

Supplement to

BULLETIN

of the European Economic Community

Draft Council directive detailing transitional measures for non-wage earning occupations in the wholesale trade and occupations serving trade and industry (intermediaries) (Articles 54 and 63 of the Treaty)

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SECRETARIAT OF THE COMMISSION OF
THE EUROPEAN ECONOMIC COMMUNITY

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Draft Council directive detailing transitional measures for non-wage-earning occupations in the wholesale trade and occupations serving trade and industry (intermediaries) (Articles 54 and 63 of the Treaty)

(Proposal submitted by the Commission to the Council)

The Council of the European Economic Community,

Having regard to the provisions of the Treaty and in particular Articles 54 (2) and 63 (2);

Having regard to the General Programme for the removal of restrictions on freedom of establishment and in particular Title V, second and third paragraphs;

Having regard to the General Programme for the removal of restrictions on freedom to supply services and in particular Title VI, second and third paragraphs;

Having regard to the proposal of the Commission;

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

Having regard to the opinion of the European Parliament and the reasons adduced in support of it;

Whereas the General Programmes, as well as providing for the removal of restrictions, also recognized the need to examine whether the removal of restrictions should be preceded, accompanied or followed by the reciprocal recognition of degrees, diplomas and other qualifications and by co-ordination of legislative and administrative provisions on admission to and pursuit of these occupations, and whether, pending such recognition and co-ordination, transitional measures should be adopted, as and when required;

Whereas conditions for admission to and the pursuit of the wholesale trade and occupations serving trade and industry are not laid down in all Member States, and where they are prescribed are based on limited requirements such as the possession of an appropriate certificate or diploma awarded in accordance with the statutory provisions;

Whereas, since these statutory provisions are in some Member States very limited in scope and non-existent in others, it has been impracticable or superfluous to co-ordinate them concurrently with the removal or restrictions as required; whereas

such co-ordination will have to be effected later; and whereas the same applies to the reciprocal recognition of qualifications which, in some Member States, are a prerequisite for admission to the said occupations, since these qualifications will not reflect comparable requirements until the general conditions for admission have been co-ordinated;

Whereas in default of immediate co-ordination, it would nevertheless seem desirable to facilitate the realization of the right of establishment and the freedom to supply services in the occupations in question by adopting transitional measures as authorized by the General Programmes; whereas, in so doing, the lack of any regulations at all in some Member States should be particularly taken into account so that nationals of States in which no conditions are prescribed for admission to these occupations are not unduly handicapped thereby; and whereas, lastly, such measures should guard against a one-sided liberalization of establishment and the supply of services focused on the States having no statutory requirements, since this would benefit persons who could not satisfy the conditions governing admission to and the pursuit of such occupations in their own country of origin;

Whereas, in order to avoid these consequences, the transitional measures should contain the following provisions:

a) receiving States that have regulations on admission to the occupations in question should recognize actual pursuit of the occupation in the country of origin for a reasonable and not too remote period as adequate proof that the person concerned has equivalent professional qualifications to those required of their own nationals;

b) any State that does not control admission to the occupations in question should be authorized, where necessary, to demand proof from nationals of the other Member States that they are qualified to pursue such occupation in their country of origin;

Whereas, with regard to this second point, transitional measures can nevertheless only be taken with great precaution, since they

partly run counter to the removal of restrictions and thus might hinder freedom of movement if they were generally applied; and whereas they should accordingly be limited in time and in scope; and whereas, to safeguard the interests of the Community and the Member States, the Commission should be charged with authorizing the implementation of such measures, in accordance with the general provisions of the Treaty concerning safeguard clauses;

Whereas, there will no longer be any grounds for the measures laid down in the present directive when the co-ordination of the conditions of admission to and the pursuit of the occupations in question and the reciprocal recognition of degrees, diplomas and other qualifications have been achieved; and whereas in any event they will have to be relinquished at the end of the transition period, because thereafter they may not be substituted for the obligation to enact the measures explicitly required by the Treaty, such as the co-ordination of national regulations and the reciprocal recognition of qualifications for admission to and the pursuit of non-wage-earning occupations in each country, as far as may be necessary to facilitate such admission and pursuit;

[...]

Has adopted the present directive :

Article 1

1. Member States shall adopt, under the conditions stated, the following transitional measures with respect to the establishment on their territory of the persons and companies referred to in Title I of the General Programmes and to the supply of services by such persons and companies in non-wage-earning occupations in the wholesale trade and in occupations serving trade and industry.

2. The occupations in question shall be those specified in the Council directives of and concerning the removal of discriminatory restrictions.

3. The provisions of the present directive shall not apply to trade in toxic substances, toxic agricultural chemicals or pathogens.

Article 2

1. Where a Member State makes admission to or pursuit of any of the occupations referred to in Article 1 (2) subject

to the possession of general, commercial or technical qualifications, it shall recognize the actual pursuit of that occupation in another Member State as sufficient proof of such qualifications in the following cases :

a) if the person concerned has worked on his own account or in a managerial capacity for three years, provided he did so not more than two years prior to the application referred to in paragraph 3 below; or

b) if the person concerned has worked on his own account for two years, provided he did so immediately prior to such application.

2. The phrase "in a managerial capacity" as used in paragraph 1 a) shall be understood to cover any person, having occupied, in an industrial or commercial establishment in the sector concerned, the post of

a) manager or branch manager; or

b) assistant manager if this involves the same economic and commercial responsibility as that of the manager.

3. A Member State shall give authorization to pursue the occupation in question on application by the interested party, accompanied by a certificate stating that he has in fact pursued the occupation in his country of origin under the conditions specified in paragraph 1. Such certificate shall be issued by the authority designated for the purpose by the country of origin.

Article 3

1. Where in a Member State admission to or pursuit of any of the occupations referred to in Article 1 (2), is not subject to the possession of general, commercial or technical qualifications, and the said Member State must, pursuant to the Council directives of and, abolish any existing discriminatory restrictions, it may on application be authorized by the Commission, for a limited period and for one or more specified occupations, to require nationals of other Member States wishing to engage in these occupations on its territory to produce evidence that they are qualified to pursue them in their country of origin. The Commission shall stipulate the conditions and method on which such authorization may be granted, particularly its period of validity.

Such authorization may not be sought in respect of persons whose country of origin does not make admission to the occupations

in question subject to evidence of particular qualifications.

2. Where paragraph 1 is applied, the Member State shall grant permission to pursue the occupation in question simply on production of a certificate, issued by the authority designated for the purpose by the person's country of origin, to the effect that he is entitled to pursue such occupation there.

Article 4

The measures referred to in Article 2 shall remain in force during the transition period until provisions have been made for the co-ordination of national regulations governing admission to and the pursuit of the occupations in question and for the reciprocal recognition of qualifications.

The measures provided for in Article 3 may not be authorized beyond the time-limit stipulated in the preceding paragraph.

Article 5

The Member States shall mutually inform one another of the authorities designated by them for issuing the certificates provided for in Article 2 (3) and Article 3 (2). They shall submit a list of authorities to the Commission.

Article 6

Member States shall put into effect any measures needed to comply with the provisions of the present directives within six months of notification and shall inform the Commission forthwith of the action taken.

Article 7

Should any Member State, after publication of the present directive, wish to introduce or substantially amend any legislative or administrative provisions relating to admission to the occupations in question, it shall enact measures applying the present directive for the benefit of nationals of the other Member States.

In addition, the Commission shall be given due notice of the draft enactment so that it may adopt a position thereon.

Article 8

The present directive is addressed to all Member States.

N. B. — In accordance with Article 191 of the Treaty, directives take effect upon notification to addressees.