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# Draft Council directive concerning freedom of establishment on farms that have been derelict or uncultivated for more than two years

(Proposal submitted by the Commission to the Council on 24 April 1962)

*The Council of the European Economic Community,*

*Having regard to the provisions of the Treaty and in particular paragraphs 2 and 3 of Article 54;*

*Having regard to the provisions of the General Programme for the removal of restrictions on freedom of establishment and in particular Title IV, F, 1 thereof;*

*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;*

*Whereas the General Programme for the removal of restrictions on freedom of establishment includes a special time-table for bringing about such freedom in agriculture and the time-table dates into account the special nature of farming; whereas the first measure in this time-table is the immediate abolition of all restrictions concerning freedom of establishment on farmlands that have been derelict or uncultivated for more than two years, with the sole reservation that establishment thereon does not imply the right to move to another holding;*

*Whereas in order to ensure the correct application of the present directive a clear definition of what is meant by farmlands that have been derelict or uncultivated for more than two years is required;*

*Whereas the step-by-step liberalization of establishment in farming activities envisaged by the General Programme makes it important that the persons who benefit under the present directive should be given a document showing what rights they enjoy in the host country;*

*Whereas the conditions of establishment must not be distorted through aids granted by the Member State from which the person benefiting has come; and whereas the specialized assistance already often given for the preparation of establishment and the actual establishment is not to be regarded as an aid causing distortion;*

*Whereas lastly, although there is no need for provisions to this effect in the present directive, it is desirable that, in accordance with the Treaty's provisions on the movement of goods, Member States should extend to all the means of production needed for working a farm those customs facilities already accorded to the nationals of other Member States immigrating as farmers for the importation of certain goods which form part of their working capital;*

*Has adopted the present directive :*

## *Article 1*

Member States shall abolish, in respect of the persons listed in Title 1 of the General Programme for the removal of restrictions on the freedom of establishment, hereinafter described as persons benefiting under the present directive, any restrictions on admission to non-wage-earning activities in farming and to the exercise of these activities on farms that have been derelict or uncultivated for more than two years.

## *Article 2*

For the purposes of the present directive farms which have been derelict or uncultivated for more than two years shall be any cultivable holding or group of cultivable holdings left fallow for more than two years and which fulfil the conditions to which the nationals are subjected as regards the minimum area for farms.

Land lying fallow because of crop rotation shall not be covered by this definition.

The existence or the absence of farm buildings or of buildings intended for farm use on the land or lands described above shall not constitute a criterion affecting the definition of these lands.

## *Article 3*

The activities covered by the present directive shall be those included in Schedule V of the General Programme (major group 01, "Agriculture") of the

“International Standard Industrial Classification of all Economic Activities” established by the Statistical Office of the United Nations, Statistical Papers, Series M, No. 4, Rev. 1, New York, 1958) in particular:

- a) Growing of field crops, growing of fruits, nuts, seeds, vegetables, flowers both in the open and under glass;
- b) Raising of livestock, poultry, rabbits, fur-bearing or other animals, bees and the production of meat, milk, wool, skins and furs, eggs and honey.

The felling and exploitation of timber, and planting and replanting of forests may be carried out as secondary activities on the farms specified in Article 2, where these operations are compatible with national regulations and particularly those concerning soil utilization.

#### Article 4

1. The restrictions to be removed are those listed in Title III of the General Programme.

Member States shall ensure in particular that persons benefiting under the present directive shall have the option, in the same conditions and with the same effect as nationals:

- a) To acquire, to have assigned or granted to them, to take on lease, to occupy and to exploit in any legal form any farm which complies with the conditions of Article 2; to exercise a right of pre-emption if the property being worked is sold;
- b) To benefit from the various general or specific forms of credit, aid or subsidy for purchasing, developing and managing farms which comply with the conditions of Article 2, including any measures taken under programmes for improving agricultural structure;
- c) To be members of, and hold any office in, co-operatives and any other agricultural organization of co-operative character, and sponsor the formation of such organizations with membership open to the nationals of the host country.

2. As an exception to paragraph 1 and pending implementation of the provision contained in the second sentence of Title IV, F, 3 of the General Programme, Member States which already applied such a restriction when the Treaty entered into force shall retain the right to require that

persons benefiting under the present directive shall seek permission before they transfer to holding which does not comply with the conditions of Article 2.

#### Article 5

1. Member States shall fully recognize the right of persons benefiting under the present directive to establish themselves on derelict or uncultivated farms without prior authorization and under the same conditions as their own nationals.

2. Any objection on the part of the competent authority, based on the absence of conditions stipulated in Articles 1, 2 and 3, if it is not to fail and provided there is no fraud, be notified to the person concerned not more than thirty days after this person has given notice of his intention to establish himself as a person benefiting under the present directive.

3. Member States shall ensure that persons benefiting under the present directive shall have a right of appeal against any decision whereby the competent authority opposes their establishment.

4. Member States in which, generally speaking, the admission of nationals of other Member States to the activities listed in Article 3 is for the time being still subject to special authorization in the case of foreigners shall issue to persons benefiting under the present directive, after expiry of the time-limit provided for in paragraph 2, at their request and without charge, a personal certificate establishing their special situation and their consequent right under Article 4 to be treated on the same footing as nationals.

#### Article 6

1. Member States shall grant their nationals no direct or indirect aid, whether financial or of any other nature, towards, or on the occasion of, their emigration for the purpose of establishing themselves under the present directive, if its effect would be to distort conditions of establishment in the host country.

2. The following shall not be deemed to distort the conditions of establishment:

- a) Administrative, technical or social assistance granted to persons benefiting under the present directive for their establishment as part of the co-operation practised between organizations authorized to take such action by the competent

authorities of the State from which the person comes or of the host State;

b) The financial or material contribution made by the State from which the person comes to the travel and transport costs of the emigrant, his family, his personal possessions and household effects, his livestock and equipment as far as the frontier of the host country.

#### Article 7

1. Member States shall advise the Commission, not later than thirty days after notification of the present directive, of the legislative and administrative provisions and of the administrative practices which, on their territories, apply specifically to the

acquisition, the allotment or granting, the leasing, the working and the management of derelict and uncultivated farms.

2. Member States shall put into effect any measures needed to comply with the provisions of the present directive within 120 days following its notification and shall inform the Commission forthwith of the action taken.

