

Supplement to

BULLETIN

of the European Economic Community

No. 6 — 1965

EXECUTIVE SECRETARIAT OF THE COMMISSION
OF THE EUROPEAN ECONOMIC COMMUNITY

Contents

Page

Proposal for a Council directive on freedom of establishment and freedom to supply services in a self-employed capacity in forestry 2

and

Proposal for an amendment of the General Programme for the removal of restrictions on freedom of establishment 2

Proposal for a Council directive on freedom of establishment and freedom to supply services in a self-employed capacity in personal services:
1. Restaurants, cafés, taverns and other drinking and eating places (Group 852 ISIC)
2. Hotels, rooming houses, camps and other lodging places (Group 853 ISIC) 12

Proposal for a Council directive on procedures for transitional measures concerning self-employed activities in personal services :
1. Restaurants, cafés, taverns and other drinking and eating places (Group 852 ISIC)
2. Hotels, rooming houses, camps and other lodging places (Group 853 ISIC) 18

Proposal for a Council directive on freedom of establishment and freedom to supply services in a self-employed capacity in retail trade (Group ex 612 ISIC) 23

Proposal for a Council directive on transitional measures affecting self-employment in retail trade (Group ex 612 ISIC) 32

Proposal for a Council directive on freedom of establishment and freedom to supply services in a self-employed capacity in the food and beverage industries (ISIC Major Groups 20 and 21) 38

Proposal for a Council directive on detailed transitional measures applicable to self-employed activities in the food and beverage industries (Major Groups 20 and 21 ISIC) 44

**Proposal for a Council directive
on freedom of establishment and freedom to supply services
in a self-employed capacity in forestry
and**

**Proposal for an amendment of the General Programme
for the removal of restrictions on freedom of establishment**

(submitted by the Commission to the Council on 8 April 1965)

**Proposal for a directive on freedom of establishment and freedom to supply services
in a self-employed capacity in forestry**

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 54(2 and 3) and 63(2 and 3) thereof;

Having regard to the General Programme for the abolition of restrictions on freedom of establishment⁽¹⁾, and in particular Title IV C thereof;

Having regard to the General Programme for the removal of restrictions on freedom to supply services⁽²⁾, and in particular Title V C thereof;

Having regard to the amendment to the time-table of the General Programmes⁽³⁾

Having regard to the Commission's proposal;

Having regard to the opinion of the European Parliament;

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

Whereas the amended time-table of the General Programmes provides for the abolition of any form of discriminatory treatment on grounds of nationality in the forestry and logging sector (Major Group 02 of the ISIC)⁽⁴⁾ between the end of the second year and the end of the second stage of the transitional period;

Whereas forestry and logging activities coming under the heading of production include the sale by the producer of the products of his activities, while restrictions on wholesale trade in these products and on trading intermediaries, have already been abolished by Council Directives Nos. 64/223 and 62/222 of 25 February 1964⁽⁵⁾;

Whereas a number of forestry activities, or ancillary activities carried on by persons working in forestry, are excluded from the scope of this directive, since they come under other ISIC headings and are, therefore, covered by other Council directives; whereas the said activities include the following:

- i) Sawmills and planing mills, whether or not operated in the forest (ISIC Group 251)⁽⁶⁾;
- ii) Infrastructure work, and in particular the construction and maintenance of forest roads, telpher railways and cable-guides (ISIC Group 400)⁽⁷⁾;
- iii) The supply of agricultural and horticultural services (ISIC Major Group 01)⁽⁸⁾;
- iv) Wholesale⁽⁹⁾ and retail⁽⁹⁾ trade in forestry products (ISIC Major Group 61);

Whereas, however, the definition of ISIC Group 400, referred to in the General Programme, explicitly includes construction, repair and demolition work undertaken as an ancillary activity by the staff and for the use of an enterprise classified in any other branch, not in Group 400, but in the Group mainly concerned;

⁽¹⁾ Official gazette of the European Communities, No. 2, 15 January 1962 p. 36.

⁽²⁾ *Ibid.*, p. 32.

⁽³⁾ *Ibid.*, No., ...

⁽⁴⁾ International Standard Industrial Classification of all Economic Activities Statistical Office of the United Nations, Statistical Papers Series M, No. 4, Rev. 1, New York 1958.

⁽⁵⁾ Council Directive No. 64/223, 25 February 1964, official gazette No. 50, 4 April 1964, p. 863.

⁽⁶⁾ Council Directive No. 64/429, 7 July 1964, official gazette of the European Communities No. 117, 23 July 1964, p. 1880.

⁽⁷⁾ Official gazette No., ...

⁽⁸⁾ Council Directive No. 65/1, 14 December 1964, official gazette No. 1, 8 January 1965.

⁽⁹⁾ Draft submitted to the Council.

Whereas, according to the General Programme for the abolition of restrictions on freedom of establishment, restrictions on right to join professional organizations are to be abolished in cases where the professional activities of the person concerned involve the exercise of this right;

Whereas, in cases where the supplier of services performs his service in the beneficiary's country, freedom to supply services should not include any obligation on the part of the supplier to comply with conditions which persons residing in that country fulfil simply because their activity is regular and permanent, such as — in certain Member States and in specific circumstances — an obligation to be entered on a trade register or to join certain trade associations; whereas, because of this difference in the systems applicable to freedom of establishment and freedom to supply services, it is essential that what is to be understood by freedom to supply services be specified in the directive in cases where the supplier of services has to travel to the beneficiary's country;

Whereas, the placing of companies on the same legal footing as individuals benefiting from freedom of establishment and freedom to supply services is subject only to the provisions of Article 58 of the EEC Treaty, and, where applicable, to the existence of a continuous and effective link with the economy of a Member State; whereas, therefore, no additional conditions — and in particular, no special licence not already demanded of domestic companies to carry on an economic activity — may be imposed on these companies before they can enjoy freedom of establishment and freedom to supply services;

Whereas the system applicable to wage-earners accompanying the supplier of services or acting on the latter's behalf is governed by the provisions adopted in pursuance of Articles 48 and 49 of the Treaty;

Whereas the Council already issued on 25 February 1964⁽¹⁾ two directives on conditions of movement and residence applicable to all beneficiaries of freedom of establishment and freedom to supply services;

Whereas it would appear necessary, for the abolition of restrictions on the felling, preparation for sale and sale of timber,

to grant a longer time-limit than in the other sectors covered by this directive, in order to take into account the concern caused in a number of Member States by the amendment to the General Programme made by the Council on ...;

Whereas particular importance attaches, in connection with the free supply of services in forestry and logging, to the Commission's Recommendation to the Member States on 8 November 1962⁽¹⁾ that "tools, instruments or equipment ... temporarily imported into one Member State from another Member State to be used in the performance of any kind of work in the importing Member State shall be covered by the rules covering temporary importation if they do not remain in the importing Member State for more than six months";

Whereas the Community authorities intend to co-ordinate national forestry policies and whereas freedom of establishment and freedom to supply services will make an important contribution to such co-ordination;

Whereas, finally, freedom of establishment and freedom to supply services in forestry, particularly in connection with technical assistance and the use of toxic or dangerous materials, will be facilitated by the mutual recognition of diplomas, certificates and other qualifications and by the co-ordination of certain national regulations; whereas directives to this effect will have to be drawn up at a later stage.

