include:
- (a) Registration as agricultural engineer: persons benefiting from the directive are entitled to be registered as members of the profession in the host country. They must be permitted to join autonomous organizations (such as a union), and these bodies may not refuse membership on the sole ground of nationality.
 - (b) Rules applicable within the profession: agricultural engineers going to a member country which, like Italy, has a legal code of professional conduct must comply with these rules. This involves an exchange of information on professional bodies if these exist in the receiving country and the country of origin.
 - (c) Title: a person benefiting from the directive may use the title equivalent to agricultural engineer in the language of the host country and his academic title in the language of his country of origin.
- B. The assumption adopted as basis for work on the directive concerning the mutual recognition of degrees and diplomas is that a joint programme will be established. Five basic criteria were adopted.
- (i) Conditions for entrance to agricultural colleges: the French "baccalauréat" or equivalent. Some of the difficulties: in France there is an entrance examination, but not in other countries; in Italy secondary education lasts a little longer than in the other member countries, and there is also the state examination; in Germany a period of training on the job is required before the academic course begins.
 - (ii) Overall length of course: in France and Germany five and a half years, in the Netherlands five and a half years in theory but seven in practice, in Belgium five years as a rule, in Italy four to five years. There seems to be a movement towards agreement on four and a half to five years.
 - (iii) Basic subjects: the working party found a broad measure of agreement on stipulating six broad fields of study:

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- (a) general science, mathematics, physics and chemistry;
- (b) biological sciences, biochemistry, genetics, botany, ecology, zoology and microbiology;
- (c) land improvement (engineering, surveying, farm machinery);
...
- (d) technical equipment, industrial uses of plants, animal husbandry;
- (e) economic and human sciences (rural sociology, etc.);
- (f) facility of expression, including knowledge of foreign languages.

Details of the various fields of knowledge will be fitted into this general training plan.

- (iv) How much time is to be devoted to the theoretical and practical study of each subject is a question still to be decided.
- (v) Also to be decided is the extent of emphasis to be laid on practical training.

Conclusions

1. If these projects to put qualifications on the same footing and to introduce freedom of establishment in agricultural engineering are to be realized, the Treaty of Rome will have to be implemented to the full, both in letter and in spirit.
2. The right of establishment and the mutual recognition of degrees and diplomas must be accepted as an element of the common agricultural policy, as these matters have far-reaching human consequences in agriculture.
3. The fundamental reason for making a reality of freedom of establishment is to give those following a profession wider scope and so to step up their productivity; this in turn would bring nearer one of the basic objectives of the Treaty of Rome: a higher standard of living.