#### 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.*

### **Draft Council directive on freedom of establishment in agriculture for nationals of a Member State who have worked as paid agricultural workers in another Member State for an unbroken period of two years**

(Proposal submitted by the Commission to the Council on 10 May 1962)

*The Council of the European Economic Community,*

*Having regard to the provisions of the Treaty and in particular paragraphs 2 and 3 of Article 54;*

*Having regard to the provisions of the General Programme for the removal of restrictions on freedom of establishment and in particular Title IV, F, 2 thereof;*

*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;*

*Whereas the General Programme for the removal of restrictions on freedom of establishment includes a special time-table for bringing about such freedom in agriculture, and this time-table takes into account the special nature of farming; and whereas it is laid down that in the first phase of this time-table, i.e. at the end of the first stage of the transition period, Member States shall remove restrictions on freedom of establishment in agriculture*

for nationals of other Member States who have been employed as paid agricultural workers in the host country for an unbroken period of two years;

*Whereas* in order to ensure the correct application of the present directive a clear definition of what is meant by an agricultural worker who has worked in this capacity in the host country for an unbroken period of two years is required;

*Whereas* in order to settle the minimum period of work which must have been actually carried out during these two years in order to benefit from the present directive, it is important to take into account the special character of farm work and its dependence on natural conditions;

*Whereas* the step-by-step liberalization of establishment in farming activities envisaged by the General Programme makes it important that persons who benefit under the present directive should be given a document showing what rights they enjoy in the host country;

*Whereas* the conditions of establishment must not be distorted through aids granted by the Member State of origin from which the person benefiting has come; and whereas

any assistance given to an agricultural worker for the transfer of his family, of his personal possessions and household effects, and of his livestock and implements is not to be regarded as an aid causing distortion;

*Has adopted the present directive :*

#### *Article 1*

Member States shall abolish, in respect of nationals of other Member States who have worked on their territories as paid agricultural workers for an unbroken period of two years, hereinafter described as persons benefiting under the present directive, any restrictions on access to non-wage-earning activities in farming and to the exercise of these activities.

#### *Article 2*

1. For the purposes of the present directive an agricultural wage-earner shall be any person bound by a contract for hire of his services and engaged in one of the activities listed in Article 3.

2. An agricultural wage-earner shall be considered as having worked for an unbroken period of two years, within the meaning of the present directive, when he has been employed as such for two consecutive periods of twelve months, each of which includes not less than eight months of actual work.

Holidays, short absences not exceeding 60 days due to sickness, industrial accident or occupational disease shall be treated as periods worked, and this shall also apply to maternity leave.

3. In the application of paragraphs 1 and 2, the fact that during the two consecutive years the agricultural wage-earner has retained a residence outside the host State, that the members of his family have not followed him into this State, or that he has worked for more than one employer or in more than one of the activities coming under Article 3, shall not be taken into consideration.

#### *Article 3*

The activities covered by the present directive shall be those included in Schedule V of the General Programme (major

group 01, "Agriculture", of the "International Standard Industrial Classification of All Economic Activities" established by the Statistical Office of the United Nations, Statistical Papers, Series M, No. 4, Rev. 1, New York, 1958), in particular :

a) Growing of field crops, growing of fruits, nuts, seeds, vegetables, flowers both in the open and under glass;

b) Raising of livestock, poultry, rabbits, fur-bearing or other animals, bees; and the production of meat, milk, wool, skins and furs, eggs and honey;

c) Agricultural, animal husbandry and horticultural services on a fee or contract basis.

The felling and exploitation of timber, and planting and replanting of forests may be carried out as secondary activities on the farms taken over or established in implementation of the present directive, where these operations are compatible with national regulations and particularly those concerning soil utilization.

#### *Article 4*

The restrictions to be removed are those listed in Title III of the General Programme.

The Member States shall ensure in particular that persons benefiting under the present directive shall have the option, in the same conditions and with the same effect as nationals :

a) To acquire, to take on lease, to have assigned or granted to them, to occupy and to exploit in any legal form any real property on which the activities listed in Article 3 can be carried out; to exercise a right of pre-emption if the property under exploitation is sold; to move to another holding;

b) To benefit from any general or specific forms of credit, aid or subsidy made available to promote access to the activities listed in Article 3 and to facilitate the pursuit of such activities, in particular measures to promote agricultural wage-earners' access to the activity of farmer;

c) To be members of, and hold any office in, co-operatives and any other agricultural organizations of co-operative character, and to sponsor the formation of such organizations with membership open to the nationals of the host country.

#### Article 5

1. Member States shall fully recognize the right of persons benefiting under the present directive to be admitted to the non-wage-earning activities listed in Article 3 and to engage in such activities without prior authorization and under the same conditions as their own nationals.

2. Any objection on the part of the competent authority, based on the absence of conditions stipulated in Articles 1, 2 and 3, must, if it is not to fail and provided there is no fraud, be notified to the person concerned not more than thirty days after this person has given notice of his intention to establish himself as a person benefiting under the present directive.

3. The Member States shall ensure that persons benefiting under the present directive shall have a right of appeal against any decision whereby the competent authority opposes their establishment.

4. The Member States in which, generally speaking, the admission of nationals of other Member States to the activities listed in Article 3 is for the time being still subject to special authorization in the case of foreigners shall issue to persons benefiting under the present directive, after expiry of the time-limit provided for in paragraph 2, at their request and without charge, a personal certificate establishing their special situation and their consequent right under Article 4 to be treated on the same footing as nationals.

#### Article 6

1. Member States shall grant their nationals no direct or indirect aid, whether

financial or of any other nature, towards their establishment under the present directive, if its effect would be to distort conditions of establishment in the host country.

2. Where any financial or material contribution is made by a Member State from which the agricultural wage-earner comes to the transfer of his family, his personal possessions, his household effects, his livestock and his implements as far as the frontier of the host country, this shall not be deemed to distort the conditions of establishment.

#### Article 7

1. The Member States shall advise the Commission, not later than thirty days after notification of the present directive, of the legislative and administrative provisions and of the administrative practices which, on their territories, apply specifically to the admission of agricultural wage-earners to any of the non-wage-earning activities listed in Article 3.

2. Member States shall put into effect any measures needed to comply with the provisions of the present directive within 120 days of notification and shall inform the Commission forthwith of the action taken.