Has adopted the present directive :

Article 1

The Member States shall abolish, in favour of the individuals and corporations referred to in Title I of the General Programmes for the abolition of restrictions on freedom of establishment and freedom to supply services, hereinafter known as the "beneficiaries", the restrictions mentioned under Title III of the said Programmes, as far as access to the activities mentioned in Article 2 and the exercise thereof are concerned.

Article 2

1. The provisions of this directive shall apply to self-employed activities in forestry

⁽¹⁾ Official gazette No. 56, 4 April 1964, pp. 845 and 850.

⁽¹⁾ Official gazette No. 125, 30 November 1962.

and logging referred to in Schedule II of the General Programme for the abolition of restrictions on freedom of establishment, Major Group 02, Groups 021 and 022.

2. For the purposes of this directive, the term "forestry" shall be taken to mean those activities coming under Group 021 of the International Standard Industrial Classification of all Economic Activities (Statistical Office of the United Nations, Statistical Papers, Series M, No. 4, Rev. 1, New York 1958). The main activities concerned are the following :

- a) Ownership of forests;
- b) Harvesting, preparation for sale and sale of seeds;
- c) Nursery work, preparation for sale and sale of seedling;
- d) Planting and replanting;
- e) Conservation and protection work in forests;
- f) Gathering, preparation for sale and sale of forestry products, other than timber itself;
- g) Charcoal burning in the forest;
- h) Technical assistance and expert advice, where applied to the above-mentioned activities.

These activities should be understood to include logging by the owner of a forest or by his staff on his property and on his own behalf.

3. For the purposes of this directive, the term "logging" shall be taken to mean those activities falling within Group 022 of the International Standard Industrial Classification of all Economic Activities (Statistical Office of the United Nations, Statistical Papers, Series M, No. 4, Rev. 1, New York 1958). The main activities concerned are the following :

- a) Felling, preparation for sale and sale of timber;
- b) Technical assistance and expert advice, where applied to the activities referred to under a) above.

This group of activities should also be taken to include construction, repair and demolition work undertaken incidentally by the owner of the forest or by his staff on his behalf because they are necessary for the work in hand, and in particular,

the construction of cable-guides, the installation of telfer railways, the building of roads and forest paths, and the construction of shelters and housing, for forestry workers.

4. A detailed list of the various activities coming under each of the headings in paragraphs 2 and 3 above is annexed to this directive.

Article 3

1. The Member States shall abolish restrictions, including those which :

- a) Prevent the beneficiaries from supplying services or setting up in business in the same conditions and with the same rights as nationals of the country concerned;

- b) Result from an administrative practice which discriminates between the beneficiaries and the nationals of the country concerned.

2. The most important of the restrictions to be abolished are those which prohibit the beneficiaries from setting up in business or from supplying services or restrict them in carrying out these activities, in the following ways.

a) *In the Federal Republic of Germany*

- i) By obliging them to possess a travelling salesman's card (Reisegewerbekarte) in order to be able to canvass third parties in connection with forestry and logging (Gewerbeordnung sec. 55, d, version of 5 February 1960; regulation of 30 November 1960);

- ii) By making the issue of the aforementioned "Reisegewerbekarte" subject to economic requirements ("Bedürfnisprüfung"), and by certain territorial restrictions imposed by this document (Gewerbeordnung sec. 55 d, version of 5 February 1960; regulation of 30 November 1960);

- iii) By obliging foreign corporations wishing to exercise professional activities in the Federal territory to obtain a special permit (Gewerbeordnung sec. 12 and Aktiengereg sec. 292).

b) *In Belgium*

- i) By the obligation to possess a "professional card" (Royal decree No. 62 of 16 November 1939; departmental orders of 17 December 1945 and 11 March 1954);

ii) By the obligation to possess Belgian nationality or, in the case of a company, to hold two-thirds Belgian capital, in order to be recognized as an authorized entrepreneur or to work in forests administered by the State, local authorities, or public enterprises, where such work is subsidized by the State (Decree-law of 3 February 1947, Regent's decree of 29 March 1947, and departmental order of 31 March 1947).

c) *In France*

i) By obliging foreigners to obtain a farmer's professional card or a permit to carry on farming activities (Decree No. 54-72 of 20 January 1954 and order of 30 March 1955);

ii) By obliging them to possess a foreign trader's identity card (Decree-law of 12 November 1938 and law of 8 October 1940).

d) *In Luxembourg*

i) By the limited validity of permits issued to foreigners, under Article 21 of the law of 2 June 1962;

ii) By the impossibility for foreign owners resident abroad to benefit from tax relief for exceptional charges and for special expenses (tax law).

3. In particular, the Member States shall ensure that:

a) Beneficiaries operating on their territory enjoy the same rights as their own nationals to:

i) loans, aids and subsidies to such operations;

ii) normal tax reliefs;

b) Beneficiaries may in the same way as nationals conclude any contract under private or public law required by their professional activity, including the submission of tenders and participation in such contracts as joint contractors or as subcontractors;

c) Where certain operations involving the use of toxic or dangerous products are subject to special approval of the entrepreneur, beneficiaries may apply for and obtain such approval with no more difficulty than their own nationals.

Article 4

1. Freedom to supply services shall also mean that beneficiaries of this directive may carry out in member countries other than that in which they are established any necessary preliminary operations connected with their business; for example, they may seek custom by advertising, canvassing and concluding contracts.

2. In the customer's country, beneficiaries shall operate on a temporary basis, without right of establishment, for the normal duration of the work undertaken, it being understood that their central management remains in another Member State.

However, the supplier of services may, in the host country and on the same terms as nationals of the latter, acquire, rent, use and transfer the equipment, land and buildings he requires to supply his service, but none of this property may constitute a fixed and permanent installation, such as a branch or an agency.

3. For the class of services referred to in Article 2(1 and 2) above, the Member State in which the service is supplied may require the supplier to produce documents or other evidence of the date when he began to exercise his professional activities on its territory. In cases where services are supplied for several clients, it must be possible to single out each of them, or each group of them.

Article 5

1. The Member States shall ensure that beneficiaries have the same rights as nationals to join professional organizations and be entered on the trade register on the same terms as nationals, in particular where one of the activities referred to in Article 2 or the enjoyment of rights and facilities connected with it is subject to such membership or registration.

In the case of the supply of services, however, beneficiaries cannot be required to join a professional organization or to register unless they are supplying services, or a series of services, for a period exceeding 90 days in the calendar year.

2. In the event of permanent establishment the right of membership shall entail eligibility or right to be appointed to executive posts in the professional organization. However, such executive posts may be reserved for nationals in cases where the

organization concerned participates in the exercise of public authority by virtue of laws or regulations. In the Grand Duchy of Luxembourg, being a member of the Chamber of Commerce shall not necessarily mean that beneficiaries are entitled to vote when the governing bodies are elected.

Article 6

1. Where the host country requires of its own nationals seeking permission to engage in any of the activities referred to in Article 2 proof of honourable character and/or proof that they have never been declared bankrupt, that country shall accept as sufficient proof from the beneficiaries of this directive a certificate based on police records or, failing this, a similar document issued by the appropriate legal or administrative authority in the country of origin (or the country from which the applicant has come) showing that these requirements are complied with.

2. If it is not the practice to issue such a certificate in the country of origin or the country from which the applicant has come, the interested party may submit in lieu thereof an affidavit sworn by him before a legal or administrative authority, a notary or a qualified professional body in the country concerned.

3. The documents supplied in accordance with 1 and 2 above, should not be more than three months old at the time they are produced.

Activities to be included under a) to b) of Article 2(2) and under a) and b) of Article 2(3)

Section 2, a) Ownership of forests :

I.e. the ownership, possession, and enjoyment of forest plots or areas or of forest land with a view to possible utilization for gain.

Section 2, b) Harvesting, preparation for sale and sale of seeds :

All work carried out by hand or by mechanical means in connection with the harvesting and treatment of the fruit and seed of resinous and deciduous trees, for reproduction purposes, up to the sales stage.

Section 2, c) Nursery work, preparation for sale and sale of seedlings :

All work carried out by hand or by mechanical means in connection with the culti-

4. Within the period laid down in Article 8(1 a) below, the Member States shall name the authorities and bodies authorized to issue the above-mentioned documents and shall immediately inform the other Member States and the Commission accordingly.

Article 7

Member States shall refrain from granting to their nationals travelling to another Member State to exercise one of the activities referred to in Article 2 any assistance likely to distort the conditions of establishment.

Article 8

1. The Member States shall take the necessary steps to comply with the present directive within the following time-limits:

a) In the case of the activities referred to in Article 2(2) and Article 2(3b), six months from notification of the present directive;

b) In the case of the activities referred to in Article 2(3 a), six months of the latest date indicated in the preceding subparagraph.

2. The Member States shall inform the Commission of these steps without delay.

Article 9

The present directive is addressed to the Member States.

vation of the seedlings of resinous and deciduous trees, up to the sales stage.

Section 2, d) Planting and replanting :

All work carried out by hand or by mechanical or chemical means in connection with the preparation of soil for natural regeneration, planting, replanting or plantations outside forest areas;

All work carried out by hand or by mechanical means in connection with the sowing of seed or seedlings for planting, replanting or plantations outside forest areas;

All work carried out by hand or by mechanical means in connection with the conservation of young seedlings or of plantations either inside or outside forest areas.

Section 2, e) *Conservation and protection work in forests :*

All the day-to-day work of forest conservation, such as the opening of cross-rides, clearing of undergrowth, thinning out and clearing in general, not carried out for marketing purposes, and pruning;

All plant health treatment, carried out by hand or by mechanical means, using aircraft or land vehicles, in order to destroy pests harmful to seed, seedlings, trees and other forest plants, together with noxious organisms found in the soil, water, air, buildings or stockpiled products, and to prevent such noxious organisms from causing damage;

All work carried out by hand or by mechanical means, using aircraft or land vehicles, to prevent or combat forest fires;

All work carried out by hand or by mechanical means for the protection of forests against damage caused by humans or animals, such as the erection and maintenance of fences and notice-boards.

Section 2, f) *Gathering, preparation for sale and sale of forestry products, other than timber itself :*

All work carried out by hand or by mechanical means in connection with the harvesting, stocking, treatment, and sale of forestry products other than timber as such, except seeds and seedlings, including resin, virgin and reproduction cork, forest fruits and fungi, branches, foliage, cones, ornamental fruits and moss, straw, ferns, heather, and osiers.

Section 2, g) *Charcoal burning* carried out in forests, in stacks or kilns, sorting, grading, packaging, loading, and sale.

Section 3, a) *Felling, preparation for sale and sale of timber :*

All work carried out by hand or by mechanical means in connection with the felling, preparation for sale and sale of timber, including :

a) marking of areas for cutting,

b) measuring, valuing and sale of standing timber,

c) felling, lopping of branches, and stripping of bark,

d) measuring and sale of felled, but unshaped timber,

e) shaping and stacking by steres, special treatment of timber for veneering, the shaping of stakes, piles, railway sleepers, and pitprops,

f) measuring, grading, conveyance by horse-drawn media, tractor, telfer railway, sledge, or raft, and sale of rough timber, whether graded or not,

g) construction of loading ramps,

h) loading, grading, and despatch,

i) cutting, grading, and sale of Christmas trees.

Section 2, h) and

Section 3, b) *Technical assistance and expert advice* given to individuals and corporations exercising an activity in forestry, including :

a) forestry and logging techniques,

b) administration of forests and plantations : layout plans and surveying,

c) cultivation and preparation for sale of forest products,

d) organization of work, forestry accounting,

e) consolidation of forest holdings, formation of groupings, associations and co-operatives,

f) various expert opinions (on forestry work, areas to be cut, damage, etc.).

**Proposal for an amendment of the General Programme
for the removal of restrictions on freedom of establishment**

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof;

Having regard to the General Programme for the removal of restrictions on freedom of establishment⁽¹⁾, and in particular Titles IV C and E and Schedules II and IV thereof;

Having regard to the General Programme for the removal of restrictions on freedom to supply services⁽²⁾, and in particular Title V C thereof;

Having regard to the Commission's proposal;

Having regard to the opinion of the European Parliament;

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

Having regard to the Council resolution of 15 December 1961 on the more rapid implementation of the General Programme, and in particular paragraph b(3) thereof;

Whereas Title IV containing the time-table for the General Programme for the removal of restrictions on freedom of establishment makes provision for the removal, between the end of the second year of the third stage and the end of the transitional period, of all discriminatory treatment on grounds of nationality as regards the establishment of self-employed persons working in forestry and logging (ISIC Major Group 02);

Whereas, according to Title V C of the General Programme for the removal of restrictions on freedom to supply services, this time-table also applies to the removal of restrictions on freedom to supply services in the field of forestry and logging;

Whereas the production of timber in the Community is insufficient to meet needs, the costs of administering and utilizing the forest resources is high, and, in some Member States, considerable forest areas are made up of non-profitable brushwood; whereas, to overcome these difficulties, a method of co-ordinating the forestry policies of the Member States is being worked out and the early removal of restrictions on the forestry and logging sector may make an appreciable contribution to this co-ordination;

Whereas, on the one hand, it is difficult to make a clear distinction between forestry and agriculture, particularly where the cultivation of rapid-growing forest trees on arable land is concerned; whereas, on the other hand, production, administration, and protection methods are frequently similar, particularly as regards agricultural and forestry nurseries; whereas some farms devote parts of their land to agriculture and parts to forestry and it would be illogical to make freedom to supply services as described in Council Directive No. 65/1 of 14 December 1964⁽³⁾ applicable to the first and not to the others;

Whereas, therefore, it is advisable to transfer forestry and logging activities from Schedule IV to Schedule II.

Has adopted the following amendment to the General Programme for the removal of restrictions on freedom of establishment :

Sole article

The annexes to the General Programme for the removal of restrictions on freedom of establishment are hereby amended as follows :

The following reference is deleted in Schedule IV and inserted in Schedule II :

“02 ... forestry and logging

021 forestry

022 logging”

⁽¹⁾ Official gazette No. 2, 15 January 1962, p. 36.

⁽²⁾ *Ibid.*, p. 32.

⁽³⁾ *Ibid.*, p. 36.

⁽¹⁾ Official gazette No. 1, 8 January 1965.

Explanatory Memorandum

The bases of the proposed amendment to the General Programme and of the proposal for a directive

The General Programmes for the removal of restrictions on freedom of establishment and freedom to supply services, agreed upon by the Council on 18 December 1961⁽¹⁾, stipulate that where nationals of the Member States of the Community are concerned restrictions on the right to accede to and exercise the business of forestry and logging, on the grounds of nationality, are to be removed between the end of the second year of the third stage and the end of the transitional period.