#### 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.*

### **Draft Council directive for the removal of restrictions on travel and residence by nationals of Member States within the Community as they affect freedom of establishment and freedom to supply services**

(Proposal submitted by the Commission to the Council on 10 July 1962)

*The Council of the European Economic Community,*

*Having regard to the provisions of the Treaty and in particular Articles 54 and 63 thereof,*

*Having regard to the provisions of the General Programmes for the removal of*

restrictions on freedom of establishment and on freedom to supply services, and particularly Title II thereof,

*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,*

*Considering that the freedom of movement of individuals envisaged by the Treaty involves the removal of restrictions on travel and residence in the territory of Member States by nationals wishing to establish themselves or to perform services there;*

*Considering that Title II of the General Programmes referred to above envisages the adaptation before 1 January 1964 of the regulations affecting travel and residence by persons who are automatically to benefit from the new provisions as and when the activities in which they wish to engage are freed;*

*Considering that freedom to settle can be fully achieved only if the beneficiaries enjoy permanent right of residence and that, as regards services, the supplier must necessarily be guaranteed right of residence for as long as is necessary to perform the service;*

*Considering, however, that restrictions based on reasons of public policy, public safety and public health are not covered by the present directive, and that co-ordinating measures in this field are regulated by a separate directive, in accordance with paragraph 2 of Article 36;*

*Has adopted the present directive :*

#### *Article 1*

Member States shall remove restrictions on travel and residence in accordance with the conditions laid down in the present directive where these restrictions affect :

1. Nationals of Member States wishing to establish themselves or to supply services in another Member State for the purpose of carrying on a non-wage-earning activity;

2. Nationals of Member States in the category of workers with special knowledge or skills or of staff holding a position of responsibility who accompany the supplier or perform the service on his behalf, provided their stay does not exceed three months;

3. Nationals of Member States wishing to go to another Member State in order to receive a service or services;

4. The husband or the wife and children under 21 years of age of the nationals referred to above who live under the same roof, irrespective of their nationality.

#### *Article 2*

1. Each Member State shall grant to the persons referred to in Article 1 the right to enter its territory on simple presentation of a valid identity card or passport.

2. The requirement of an entry visa shall not apply in their case. This requirement may not be replaced by another of the same nature.

#### *Article 3*

1. Each Member State shall grant the right of permanent residence to nationals of other Member States who establish themselves in its territory.

In recognition of such right it shall issue a document, hereinafter called a Residence Permit, which shall be valid for at least ten years and be automatically renewable.

2. In the case of persons who supply services and of workers with special knowledge or skills or of staff holding a position of responsibility who accompany the supplier or perform the service on his behalf, as well as of persons who receive services, the right of residence shall correspond with the period required to perform the service or with the period during which the person is at work :

a) If, in the case of the person supplying or receiving the service, this period exceeds three months, the Member State of the place of performance shall issue a residence permit recognizing that right;

b) If this period does not exceed three months, the identity document with which the person concerned entered the territory shall cover his residence. The Member State may, however, require of the person concerned a declaration of arrival, and the latter may, on request, obtain a certificate attesting his status and the rights conferred on him by this status.

3. The right of residence of members of a family shall be the same as that of the person responsible for them.

#### *Article 4*

The validity of the residence permit shall cover the whole territory of the Member



State concerned, subject to any special measures arising from reasons of public policy or public safety.

#### *Article 5*

For the purpose of issuing the residence permit the State may require of the applicant only :

1. That he present the document under cover of which he entered the territory;
2. That he furnish evidence of his ability to perform, in accordance with the Treaty, an activity which may involve residence of more than three months in the territory. This provision shall not apply to members of his family.

#### *Article 6*

1. Each Member State shall, in accordance with its laws, issue to its nationals covered by Article 1, and renew where necessary, a passport or identity card which shall state the nationality of the holder and enable him to leave the country freely and to return to it.

2. The passport must be valid for at least all Member States and for countries of direct transit between Member States. Where the passport is the only document which entitles the holder to leave the country, the period of its validity may not be less than five years.

#### *Article 7*

Residence permits, passports and identity cards supplied in pursuance of the present directive may be issued and renewed free

of charge, or against payment of a sum not exceeding their administrative cost. These provisions shall also apply to the documents and certificates necessary for issuing and renewing such permits.

#### *Article 8*

1. A Member State may refuse entry to its territory only for reasons of public policy, public safety or public health.
2. A Member State may refuse to issue a residence permit only for reasons of public policy, public safety or public health or, with the exception of members of the family, if no such activity is carried on in the territory.
3. A document which gives the holder the right of residence may not be withdrawn during its period of validity nor may the holder be deported except for reasons of public policy or public safety.

#### *Article 9*

Member States shall put into effect by 1 January 1964 any measures needed to comply with the provisions of the present directive and shall inform the Commission thereof without delay.

#### *Article 10*

The present directive is addressed to all Member States.

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

### **Draft Council directive for co-ordination of the special measures governing the entry and residence of foreign nationals, where such measures are warranted on grounds of public policy, public safety or public health (Art. 56)**

(Proposal submitted by the Commission to the Council on 10 July 1962)

*The Council of the European Economic Community,*

*Having regard to the provisions of the Treaty and in particular paragraph 2 of Article 56 thereof,*

*Having regard to Council Regulation No. 15 of 16 August 1961 (published in the official gazette of 26 August 1961) relating to initial measures to bring about free movement of workers within the Community and in particular Article 47 thereof,*

*Having regard to* the Council directive of 16 August 1961 (published in the official gazette of 13 December 1961) on administrative procedures and practices which in any Member States of the Community govern the admission, employment and residence of workers and their families from another Member State,

*Having regard to* the provisions of the General Programmes for the removal of restrictions on freedom of establishment and on freedom to supply services and in particular Title II in these Programmes,

*Having regard to* the Council directive of... (published in the official gazette of...) on the removal of restrictions on the entry and residence of nationals of one Member State in other Member States,

*Having regard to* the proposal of the Commission,

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

*Whereas* the chief purpose of co-ordinating the legislative and administrative provisions that lay down special treatment for foreign nationals and are warranted on grounds of public policy, public safety or public health is to bring into line those provisions in the municipal law of Member States which might on these grounds jeopardize the freedom of entry and residence of nationals of other Member States;

*Whereas* the above-mentioned provisions of municipal law apply in general to all foreigners, and whereas action to co-ordinate them must therefore affect all nationals of Member States who change their place of residence within the Community in order to carry on any form of economic activity, whether as self-employed persons, as employees or as users of services;

*Whereas* the co-ordination of these provisions of municipal law requires that any basic difference in the concepts of public policy, public safety and public health be eliminated; and whereas it requires at the same time that the procedures followed in each of the Member States for adducing public policy, public safety or public health as grounds for refusing entry or residence to nationals of other Member States be brought into line;

*Whereas*, however, definition of the concepts of public policy and public safety at Community level is even more difficult

than at national level though they can already be outlined;

*Whereas*, with respect to diseases or infirmities constituting a threat to public health, public policy and public safety, a complete list of such ailments would be of little practical value and could hardly be exhaustive; and whereas for these reasons it is to be recommended that they be put into groups rather than listed;

*Whereas* the types of ailment in each of these groups must be defined clearly enough not only to ensure that, since there are no basic differences in the epidemiological situations of the six countries of the Community, an objective assessment can in each case be made of the existence of so real and immediate a danger that a Member State would be justified in objecting to the entry and residence on its territory of a national of another Member State and his family, but also to offer the fullest assurance that the essentials of public health, public policy and public safety are respected;

*Whereas* the list of diseases and infirmities annexed to the present directive can serve as that referred to in Article 47 of Regulation No. 15;

*Has adopted the present directive :*

#### *Article 1*

The provisions of the present directive shall be applicable to nationals of Member States who change their place of residence within the Community in order to carry out an economic activity as self-employed persons, as employees or as users of services.

#### *Article 2*

1. Grounds of public policy or public safety may not be adduced for economic ends.
2. They must relate exclusively to the behaviour of an individual affected by one of the decisions referred to in Article 7.
3. Grounds of public policy or public safety must be of a particularly serious nature.

Criminal convictions shall not in themselves be considered grounds of public policy or public safety.

### Article 3

Should the identity card, on the basis of which entry into the host country was granted and a residence permit issued, become invalid, this shall not constitute a ground of public policy or public safety warranting the withdrawal of the residence permit or the issue of an expulsion order.

The State which had issued the identity card shall allow the holder thereof to re-enter its territory without formality, even if the identity card has become invalid or the nationality of its holder is in doubt.

### Article 4

Only the diseases or infirmities listed in the annex to this directive may be adduced as grounds of public health, public policy or public safety justifying a State in refusing entry to its territory or the issue of an initial residence permit.

Should any disease or infirmity be contracted after the initial residence permit has been issued, this shall not constitute a ground of public health, public safety or public policy justifying a State in refusing to renew or in withdrawing a residence permit or in issuing an expulsion order.

### Article 5

Any decision to refuse an initial residence permit based on grounds of public policy, public safety or public health must be taken within three months of application.

The person concerned shall in any case be allowed provisionally to reside on the territory of the State in question until it has been decided whether a residence permit should be granted or refused.

### Article 6

The grounds of public policy, public safety or public health adduced shall be made known to the person concerned, unless the security of the State requires that this shall not be done.

### Article 7

Any person affected by a decision to refuse to grant or renew a residence permit or by a decision to issue an expulsion order must have at least the same right of appeal from any such decision as is open to nationals of the State concerned with respect to acts of the administration.

### Article 8

1. Where there is no appeal, or if an appeal may relate only to the lawfulness of the decision, or if such appeal does not have suspensive effect, no decision shall be taken by the administrative authority until an opinion has been given by a competent authority in the host country, before which the person concerned may defend himself and be assisted or represented in accordance with procedure laid down in municipal legislation.

This competent authority must not be the same as that entitled to take the decision to refuse a permit or the renewal of a permit or the decision to issue an expulsion order.

2. Except in urgent cases, the diplomatic or consular services of the Member State of which the person concerned is a national shall be notified of the decision and the grounds on which it is based prior to its execution.

### Article 9

The Council directive of ... relating to the preparation of a common list of diseases and infirmities warranting which would justify a Member State in objecting to the entry of a worker who is a national of another Member State and his family is hereby cancelled.

### Article 10

1. Member States shall put into effect by 1 January 1964 any measures needed to comply with the provisions of the present directive and shall inform the Commission thereof without delay.

2. Member States shall inform the Commission, in sufficient time for the Commission to submit its comments, of any further draft legislative or administrative provisions that they intend to adopt within the scope of the present directive.

### Article 11

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.*

## ANNEX

### to the directive for co-ordination of the special measures governing entry and residence of foreign nationals (Art. 56, para. 2)

A. Diseases and infirmities constituting a threat to public health.

Infectious diseases :

a) Quarantinable diseases and infirmities listed in International Sanitary Regulation No. 2 of 25 May 1951, issued by the World Health Organization;

b) Active or progressive respiratory tuberculosis;

c) Syphilis;

d) Other infectious diseases.

B. Diseases and infirmities constituting a threat to public order or safety.

1. Drug addiction;

2. Obvious psychoses with manifestations of agitation, delirium or hallucination and with confusional states and obvious severe mental and psychological disturbances.

### Draft Council directive for the removal of restrictions on freedom of establishment and freedom to supply services in reinsurance and retrocession

(Proposal submitted by the Commission to the Council on 28 July 1962)

*The Council of the European Economic Community,*

*Having regard to the provisions of the Treaty and in particular paragraph 2 of Article 54 and paragraph 2 of Article 63 thereof,*

*Having regard to the General Programme for the removal of restrictions on freedom of establishment and in particular Title IV, A, thereof,*

*Having regard to the General Programme for the removal of restrictions on freedom to supply services and in particular Title V, C, thereof,*

*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,*

*Whereas by virtue of the aforesaid General Programmes all branches of reinsurance without exception must be liberalized before the end of 1963 as regards both establishment and the supply of services,*

*Whereas reinsurance is transacted both by specialized companies and direct-writing*

*companies which also effect reinsurances and which consequently benefit from the provisions of the present directive in respect of that part of their business concerned with reinsurance and retrocession,*

*Whereas transfers effected under reinsurance and retrocession contracts are traditionally regarded as payment transfers and not as movements of capital, and by virtue of paragraph 1 of Article 106 are therefore to be automatically liberalized by the date of implementation of the present directive, if not earlier,*

*Has adopted the present directive :*

#### *Article 1*

*In behalf of the persons referred to under Title I of the General Programme for the removal of restrictions on freedom of establishment and freedom to supply services, Member States shall remove the restrictions listed in Title III of the said Programmes which affect admission to and pursuit of the occupations referred to in Article 2.*

#### *Article 2*

*1. The provisions of the present directive shall apply to reinsurance and retrocession*

business on own account falling within group ex 630 of Schedule I to the General Programme for the removal of restrictions on freedom of establishment.

2. The persons referred to in Article 1 shall include direct-writing companies which also effect reinsurances and benefit from the measures taken in execution of the present directive in respect of that part of their business concerned with reinsurance and retrocession.