In accordance with Article 54(1) of the Treaty and the Council resolution on the more rapid implementation of the General Programme⁽²⁾, the Commission laid before the Council its proposal that the above-mentioned activities should be transferred from Schedule IV to Schedule II (timetable) of the General Programme for the removal of restrictions on freedom of establishment. It is stipulated in this Article that the Council shall consult the Economic and Social Committee and the European Parliament, before reaching a unanimous decision.

It is stipulated in Article 54(2) of the Treaty that the Commission shall lay its proposal for a directive before the Council so that, as soon as the above-mentioned provision is adopted, freedom of establishment and freedom to supply services in the forestry and logging sector can be put into effect. The same article provides that the Council may consult the Economic and Social Committee and the European Parliament, before reaching a decision by qualified majority.

I

1. *Forests in the Community*

21.6 % of Community territory, or an area of over 25 million hectares, is covered by forest. Both the quantity and quality of this forest land vary considerably from one EEC country to another, since the area under timber amounts to 32 % in Luxembourg, 28 % in the Federal Republic of Germany, and only 7.7 % in the Netherlands. Similarly, the composition and characteristics of the forests vary according to the different regions, the present situa-

tion having been shaped throughout the ages both by ecological factors and by various political and economic influences. In this connection, several countries have large areas of coppice with standards and brushwood, the sale of which is an increasingly uncertain matter.

With regard to timber production and the timber market, the Community countries are all short of timber and are obliged to rely on imports to meet their requirements. This deficiency, which amounted in 1961 to a rough timber equivalent of 29 million cu. m. in the case of rough timber and sawings and to a rough timber equivalent of approximately 18 million cu. m. for imported pulp and paper, has to be made up by increasingly large imports of finished and semi-finished products, since the countries which traditionally supply timber are growing more and more reluctant to export their raw material.

As this timber shortage will become more pronounced in the future, it would be advisable to co-ordinate the Member States' forestry policies and stimulate them to extend the area under timber and increase the yield and profitability of their forests. Among the great variety of measures which should be taken to achieve this aim are the afforestation of uncultivated or marginal land, the conversion of brushwood, forestry mechanization, and increased technical assistance and instruction for small forest-owners, who should be encouraged to amalgamate.

2. *The effects of freedom of establishment and freedom to supply services*

The removal of restrictions on grounds of nationality can only have favourable consequences for forestry and logging. The fact is that keener competition in the professions concerned with the improvement of forests (nurserymen, reforestation personnel, enterprises working on the conservation and protection of forests and in logging) must have the effect of improving quality and of reducing the costs of work and services. The trend towards increased mechanization of certain operations, due to the high cost and shortage of labour, will be encouraged, since enterprises using mechanized methods will have a wider choice of clients.

⁽¹⁾ Official gazette No. 2, 15 January 1962, pp. 36 and 32.

⁽²⁾ *Ibid.*, p. 36.

Since freedom of establishment and freedom to supply services play a decisive part in the process of rationalizing forestry methods, the Commission considered it advisable to propose to the Council that the timetable initially laid down should be accelerated. Furthermore, it is difficult to make a clear distinction between agriculture and forestry, since, where the climate and the soil permit, the latter tends to develop into the intensive cultivation of rapid-growing forest trees which require the same treatment and methods of cultivation, such as ploughing, the use of fertilizers, and pest control, as are used in agriculture proper. It would seem logical to try to bring the time-limits laid down in the General Programmes closer together in the case of activities which can be exercised equally well in both agriculture and forestry. Finally, there are many mixed farms carrying on both agriculture and forestry, and it is difficult to conceive how the freedom to supply services laid down in Council Directive No. 65/1 of 14 January 1965⁽¹⁾ could be made to apply to the agricultural side of their activities and not to the forestry side.

II

In order to define the exact scope of freedom of establishment and freedom to supply services in forestry and logging, the terms

- i) forestry and logging, and
- ii) equal treatment

are defined as follows in the proposal for a directive :

1. *Forestry and logging*

In order to simplify presentation, the proposal makes a distinction between forestry and logging.

Forestry (Article 2(2) and annex) includes production, i.e. both ownership and the cultivation necessary to bring a plantation to the stage when it is ready for cutting.

The term "cultivation" includes, first of all, the harvesting and preparation of seed, the growing of seedlings in nurseries, and planting: these activities are assuming ever-increasing importance in modern forestry and, if planting is to be successful and

the forest to give a good yield of timber, a high degree of technical skill and attentive care are necessary. Secondly, there are the operations for the conservation, protection, and administration of the forest, and the harvesting of ancillary products. Finally, technical assistance where related to these activities also comes under this heading.

The main purpose of logging (Article 2(3) and annex) is the gathering, preparation for sale, and sale of timber from state and privately-owned forests. With regard to forests coming under the control of the forestry authorities (state-owned or, in many cases, belonging to local authorities), the procedures followed for the cutting and sale of timber vary from one Member State to another and, in some cases, place foreigners at a disadvantage as compared with the nationals of the country concerned. Although it is not indispensable, for the achievement of freedom of establishment and freedom to supply services, that benefits should be reciprocal, it would be desirable to lessen the disparities between the Member States with regard to the methods of state-owned forests and the sale of timber produced by them. It would also be advisable for the Member States to improve the exchange of information to bring sales of timber from such forests to public notice.

The terms "forestry" and "logging", as used in the proposed directive also include the direct sale by the producer of the unfinished or roughed-up products of his operations.

This interpretation was accepted as far as the right of establishment and freedom to supply services were concerned, since the same criterion is applied in Council Directive No. 64/428⁽¹⁾ on the extractive industries, and since Article 2(2) of Council Directive No. 64/223⁽²⁾ on wholesale trade, which applies to forestry products, defines the term "trade" as the purchase of goods for resale, which thus excludes the sale by the producer of the product of his operations.

2. *Equal treatment*

Although States cannot make demands on suppliers of services solely on the grounds that their establishment is of a stable and permanent nature, it must however grant

⁽¹⁾ Official gazette No. 1, 8 January 1965.

⁽²⁾ Official gazette No. 117, 23 July 1964, p. 1871.

⁽³⁾ *Ibid.*, No. 56, 4 April 1964, p. 883.

them the same rights as beneficiaries setting up in business on their territory. The removal of restrictions on access to forestry and logging and the exercise thereof makes it incumbent on the Member States to ensure that the beneficiaries are actually treated on exactly the same footing as nationals of the country concerned.

Establishment may take two forms: the beneficiary, being a national of a Member State, may either transfer his business to another Member State, known as the "host country" or he may set up, in the host country, a permanent installation in the form of a branch or agency [see Article 4(2)]. Beneficiaries must be treated on a completely equal footing, i.e. the States must grant them the same rights as their nationals and be entitled to impose the same obligations on them.

The main characteristic of the supply of services, on the other hand, is that it is temporary, inasmuch as the supplier of services either travels to the client's country or the latter himself travels to the supplier's country, or again both stay in their respective country and dispatch the article or medium involved in the service across the frontier (e.g. the dispatch of samples for an expert opinion or the hiring of equipment).

As far as services are concerned, it is clear that the States, although granting beneficiaries the same rights as their own nationals, cannot make the same demands of them as of the latter or of foreigners permanently resident whose activity is of a permanent nature. This applies to the

obligation to enter their names in a trade or professional register or to join trade associations in cases where membership is compulsory for nationals.