### *Article 3*

Article 1 refers in particular to the restrictions contained in the following provisions :

a) Whereby, in case of establishment for the purpose of transacting reinsurance as a principal or secondary occupation, admission to such business may be made subject to conditions imposed solely on the persons referred to in Article 1 or may be withheld from them; or whereby prior authorization, in the form of a certificate or in some other form, to transact reinsurance business, may be required of such persons and no others :

#### *In the Federal Republic of Germany :*

1. Law of 6 June 1931 as amended by the Law of 31 July 1951 (Insurance Supervision Law): last sentence of Article 106 and paragraph 2 of Article 111 under which the Federal Minister of Economic Affairs may impose conditions on admission to this occupation or at his own discretion forbid anyone to pursue this occupation on German territory;

2. Trading and Industrial Code (Gewerbeordnung), Article 12, and Law of 30 January 1937, Article 292, which require that foreign companies shall obtain permission before they operate;

#### *In the Kingdom of Belgium :*

Royal Decree No. 62 of 16 November 1939 and Departmental Order of 17 December 1945, which require possession of a permit to operate;

#### *In the French Republic :*

1. Decree-Law of 12 November 1938 and Decree of 2 February 1939 as amended by the Law of 8 October 1940, which require possession of a permit to operate;

2. Law of 15 February 1917 as amended and supplemented by Decree-Law of 30 October 1935, Article 2, sub-paragraph 2, requiring special authorizations;

#### *In the Grand Duchy of Luxembourg :*

a) Grand Ducal Decree of 14 August 1934, Article 6, which requires yearly renewal of the authority to carry on a commercial or industrial activity.

b) Whereby the persons referred to in Article 1 may be prevented from or hampered in supplying services :

#### *In the French Republic :*

Law of 15 February 1917 as amended by Decree-Law of 30 October 1935 :

1. Sub-paragraph 2 of Article 1, which enables the Minister of Finance to draw up a list of particular concerns, or of concerns belonging to a particular country, with which no risk concerning any person, property or liability in France may be reinsured or retroceded;

2. The last sub-paragraph of Article 1, which forbids accepting in reinsurance or retrocession risks insured with the firms referred to in 1 above;

#### *In the Republic of Italy :*

Consolidated text approved by Decree No. 449 of 13 February 1959, sub-paragraph 2 of Article 73, which empowers the Minister of Industry and Commerce to prohibit the conclusion of reinsurance or retrocession contracts with specified foreign firms having no duly authorized representative on Italian territory.

The Member States concerned shall amend the above-mentioned provisions accordingly.

### *Article 4*

The Member States shall put into effect such measures as may be necessary to conform with the present directive not later than one hundred and eighty days of notification and shall inform the Commission forthwith of the action taken.

### *Article 5*

The present directive is addressed to all Member States.

## **Draft Council directive on freedom of establishment and freedom to supply services in the form of activities serving trade and industry**

(Proposal submitted by the Commission to the Council on 28 July 1962)

*The Council of the European Economic Community,*

*Having regard to the provisions of the Treaty and in particular paragraphs 2 and 3 of Article 54 and paragraphs 2 and 3 of Article 63 thereof;*

*Having regard to the provisions of the General Programme for the removal of restrictions on freedom of establishment and in particular Title IV, A;*

*Having regard to the provisions of the General Programme for the removal of restrictions on freedom to supply services and in particular Title V, C;*

*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;*

*Whereas the General Programmes provide for the ending, before the end of the second year of the second stage, of any discriminatory treatment based on nationality which affects establishment and the supply of services in connection with activities serving trade and industry; and whereas these are activities in which freedom of establishment will make a particularly useful contribution to the expansion of trade, and must therefore be liberalized as soon as possible, in accordance with the Council's resolution of 18 December 1961 on the more rapid implementation of the General Programme on establishment;*

*Whereas in order to ensure the correct application of the present directive, its scope should be specified and the activities in question should be defined exactly;*

*Whereas certain such activities are not covered by the present directive, either because, under the General Programmes, they may be liberalized only at a later date (insurance agents and brokers), or because, as in the case of stock-brokers and other brokers handling securities, real*

*estate agents or occupations incidental to transport, they belong to branches of activity for which there will be separate directives;*

*Whereas for persons engaged in activities serving trade and industry, freedom to supply services requires, where the service involves a journey to the country of the person receiving the service, the lifting of all restrictions affecting both those supplying the services and their employees accompanying them or acting on their behalf; and whereas these employees, at least when their stay in the host country is only temporary, retain their financial and legal links with the country of their employer, and can therefore be freed forthwith from the requirement of a work permit, in so far as work permits are still required for employees;*

*Whereas it is appropriate at the same time that the present directive should include a general withdrawal of restrictions on freedom to supply services for travelling salesmen in the employ of any of the persons benefiting under Title I of the General Programme, whatever the activity pursued by the employers; and whereas the activity of salesmen travelling as paid employees is not always easily distinguished from that of independent representative, and the legal demarcation between the two is not the same in the six countries; whereas this is an activity having the same economic scope as that of the independent representative, and it would be pointless and very inconvenient to split up the liberalization of this very special form of service into a great number of partial liberalizations related to the liberalization of the activities pursued by the employer;*

*Whereas, in addition, separate directives will be adopted, applying in general to all non-wage-earning activities, concerning arrangements for the entry and residence of persons benefiting under the present directive; and whereas such directives will also be adopted as may be necessary to co-ordinate the guarantees Member States require of companies in order to protect the interests of partners and of third parties;*

*Has adopted the present directive :*

### Article 1

Member States shall remove the restrictions listed in Title III of the General Programmes on establishment and services where these affect the legal and natural persons listed in Title I of these Programmes — hereinafter described as the persons benefiting under the present directive — in so far as such restrictions concern admission to the activities referred to in Articles 2 and 3, or the pursuit thereof.

### Article 2

The provisions of the present directive shall apply:

1. To the following non-wage-earning activities:

a) The commercial activities of an intermediary charged under one or more contracts of some length with the preparation or conclusion of commercial operations in the name of and on behalf of other persons;

b) The commercial activities of an intermediary who, though not engaged per-

manently on this task, negotiates or prepares negotiations between businessmen in the name of or on behalf of other persons.

c) The commercial activities of an intermediary who concludes commercial operations in his own name but on behalf of other persons;

d) The commercial activities of an intermediary who, though not engaged permanently on this task, acts as a wholesale auctioneer for other persons.

2. To the services carried out commercially by an intermediary in the regular paid employ of one or more business enterprises in trade or industry and resident in a Member State other than that of the person to whom the service is rendered.

### Article 3

The restrictions on the activities listed in Article 2 shall be abolished regardless of their designations.

At present the designations used in the Member States are the following:

	<i>For independent workers</i>	<i>For persons in the paid employ of others</i>
<i>In Belgium:</i>	Agent commercial Représentant autonome Courtier Commissionnaire Organisateur de ventes aux enchères en gros	Commis-voyageur Voyageur de commerce
<i>In Germany:</i>	Handelsvertreter Handelsmakler Kommissionär Versteigerer auf Grosshandels- versteigerungen	Handelsreisender
<i>In France:</i>	Agent commercial (ou repré- sésentant mandataire) Courtier Commissionnaire Commissaire - priseur, courtier inscrit et assermenté	Représentant de commerce Commis-voyageur Placier
<i>In Italy:</i>	Agente di commercio Rappresentante Mediatore Commissionario Astatore	Agente Viaggiatore di commercio Piazzista
<i>In Luxembourg:</i>	Représentant de commerce Courtier Commissionnaire	Commis-voyageur Représentant de commerce
<i>In the Netherlands:</i>	Handelsagent Handelsmakelaar Commissionnair Veilinghouder-groothandel	Handelsreiziger

#### Article 4

1. In all Member States the following are excluded from the field of application of the present directive :

a) Intermediaries working in connection with :

- i) insurance of all kinds (notably insurance agents, brokers and experts);
- ii) banks and other financial establishments (notably stock-brokers and bill-brokers, mortgage brokers, etc.);
- iii) real estate (notably estate agents and brokers);
- iv) transport (notably shipbrokers ("courtiers maritimes, courtiers interprètes et conducteurs de navires"), forwarding and customs agents and travel agencies);

b) Door-to-door salesmen selling to the private consumer and delivering the goods.