However, the same restrictions have to be abolished (Article 3) in the case of both establishment and the supply of services. It is immaterial whether the obstacles are of a general nature, i.e. involve all economic activities exercised by foreigners, or whether they are peculiar to the spheres of forestry and logging. Since the aim is to achieve equal treatment, it follows that, in order to determine whether a given provision or practice is discriminatory or not, the Member States must consider not only the aim in view, but also the effect. They should remove on the one hand the restrictions applying specifically to the activities covered by the draft directive and, on the other, restrictions of a general nature where these impede establishment and the free supply of services by the nationals of other Member States in the spheres of forestry and logging. The removal of restrictions makes it incumbent on the Member States to ensure, in particular, that tax benefits, loans, aids, subsidies, and financing facilities provided for nationals are granted on a completely impartial basis.

Finally, when the directive is put into effect, the Member States will be obliged to abolish restrictions on movement and residence of beneficiaries, in accordance with Council Directive No. 64/220 of 25 February 1964 (1).

(1) Official gazette No. 56, 4 April 1964, p. 845.

**Proposal for a Council directive on freedom
of establishment and freedom to supply services
in a self-employed capacity in personal services :**

1. Restaurants, cafés, taverns and other drinking and eating places
(Group 852 ISIC);
2. Hotels, rooming houses, camps and other lodging places
(Group 853 ISIC),
(Art. 54(2) and Art. 63(2) of the Treaty)

(submitted by the Commission to the Council on 9 April 1965)

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54(2 and 3) and Article 63(2 and 3) thereof;

Having regard to the General Programme for the removal of restrictions on freedom of establishment⁽¹⁾, and in particular Title IV C thereof;

Having regard to the General Programme for the removal of restrictions on freedom to supply services⁽²⁾, and in particular Title V C thereof;

Having regard to the Commission's proposal;

Having regard to the opinion of the European Parliament;

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

Whereas the General Programmes provide for the abolition of all discrimination treatment based on nationality affecting freedom of establishment and freedom to supply services in a self-employed capacity in restaurants, cafés, taverns and other eating and drinking places and in hotels, rooming houses, camps and other lodging places after the expiry of the second year of the second stage of the transition period and before expiry of the second stage;

Whereas other activities in the field of "personal services" will be freed of restrictions at a later date according to the terms of the General Programmes;

Whereas within the meaning of Article 58(2) of the Treaty, the term "company" is

understood to include co-operatives, even when they provide services only for their own members;

Whereas, for the application of the rules governing right of establishment and freedom to supply services, the equivalence of companies to individuals who are nationals of Member States is subject only to the conditions set out in Article 58 and, where necessary, to the stipulation of a continuous and effective link with the economy of a Member State; and whereas, in consequence, no additional stipulation may be made and, in particular, no special authorization not required of domestic companies for the exercise of an economic activity may be required for them to benefit from these provisions; and whereas this equivalence does not, however, detract from the right of Member States to demand that joint stock companies shall operate in their territory under the designation specified by the legislation of the Member State where they are incorporated and shall indicate on the business papers they use in the host country the amount of capital subscribed;

Whereas the present directive applies to the sale of food and beverages to be consumed on the premises, even when such sale is carried out :

- i) on a temporary basis in establishments, kiosks or pavilions fixed to the ground, or
- ii) by means of automatic machines;

Whereas the present directive applies only to activities carried on habitually and professionally, regardless of whether they serve an unrestricted or a restricted public; and whereas the host country may stipulate the professional criteria for a given activity according to its own legislation or administrative practice; and whereas the present directive does not apply to services provided

⁽¹⁾ Official gazette, No. 2, 15 January 1962, p. 36.

⁽²⁾ *Ibid.* p. 32.

to the general public by charitable organizations or others devoted to social welfare on a non-profit-making basis;

Whereas the present directive also does not apply to the renting of rooms or bungalows, even furnished, if such renting is not accompanied by the supply of services;

Whereas, in accordance with the terms of the General Programme for the removal of restrictions on freedom of establishment, restrictions on the right to membership of professional organizations are to be eliminated to the extent required by the professional activity of the party concerned;

Whereas the proof of honourable character which the party concerned may be called upon to provide is of particular importance in the case of the activities to which the present directive applies; and whereas certain Member States therefore require such proof not only of the applicant himself but also of those members of his family living with him or working in his establishment; and whereas the directive should make it possible to facilitate supply of such proof by all persons of whom it may be required; whereas the importance of the idea of honourable character in the professions concerned has led some Member States to stipulate for their own nationals conditions of honourable character and morality other than those certified by an extract from police records; and whereas the host State can impose similar conditions on nationals of other Member States;

Whereas the system applicable to wage-earners accompanying the supplier of services or acting for him are determined by the arrangements pursuant to Articles 48 and 49 of the Treaty;

Whereas specific directives have been or will be issued, applicable to all self-employed activities and concerning movement and residence of the beneficiaries, and also, where necessary, directives concerning the co-ordination of the guarantees required of companies by Member States for protection both of co-partners and third persons;

Whereas, moreover, in certain Member States the exercise of most of the activities to which the present directive applies is regulated by provisions governing admission to the profession and other States will put such regulations into effect where necessary; and whereas, for this reason,

certain transitional measures, to facilitate admission to and exercise of the profession for nationals of other Member States, are dealt with in a special directive,

Has adopted the present directive :

Article 1

For the benefit of the individuals and companies mentioned in Title I of the General Programmes for the removal of restrictions on freedom of establishment and the freedom to supply services, hereinafter called beneficiaries, the Member States shall remove the restrictions mentioned in Title III of the said Programmes in so far as concerns admission to and exercise of the activities mentioned in Article 2.

Article 2

1. The present directive shall apply to those self-employed activities referred to as "personal services" in Schedule II of the General Programme for removal of restrictions on freedom of establishment (Groups 852 and 853 ISIC).

2. For the purposes of this directive, a party (individual or company) shall be deemed to carry on an activity included in Group 852 "Restaurants, cafés, taverns and other drinking and eating places", if that party habitually and professionally, in his own name and on his own account, provides either prepared food or beverages for consumption on the premises in one or more establishments operated by him and open to the public.

3. For the purposes of this directive a party (individual or company) shall be deemed to carry on an activity included in Group 853 "Hotels, rooming houses, camps and other lodging places" if he habitually and professionally, in his own name and on his own account

a) rents out furnished lodgings or rooms in one or more establishments operated by him, or

b) puts at the disposal of tourists on sites fitted out for the purpose facilities and camping installations for temporary accommodation

and provides the normal ancillary services.

Article 3

1. The Member States shall remove restrictions which in particular:

a) Prevent the beneficiaries from establishing themselves in the host country or from supplying services there under the same conditions and with the same rights as nationals;

b) Result from administrative practices whose effect is to apply treatment to the beneficiaries which is discriminatory compared with that applied to nationals.