2. Activities which in a given Member State involve the exercise of public authority are in that Member State excluded from the effect of the provisions of the present directive. These activities are :

*In France* : Sale by auction of movable property or of goods by the "courtier inscrit et assermenté" (registered auctioneer) or by other authorized persons;

*In Italy* : Sale by auction of goods by public auctioneers ("mediatori pubblici");

*In Belgium and in Luxembourg* : The attendance of the bailiff ("huissier") and of the notary at auction sales;

*In Luxembourg* : The activity of the commissioner supervising cattle for slaughter.

#### Article 5

1. The Member States shall remove any restrictions :

a) Which prevent the persons benefiting under the present directive from establishing themselves in the host country or from supplying services there on the same conditions and with the same rights as nationals of the country concerned;

b) Which stem from administrative practice and lead to discrimination between the persons benefiting under the present directive and nationals of the country concerned.

2. Restrictions to be removed include in particular those inherent in provisions by which the right of persons benefiting under the present directive to establish them-

selves or to supply services is annulled or limited in the following ways :

a) *In Germany* : i) by requiring persons to hold a travelling salesman's card (Reisegewerbekarte) before visiting other persons in the course of business (Gew. O, Sec. 55 d, text of 5 February 1960; regulation of 30 November 1960);

ii) by introducing a check on demand (Bedürfnisprüfung) before issuing the travelling salesman's card which authorizes a salesman to seek business from private persons with a view to obtaining orders; by the restriction of the field for which the travelling salesman's card is valid (Gew. O, Sec. 55 d, the text of 5 February 1960 BGB I., 1 p. 61, amendment p. 92 - regulation of 30 November 1960);

iii) by requiring legal persons from abroad to hold a special permit if they wish to do business on Federal territory (Gew. O, Sec. 12, Aktiengesetz, Sec. 292);

b) *In Belgium* : by the requirement of a "professional card" (carte professionnelle) (royal decree No. 62 of 16 November 1939, ministerial order of 17 December 1945, ministerial order of 11 March 1954);

c) *In France* : by the requirement of a foreign trader's identity card ("carte d'identité d'étranger commerçant") (decree-law of 12 November 1938, decree of 2 February 1939, law of 8 October 1940, law of 10 April 1954, decree No. 59-852 of 9 July 1959); and

by the requirement of French nationality for the activity of "mandataire" and "approvisionnement" at the Halles in Paris (decree of 30 September 1953, decree of 2 December 1960, Article 9);

d) *In Italy* : by the additional condition with which foreigners must comply in order to obtain special authorization from the "questore" for certain products ("Testo Unico delle Leggi di Pubblica Sicurezza", Article 127, royal decree No. 773 of 18 June 1931).

#### Article 6

Member States shall grant to their nationals going to another Member State in order to act as an intermediary no aid which would have the effect of distorting the conditions of establishment.

#### Article 7

When the host country requires proof of good character from its own nationals wishing to be admitted to the activity in



question, that State shall accept as sufficient proof, from nationals of other Member States, the submission of a certificate based on police records (" *extrait de casier judiciaire* ") or of a similar document. When the host country requires from its own nationals a certificate showing that there has been no bankruptcy, the submission of a similar document by persons benefiting under the present directive shall be sufficient. These documents, issued by the authorities of the country of origin, shall be recognized as valid for three months from the date of issue.

#### *Article 8*

The Member States in which admission to the activity in question is subject to the taking of an oath shall ensure that in its current wording the oath can also be taken by foreign nationals. Where this is not so, the Member State shall adopt a suitable wording having the same effect.

#### *Article 9*

1. Member States shall exempt from all work permit requirements employees whose permanent residence is in another Member State but who are temporarily on their territory to perform services which are part of the commercial activities covered by Article 2, either while accompanying their employer who is a person benefiting

under the present directive, or on his behalf.

Wherever necessary for the performance of the services concerned, Member States shall also remove those restrictions on the activities of the said employees which, by virtue of the present directive, are no longer imposed on their employer.

2. Paragraph 1 shall apply to the intermediaries in paid employment covered by paragraph 2 of Article 2.

3. For the application of paragraphs 1 and 2 the activity of employees shall be considered as temporary when it does not exceed either three consecutive months or a total of 120 days in any twelve months.

#### *Article 10*

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

#### *Article 11*

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.*

### **Draft Council directive on freedom of establishment and freedom to supply services in connection with wholesale trade**

(Proposal submitted by the Commission to the Council on 28 July 1962)

*The Council of the European Economic Community,*

*Having regard to the provisions of the Treaty and in particular paragraphs 2 and 3 of Article 54 and paragraphs 2 and 3 of Article 63;*

*Having regard to the provisions of the General Programme for the removal of restrictions on freedom of establishment and in particular Title IV, A;*

*Having regard to the provisions of the General Programme for the removal of*

restrictions on freedom to supply services and particularly Title V, C;

*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;*

*Whereas the General Programmes provide for the ending, before the end of the second year of the second stage, of any discriminatory treatment based on na-*

tionality which affects establishment and the supply of services in wholesale trade;

*Whereas* wholesale trade is an activity in which freedom of establishment will make a particularly useful contribution to the expansion of trade, and must therefore be liberalized as soon as possible, in accordance with the Council resolution of 18 December 1961 on the more rapid implementation of the General Programme on establishment;

*Whereas* in order to ensure the correct application of the present directive, its scope should be specified and a clear definition given of what is meant by "activities connected with wholesale trade";

*Whereas* wholesale trade in medicines and pharmaceutical products and wholesale trade in coal are not covered by the present directive, since these activities are to be liberalized at a later date in accordance with the General Programmes;

*Whereas* freedom to supply services in wholesale trade requires, where the service involves a journey to the country of the person receiving the service, the lifting of all restrictions affecting both those supplying the services and their employees accompanying them or acting on their behalf; and whereas these employees at least when their stay in the host country is only temporary, retain their financial and legal links with the country of their employer, and can therefore be freed forthwith from the requirement of a work permit, in so far as work permits are still required for employees;

*Whereas*, in addition, separate directives will be adopted, applying in general to all non-wage-earning activities, concerning arrangements for the entry and residence of persons benefiting under the present directive, and whereas such directives will also be adopted as may be necessary to co-ordinate the guarantees Member States require of companies in order to protect the interests of partners and of third parties;

*Whereas*, in addition, in certain Member States wholesale trade in various products is controlled by provisions concerning admission to the activity in question and whereas other Member States are preparing to put such regulations into effect, whereas for this reason a separate directive is devoted to certain transitional measures to facilitate admission to the activity in ques-

tion and the pursuit thereof for nationals of other Member States;

*Has adopted the present directive :*

#### *Article 1*

Member States shall remove the restrictions listed in Title III of the General Programmes on establishment and services where these offer the legal and natural persons listed in Title I of these Programmes — hereinafter described as the persons benefiting under the present directive — in so far as such restrictions concern admission to the activities referred to in Article 2, or the pursuit thereof.