2. The restrictions to be removed include especially those embodied in regulations which forbid or limit the beneficiaries in the matter of establishment or of supply of services in the following ways:

a) *In the Federal Republic of Germany:*

i) By the stipulation that authorization for foreigners to open an establishment is subject to proof of requirement (Paragraph 1, sub-paragraph 2, Gaststättengesetz of 28 April 1930);

ii) By making the issue of a travelling salesman's card ("Reisegewerbekarte") subject to a survey as to economic requirement ("Bedürfnisprüfung") and by the territorial limitations which this document imposes on the sale of food or drinks for consumption on the premises (Paragraph 55 d Gewerbeordnung; text of 5 February 1960; regulation of 30 November 1960);

iii) By the requirement of authorization for foreign corporations wishing to carry on a professional activity in the Federal territory (Paragraph 12, Gewerbeordnung and Paragraph 292, Aktiengesetz).

b) *In Belgium*

By the requirement of a "professional card" (Royal decree No. 62 of 16 November 1939, and departmental order of 17 December 1945).

c) *In France*

i) By the requirement of a foreign trader's identity card (decree-law of 12 November 1938, law of 8 October 1940);

ii) By exclusion from the right to renew commercial leases and from the right of repossession (decree of 30 September 1953, Article 38);

iii) By the prohibition on foreigners from exercising the profession of selling drinks for consumption on the premises (Article L. 31 of the Code de débit de boissons; decree 55-222 of 8 February 1955 and ordinance of 5 January 1959).

d) *In Italy*

By the Italian nationality requirement as a precondition for the profession of manager of mountain refuges (rifugi alpini); (Article 13 of the decree of the Tourist Commissioner — Commissario per il Turismo — of 29 October 1955).

e) *In Luxembourg*

i) By the limited duration of permits granted to foreigners under Article 21 of the Luxembourg law of 2 June 1962 (Memorial A No. 31 of 19 June 1962);

ii) By the five years' minimum residence requirement, specified in the Luxembourg law of 12 August 1927, to operate a place of sale for alcoholic beverages in the territory of the Grand Duchy.

Article 4

1. The Member States shall ensure that the beneficiaries of the present directive have the right of membership of professional organizations on the same terms and with the same entitlements and obligations as nationals.

2. In the event of establishment, the right of membership shall entail eligibility for executive posts in the professional organization or the right to be appointed to such posts. These executive posts may, however, be reserved for nationals if the organization concerned participates in the exercise of public authority by virtue of laws or regulations.

3. In the Grand Duchy of Luxembourg, being a member of the Chamber of Commerce shall not necessarily mean that beneficiaries are entitled to vote when the governing bodies are elected.

Article 5

The Member States shall not give their nationals who go to another Member State to carry on one of the activities mentioned in Article 2 any assistance which might tend to distort the conditions of establishment.

Article 6

1. Where the host Member State requires of its own nationals seeking permission to engage in any of the activities mentioned in Article 2 proof of honourable character and/or proof that they have not previously been declared bankrupt, that country shall accept as sufficient proof in the case of nationals of other Member States a certificate based on police record or, failing this, a similar document, issued by the appropriate legal or administrative authority of the country of origin or the country from which the applicant has come, showing that these requirements are complied with.

If it is not the practice to issue such a certificate that there has been no bankruptcy in the country of origin or the country from which the applicant has come, the interested party may submit in lieu thereof an affidavit sworn by him in the presence of a legal or administrative authority, a notary or a qualified professional body in the country concerned.

2. When the host Member State requires of its own nationals seeking to engage in one of the activities mentioned in Article 2 certain conditions of morality or reputation on their part or on the part of certain family members living with them, proof of which is not contained in the document mentioned in paragraph 1, sub-paragraph 1, this State shall accept as sufficient proof for nationals of other Member States a certificate issued by the appropriate legal

or administrative authority in the country of origin or the country from which the applicant has come, showing that these requirements are complied with. Such certificates shall deal with the precise facts required by the host country.

3. Documents issued according to paragraphs 1 and 2 shall not be more than three months old at the time they are presented.

4. Within the time-limit mentioned in Article 7 the Member States shall designate the authorities and organizations competent to issue the documents mentioned above, and shall immediately inform the other Member States and the Commission accordingly.

5. When financial capacity must be proven in the host Member State, this State shall recognize attestations issued by the authorities or the banks of the country of origin or the country from which the interested party has come as equivalent to attestations issued in its own territory.

Article 7

The Member States shall take the necessary steps to comply with the present directive within six months of its notification, and shall inform the Commission of these steps without delay.

Article 8

The present directive is addressed to the Member States.

Explanatory Memorandum

I. INTRODUCTION

1. *Object of the directive*

a) On 18 December 1961 the Council, acting in conformity with Article 54(1), agreed upon the General Programme for removal of restrictions on freedom of establishment⁽¹⁾.

This Programme stipulates in Title IV C (time-table) that for the activities listed in Schedule II of the said Programme the actual removal of restrictions on freedom

of establishment must take place between the final date indicated in paragraph A and the expiry of the second stage of the transition period (i.e. between 31 December 1963 and 31 December 1965).

In the said Schedule II, "restaurants, cafés, taverns and other drinking and eating places" are mentioned in Group 852, and "hotels, rooming houses, camps and other lodging places" in Group 853.

b) The General Programme for the removal of restrictions on freedom to supply services, approved by the Council on 18 December 1961⁽²⁾, refers in Title V C

⁽¹⁾ Official gazette No. 2 15 January 1962 p. 36.

⁽²⁾ Official gazette No. 2 15 January 1962, p. 32.

to the time-table fixed for putting into effect the programme concerning freedom of establishment.

c) In conformity with Article 54(2) and Article 63(2), the Commission submits to the Council a directive to put into effect these provisions of the Programme which deal with the activities of ISIC Groups 852 and 853.

According to these articles the Council is required, before issuing the directive by qualified majority, to consult the Social and Economic Committee and the European Parliament.

d) The Commission has deemed it opportune to attach to its draft directive a brief commentary explaining its proposals and giving its opinion on certain comments by experts from Member States during the preliminary studies.

II. THE SCOPE OF THE DIRECTIVE

1. *Nomenclature*

The directive applies to activities in Groups 852 and 853 mentioned in Schedule II of the General Programmes. The schedules were drawn up on the basis of the ISIC nomenclature "International Standard Industrial Classification of all Economic Activities", Statistical Papers, Series M, No. 4, Rev. 1, New York 1958, published by the Statistical Office of the United Nations.

As no Community nomenclature has been formulated for the activities in question, the present directive follows the ISIC nomenclature.

Groups 852 and 853 are part of Major Group 85, which deals with "personal services". The schedules to the General Programmes provide that restrictions on activities mentioned in these Groups will be removed before the freeing of other activities coming under the heading of personal services, because of the great economic importance of the former in the world today.

The activities in question are directly connected with the tourist trade and are consequently, expanding notably in the six Member States.

2. *Preliminary studies*

In formulating the draft directive the Commission held several meetings in which officials from the Member States took part; the co-operation of the "Contact Committee of the hotel industry in the EEC countries" was also obtained.

The discussions dealt with various problems concerning the field of application of the directive. It would seem useful, for a clearer understanding of the text of the directive, to indicate at least briefly what these problems are and what solutions were considered:

A. General problems (concerning the activities listed in Group 852 and those in Group 853)

i) *Beneficiaries of the directive*: the individuals and companies mentioned in Title I of the General Programme.

ii) *Characteristics of these activities*:

a) They must be carried on habitually and professionally by the party concerned in his own name and on his own account: the directive does not, however, spell out precisely when an activity may be considered as being exercised professionally. As a result the provisions of municipal law in this respect remain applicable;

b) They must be carried on for profit;

c) They must be carried on for the benefit of third parties. "Third parties" does not necessarily mean all members of the general public; beneficiaries may in fact also be restricted categories of persons, such as members of clubs;

d) They must be carried on under the conditions established by the host country. The directive recognizes the right of any individual or company to operate more than one public establishment unless this right is also denied to nationals of the host country, as is the case in certain Member States.