#### *Article 2*

1. The provisions of the present directive shall apply to the non-wage-earning activities in wholesale trade listed in Schedule I to the General Programme for the removal of restrictions on freedom of establishment, Group ex 611.

2. For the purposes of the present directive a wholesale trader means any natural or legal person who habitually purchases goods for commercial purposes in his own name and on his own behalf and resells them, either to other traders — wholesalers or retailers — or to processors, to commercial users or to other major users. The goods may be sold as bought, or after processing, treating or packaging, provided such processing, treating or packaging is a customary practice in wholesale trade. For the purposes of the present directive wholesale trade can be carried out as internal, export, import or transit trade.

#### *Article 3*

The present directive shall not apply to wholesale trade in medicines and pharmaceutical products, nor to that in coal.

#### *Article 4*

1. The Member States shall remove any restrictions which :

a) Prevent the persons benefiting under the present directive from establishing themselves in the host country or from supplying services there on the same conditions and with the same rights as nationals of the country concerned;

b) Stem from administrative practice and lead to discrimination between the persons

benefiting under the present directive and nationals of the countries concerned.

2. The restrictions to be removed include in particular those inherent in provisions by which the right of persons benefiting under the present directive to establish themselves or to supply services is annulled or limited in the following ways:

a) *In Germany*: by requiring persons to hold a travelling salesman's card (Reisegewerbekarte) before visiting other persons in the course of business.

(Gew. O, Sec. 55 d, text of 5 February 1960 [BGBI. I, p. 61, amendment, p. 92]; regulation of 30 November 1960 [BGBI. I, p. 871]; and

by requiring legal persons from abroad to hold a special permit if they wish to do business on Federal territory (Gew. O, Sec. 12 and Aktiengesetz Sec. 292);

b) *In Belgium*: by the requirement of a "professional card" ("carte professionnelle") (royal decree No. 62 of 16 November 1939, ministerial order of 17 December 1945);

c) *In France*: by the requirement of a foreign trader's identity card ("carte d'identité d'étranger commerçant") (decree-law of 12 November 1938, decree of 2 February 1939, law of 8 October 1940, law of 10 April 1954, decree No. 59-852 of 9 July 1959);

d) *In Italy*: by the additional condition with which foreigners must comply in order to obtain the special authorization from the "questore" for certain products ("Testo unico delle Leggi di Pubblica Sicurezza", Article 127, royal decree No. 773 of 18 June 1931);

e) *In the Netherlands*: by the nationality or residence conditions on access to wholesale trade in various agricultural products stipulated by certain regulations on admission to the activity concerned ("Erkenningssystemen").

#### Article 5

Member States shall grant to their nationals going to another Member State in order to exercise one of the activities defined in Article 2 no aid which would have the effect of distorting the conditions of establishment.

#### Article 6

When the host country requires proof of good character from its own nationals wish-

ing to be admitted to wholesale trade that State shall accept as sufficient proof, from nationals of other Member States, the submission of a certificate based on police records ("extrait de casier judiciaire"), or of a similar document. When the host country requires from its own nationals a certificate showing that there has been no bankruptcy, the submission of a similar document by persons benefiting under the present directive shall be sufficient.

These documents, issued by the authorities of the country of origin, shall be recognized as valid for three months from the date of issue.

#### Article 7

1. Member States shall exempt from all work permit requirements employees whose permanent residence is in another Member State but who are temporarily on their territory to perform services which are part of the commercial activities covered by Article 2, either while accompanying their employer who is a person benefiting under the present directive, or on his behalf.

Wherever necessary for the performance of the services concerned, Member States shall also remove those restrictions on the activities of the said employees which, by virtue of the present directive, are no longer imposed on their employer.

2. For the application of paragraph 1, the activity of employees shall be considered as temporary when it does not exceed either three consecutive months or a total of 120 days in any twelve months.

#### Article 8

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

#### Article 9

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.*

**Draft Council directive removing all prohibitions on or other obstacles to payments for services where payment restrictions are the only limiting factor on their supply**

(Proposal submitted by the Commission to the Council on 3 August 1962)

*The Council of the European Economic Community,*

*Having regard to the provisions of the Treaty and in particular to Article 63 and paragraph 2 of Article 106 thereof;*

*Having regard to the General Programme for the removal of restrictions on freedom to supply services and in particular Title V, B, paragraph 1 thereof;*

*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;*

*Whereas most of the restrictions on payments in connection with the supply of services have been removed by the Member States and such measures of liberalization should therefore be completed and consolidated within the Community;*

*Has adopted the present directive :*

*Article 1*

Member States shall remove any restrictions on payments connected with the supply of services contained in legislative or administrative provisions, or resulting from administrative practices, where these restrictions by themselves constitute a prohibition on or an obstacle to the performance of services within the Community by the persons referred to in Title I of the General

Programme for the removal of restrictions on freedom to supply services. Consequently, the Member States shall grant any exchange permit required for the transfer of these payments; the Member States shall ensure the transfer of these payments on the basis of the exchange rates prevailing for payments covering current transactions.

*Article 2*

The present directive shall not derogate from the right of Member States to check the nature of the payments, to verify that they are actually made and to take any measure needed to prevent infringement of their laws and regulations.

*Article 3*

The present directive shall apply to the services defined in Articles 59 and 60 of the Treaty.

However, it shall not apply to services in the transport sector nor to the granting of foreign exchange to tourists.

*Article 4*

The Member States shall put into effect such measures as may be necessary to conform with the present directive not later than ninety days of notification and shall inform the Commission forthwith of the action taken.

*Article 5*

The present directive is addressed to all Member States.

**Draft Council first directive concerning cinematography**

(Proposal submitted by the Commission to the Council on 5 July 1962)

*The Council of the European Economic Community,*

*Having regard to the provisions of the Treaty and in particular Article 63 (2) thereof;*

*Having regard to the provisions of the General Programme for the lifting of restrictions on freedom to supply services and in particular Title V, C-c thereof;*

*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;*

*Whereas the provisions of the General Programme for the lifting of restrictions on freedom to supply services govern the exchange of films between the Member States for the purpose of distribution;*

*Whereas the establishment of a common film market raises a number of problems which will have to be solved gradually during the transitional period; and whereas the removal of restrictions on the importation of films represents only one aspect of the overall problem of cinematography;*

*Whereas in the field of cinematography Title V-C-c of the General Programme lays down that the bilateral quotas in existence between Member States at the time of the Treaty's coming into force shall be raised by one-third in those States in which the importation of exposed and developed films for the purposes of distribution and commercial exploitation is restricted;*

*Whereas to ensure the proper application of this directive, it must be clearly defined what is to be understood by films, and whereas, the quotas being determined on the basis of the nationality of the films, common criteria for the recognition of the nationality of the films of the Member States must also be established, without prejudice to subsequent arrangements regarding the complete liberalization of the supply of services in the field of cinematography;*

*Whereas the existing degree of freedom in the sphere of distribution, exploitation and exchange of films not subject to bilateral quotas must be consolidated;*

*Whereas transfer payments in respect of transactions provided for in this directive will be liberalized, in so far as this has not already been done under paragraph 1 of Article 106, by the second directive pursuant to Article 67 of the Treaty concerning the liberalization of capital movements (No. ... of the official gazette of the European Communities, pp. ...) which amplifies and amends the directive of 11 May 1960 (official gazette of 12 July 1960, pp. 919 to 932) thus removing the prohibitions or restrictions on the transfer both of payments for the service and of the funds required for the performance of the service are therefore lifted;*

*Has adopted the present directive :*

#### *Article 1*

The measures to be adopted for the application of this directive concern those individuals or groups of individuals indicated in Title I of the General Programme for the removal of restrictions on freedom to supply services.

This directive applies to those films which comply with the conditions of Article 2 and which, according to Articles 3 and 4, are considered to be films of a Member State of the European Economic Community.

#### *Article 2*

In this directive "films" means a completed cinematographic product intended for public or private performance together with all rights and titles needed for its commercial exploitation.

This covers :

- a) Feature films : 35 mm films with a minimum length of 1 600 metres;
- b) Short films : 35 mm films of less than 1 600 metres length;
- c) Newsreel films : 35 mm films with an average minimum length of 200 metres designed for the provision of periodical information and for the presentation of current events; one metre of colour film is equivalent to three metres of black-and-white film.

In the case of films on gauges other than 35 mm, the lengths will be increased or decreased in proportion to the gauge.

#### *Article 3*

Subject to Article 4 of this directive which refers to the agreements on co-productions reached between the Member States of the European Economic Community and without prejudice to the measures taken, or to be taken, under Articles 48 and 49 of the Treaty, in particular to Article 4 of Regulation No. 15 of the Council, a film is considered as being a film of a Member State if it complies with the following conditions :

- a) It must be produced by an organization within the meaning of Title I of the General Programme for the removal of restrictions on freedom to supply services;

b) Shooting on studio lots must be done within the Community territory;

c) The original version of the film must be recorded in the language of the Member State concerned, apart from those dialogue sections for which the script may require another language; in the case of two or more versions, one of these must be in the language of the Member State concerned;

d) The shooting script, dialogue adaptation and, if especially composed for the film, the musical score must be written by nationals of the relevant Member State or by persons who derive from its cultural sphere;

e) The director must be a national of the relevant Member State or derive from its cultural sphere;

f) The production team, i.e. the principal actors, director of photography, sound engineer, chief editor and art director, must in the main be nationals of the relevant Member State or derive from its cultural sphere.

The participation of nationals from another Member State or of persons who derive from its cultural sphere in the activities referred to in paragraph d) to f) does not constitute an obstacle to the recognition of the film's nationality if the Member State concerned has granted it this nationality. The same applies if nationals of non-member countries who do not derive from the cultural sphere of a Member State take part in the activities listed under d), or if the number of these taking part under f) does not exceed 2/5.

#### Article 4

1. Co-productions may be made under agreements concluded between Member States of the European Economic Community or between Member States and non-member countries.

2. Except as otherwise provided in Article 7, co-productions made by producers from Member States may be freely exchanged between all the Member States for distribution and exploitation purposes.

3. Films made by producers from one or more Member States in co-production with producers from one or more non-member countries are considered as films of the relevant Member State or Member

States provided the producer or producers of the Member State or Member States has or have borne the greater part of the production costs and provided that the artistic and technical contribution of that Member State or those Member States is greater than the contribution of the non-member country or countries.

#### Article 5

The Member States shall permit without any restriction the importation, distribution and exploitation of:

a) Short films of any kind;

b) Newsreel films, except that existing restrictions on the regular importation of newsreel film not intended for exhibition in more than one country may still be upheld;

c) Feature-length, scientific and technical films, industrial films, instructional and educational films for the young or films promoting Community principles, where these merit classifications as documentaries.

#### Article 6

The importation, distribution and exploitation of films from Member States of the European Economic Community, in original version with or without subtitles in the language of the exhibiting country, may not be subject to any restrictions in the other Member States.

#### Article 7

1. Where a quota system exists between Member States, these Member States shall permit the importation, distribution and exploitation of each other's films, dubbed in the language of the exhibiting country, on the basis of existing quotas, provided always that the minimum quota shall in no case be less than 60 films for each film year after the coming into force of this directive.

2. The exploitation of subsequent reissues shall be authorized by agreement between the competent authorities of the Member States concerned.

3. Member States may not introduce quota limitation for films, of whatever kind, from other Member States if it imports of films from such States are not already subject to quota limitations.

*Article 8*

The authorizations granted on the basis of the above Articles permit the unrestricted importation of prints, dupes and publicity material.

*Article 9*

This directive does not affect existing regulations for the exhibition of national films or films treated as such.

*Article 10*

The granting of permits for the importation, distribution and exploitation of films from Member States shall not be made dependent on any tax or other charge with equivalent effect which might be discriminatory either because of the way it is applied or because of the way exemptions are granted.

*Article 11*

The authorities of the importing Member States are not obliged to grant permits for

their territory for the importation and exploitation of the film quotas referred to in Article 7 if such films are not accompanied by a certificate of origin issued by the exporting Member State attesting to the nationality of the film in accordance with Articles 3 and 4 of this directive.

*Article 12*

The Member States shall put into effect, within 120 days of the publication of this directive, any measures needed to comply with the provisions of the present directive and shall inform the Commission forthwith of the action taken.

*Article 13*

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 their addressees.*

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