B. Specific problems

i) *in the activities under Group 852 [see Art. 2(2)]*

a) The consumption of beverages and prepared food must take place on the premises of the establishment. However, as it is often customary for bars, restaurants, etc., in addition to selling beverages and food prepared for consumption on the

premises, to sell the same products for consumption off the premises, the directive also frees these activities.

b) Moreover, with a view to the greater comfort and convenience of customers, public establishments in certain States carry on the sale of cigarettes, newspapers, picture postcards, etc. in addition to the activities of Group 852; in the States in question the right to carry on this activity must consequently be granted to all beneficiaries of the directive.

c) The sale of beverages and prepared food for immediate consumption on the premises must be considered as an activity within the meaning of the directive even if it is on a temporary basis, provided that the installations, kiosks or places of sale are fixed to the ground: this is the case for installations built for regularly recurring events such as fairs, etc.; it is not, however, true of the activity of hawkers and pedlars, which will be freed of restrictions at a later date, since this is provided for only in Schedule IV of the General Programmes.

d) The operation of buffets or restaurants in railway stations, ports and airfields is to be considered as belonging to Group 852.

ii) *in the activities under Group 853* [see Art. 2(3)]:

a) It has already been pointed out that the profit motive is one of the essential characteristics if an activity is to be considered eligible for freedom from restrictions.

Charitable and social welfare organizations are to be considered as non-profit-making activities.

On the other hand the operation of lodging-places as a supplementary activity cannot be considered as being non-profit-making. Such establishments have multiplied fast in recent years, and operate at so-called "social" prices, i.e. prices which are lower than those of public establishments; they usually offer the customer very simple accommodation and restricted services (for example motels, "auto-ostelli", in Italy)⁽¹⁾.

b) The activity must not be limited to the renting of rooms, which is dealt with in another directive. Such renting must be accompanied by all the services traditionally connected with the hotel business.

c) As in the case of activities in Group 852, if the sale of cigarettes, newspapers, picture postcards, etc. is permitted in certain States, the same right must be accorded to all beneficiaries of the directive.

III. REMOVAL OF RESTRICTIONS

1. Article 3(1) establishes the principle of parity of treatment as between nationals and foreigners, and recalls the prohibition on discriminatory administrative practices.

The Commission will devote particular attention to this field in order to ensure that freedom of establishment is not limited indirectly by discretionary decisions, surveys as to economic requirement, etc.

Paragraph 2 contains, on the other hand, a list of examples of restrictions at present in force in the laws of Member States.

It will be impossible to replace the foreigner's permits existing in France and Belgium by other documents without infringing the Treaty, the General Programme and the directive.

2. It must be emphasized that the full introduction of freedom of establishment and freedom to supply services will be effected on the basis not only of the present directive but also of others which have important complementary functions, such as the Council directive for the removal of restrictions on travel and residence within the Community for nationals of Member States in the field of establishment and supply of services, adopted on 25 February 1964, and the directives yet to be issued concerning the object on which or with the aid of which the service itself is provided (Title V A of the General Programme for the removal of restrictions on freedom to supply services) and concerning the transfer of funds.

3. Article 4 establishes the principle of the right of membership of professional organizations, which includes eligibility and the right to vote in elections held for the executive posts in such organizations. Such eligibility is not recognized when these organizations participate in the exercise of public authority. In Luxembourg where Articles 29 and 32 of the law of 4 April 1924 provide that professional organizations must be consulted on important draft legislation and on budgetary problems, foreigners may not even participate in the elections to such executive posts.

(1) See Law No. 326 of 21 March 1958.

Article 5 is intended to prevent, in conformity with Article 54(3 h), the distortion of conditions of establishment.

IV. HONOURABLE CHARACTER

Article 6 provides that documents issued by an appropriate authority in the country of origin constitute adequate proof in the host country.

Since extracts of police registers are not issued in all Member States, special importance attaches to this provision, thanks to it other documents of an analogous nature, such as certificates of good conduct provided by the police, which even private persons can obtain, are made admissible. Further, when, as in France, national regulations require that the person concerned should not previously have been declared bankrupt, the foreigner also must provide this proof, but even in this case the procedure must be facilitated for him.

In certain Member States the regulations governing the activities under consideration in the present directive are very severe and strict in matters of morality and honourable character.

So that these States may be able to ensure that guarantees offered by nationals of other Member States are identical to those they require of their own nationals, the directive introduces the principle that non-nationals must possess documents issued by the authorities of their country of origin

or the country from which they have come identical for all intents and purposes to those required of nationals of the host country.

The obligation to have such documents applies equally to family members living under the same roof as the person wishing to carry on one of the activities in question in states which impose this prerequisite on their own nationals.

V. TRANSITIONAL MEASURES

In formulating the directive the Commission examined whether any transitional steps were needed for the recognition of qualifications and the co-ordination of laws and regulations governing the activities under ISIC Groups 852 and 853.

It has not yet been possible to complete preliminary studies already begun by the Commission.

On the other hand, to have waited for the completion of these studies would have meant delaying the directive for the removal of restrictions. It therefore seemed best to provide transitional measures which will be the subject of a special directive to be issued and put into force at the same time as the present one. As admission to the profession is restricted in the Netherlands and Luxembourg, these transitional measures are designed to facilitate access for nationals of the other Member States wishing to carry on activities in these countries.

Proposal for a Council directive on procedures for transitional measures concerning self-employed activities in personal services :

- 1. Restaurants, cafés, taverns and other drinking and eating places
(Group 852 ISIC);**
- 2. Hotels, rooming houses, camps and other lodging places
(Group 853 ISIC),
(Art. 54(2), Art. 75(1), Art. 63(2) and Art. 66 of the Treaty)**

(submitted by the Commission to the Council on 8 April 1965)

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community, and in

particular Article 54(2), Article 57(1), Article 63(2) and Article 66 thereof;

Having regard to the General Programme for removal of restrictions on freedom of

establishment ⁽¹⁾, and in particular Title V, sub-paragraphs 2 and 3 thereof;

Having regard to the General Programme for removal of restrictions on freedom to supply services ⁽²⁾, and in particular Title VI, sub-paragraphs 2 and 3 thereof;

Having regard to the proposal of the Commission;

Having regard to the opinion of the European Parliament;

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

Whereas the General Programmes provide not only for the removal of restrictions but also for consideration of whether this removal should be preceded, accompanied or followed by the mutual recognition of diplomas, degrees and other certificates of competence, and by the co-ordination of laws, regulations and administrative instructions concerning admission to an exercise of the activities in question; and whether transitional measures should be made pending such recognition or co-ordination;

Whereas, as regards restaurants, drinking places and hotels, conditions for admission to and exercise of the activities in question are not imposed in all Member States; whereas in some cases freedom of admission and exercise exists, but in other cases strict regulations call for possession of a diploma in order to exercise the profession;

Whereas, since some Member States regulate these activities little and others not at all, it has not been possible to co-ordinate at the same time as removing restrictions;

Whereas, none the less, failing such immediate co-ordination, it seems desirable to liberalize establishment and services in the sectors under reference by adopting transitional measures such as those provided for in the General Programmes, mainly to avoid undue inconvenience to nationals of Member States where admission to these activities is not subject to any conditions;

Whereas in order to prevent such inconvenience the transitional measures should consist mainly of establishing, as a sufficient prerequisite for admission to the activities in question in host countries which regulate these activities, experience in the profession in the applicant's home country for a rea-

sonable length of time during a relatively recent period, in cases where previous formal training is not required to guarantee that the beneficiary has professional competence equivalent to that required of nationals

Whereas the limits fixed in the present directive on the length of time during which the profession must have been practised in the home country are maximum limits; and whereas the host country can reduce them at its discretion;

Whereas provision should also be made for States which do not restrict admission to the activities in question to require (in one or more activities) nationals of other States to furnish proof of competence to exercise the activity in question in the home country, so as to avoid a disproportionate influx of persons who would not have been able to satisfy the conditions for admission to and exercise of the activity in their own country;

Whereas such authorization must, however, be granted with discretion, as it might, if too freely applied, obstruct free circulation; whereas it should, therefore, be limited in time and scope, and its application, as generally provided in the Treaty for safeguard clauses, should be within the discretion of the Commission;

Whereas the measures embodied in the present directive will cease to have any purpose when conditions of admission to and exercise of the activity in question have been co-ordinated, and diplomas, degrees and other certificates have been mutually recognized; whereas they will be rescinded in any case on expiry of the transition period, as they cannot after that date be alternatives to the obligation to have recourse to the procedures expressly provided for in the Treaty, namely the co-ordination of national regulations and the mutual recognition of diplomas required in individual countries for admission to and exercise of the activity in question, if this should be necessary to facilitate the said admission and exercise.

Has adopted the present directive :

Article 1

1. The Member States, under the conditions stated hereinafter, shall take the following measures concerning establishment on their territory by the individuals and companies mentioned in Title I of the General Programmes, and concerning the provision of

⁽¹⁾ Official gazette No. 2, 15 January 1962, p. 36.

⁽²⁾ *Ibid.*, p. 32.

services by these individuals and companies, hereinafter called beneficiaries, in a self-employed capacity in the catering trades.

2. The activities referred to are those to which the Council directive of ... applies, concerning liberalization of establishment and of services in the personal services sector (restaurants, cafés, taverns and other eating and drinking places (Group 852 ISIC) and hotels, rooming houses, camps and other lodging places [Group 853 ISIC] (1).

Article 2

Member States in which admission to and exercise of any of the activities mentioned in Article 1(2) is conditional on possession of certain qualifications, shall ensure that a beneficiary making application for this purpose is informed, before setting up in business or entering upon a temporary activity, of the regulations under which, by its nature, the proposed activity would fall.

Article 3

1. If admission to or exercise of one of the activities mentioned in Article 1(2) is subject, in a Member State, to the condition of possessing general, commercial or professional knowledge or skills, this Member State shall accept as proof of such knowledge or skills the actual exercise of the activity in question in another Member State:

a) for three consecutive years in an independent or managerial capacity;

b) for two consecutive years in an independent or managerial capacity, where the beneficiary can show that he has undergone previous training for the profession concerned, attested by a certificate recognized by the State or accepted as valid by a competent professional organization;

c) for two consecutive years in an independent or managerial capacity, where the beneficiary can show that he has carried on the profession concerned as an employee for at least three years;

d) for three consecutive years as an employee, where the beneficiary can show that he has undergone previous training for the profession concerned, attested by a certificate recognized by the State or accepted as valid by a competent professional organization.

(1) Official gazette No. ..., ...

In cases a) and c) above, activity in the branch concerned must not have been abandoned more than 10 years before the date of application mentioned in Article 5(2).

2. The exercise and, where applicable, professional training must have occurred in the same branch as that in which the beneficiary wishes to set himself up in the host country, save where such country does not make the same requirement of its own subjects.

Article 4

1. Where, in a Member State, admission to or exercise of any of the activities mentioned in Article 1(2) is not subject to the possession of general, commercial or professional knowledge or skills, the said State may, in the event of serious difficulties arising from application of the Council directive referred to in Article 1(2), request authorization of the Commission to require, for a limited period and for one or more specific activities, that subjects of other Member States wishing to carry on these activities in its territory furnish proof that they are qualified to exercise them in their own country.

Such authorization may not apply to persons whose home country does not make admission to and exercise of the activities in question subject to proof of qualification, nor to persons who have been resident in the host country for five years or more.

2. On duly supported application by the Member State concerned, the Commission shall stipulate without delay forms and procedures for application of the authorization mentioned in paragraph 1 hereof.

Article 5

1. Any person shall be considered of managerial capacity in the sense of Articles 3 and 4 who, in an industrial or commercial establishment in the appropriate sectors, has worked as:

a) manager of a business or a branch;

b) assistant to the owner or manager, if he assumed the responsibilities of the latter.

2. Proof that the conditions laid down in Article 3(1) or in Article 4(1) are fulfilled shall take the form of a certificate issued by the competent authority or organization in the home country, to be submitted by the person concerned in support of his application for authorization to set up in business in the host country.

3. The Member States shall, within the time-limit laid down in Article 7, designate the authorities or organizations competent to issue the above-mentioned certificates and inform the other Member States and the Commission to this effect forthwith.

Article 6

The provisions of the present directive shall be applicable during the transition period until entry into force of the rules governing the co-ordination of national regulations for admission to and exercise of the activities in question.

Article 7

The Member States shall take the necessary steps to comply with the present directive within six months of its notification and inform the Commission thereof forthwith.

Article 8

The Member States shall inform the Commission of any internal measures which they contemplate introducing in the field covered by the present directive.

Article 9

The present directive is addressed to the Member States.

Explanatory Memorandum

1. Purpose of the directive

a) On 18 December 1961 the Council, in accordance with Article 54(1) of the Treaty, approved the General Programme for the removal of restrictions on freedom of establishment⁽¹⁾. To execute this Programme the Commission has submitted to the Council proposals for directives to abolish restrictions on freedom of establishment in the activities listed in Schedules I and II of the said Programme.

b) The General Programme for removal of restrictions on services, which was also issued by the Council on 18 December 1961⁽²⁾, refers in Title V C to the timetable provided for implementing the Programme for establishment. For this reason the proposals mentioned above apply also to the removal of restrictions on services.

c) In conformity with Article 54(2), Article 57(1), Article 63(2) and Article 66, the Commission hereby submits to the Council a directive to give effect to the provisions of these Programmes dealing with activities in Groups 852 and 853 ISIC. The present directive deals with transitional measures which, pending co-ordination, are designed to facilitate admission to the profession (Titles V and VI respectively of the Programmes).

The Council is required to consult the Economic and Social Committee and the European Parliament before approving the directive.

⁽¹⁾ Official gazette of the European Communities, No. 2, 15 January 1962, p. 36.

⁽²⁾ *Ibid.*, p. 32.

2. General remarks on the directive

The removal of restrictions on foreigners is not sufficient to ensure freedom of movement as regards establishment and services. The profession can, in fact, only be exercised under the conditions laid down by the host country. If these conditions are liberal, that country will be especially attractive; on the other hand, if they are restrictive, and difficult even for nationals to comply with, they may prevent a foreigner from setting up in the branch concerned.

In the drafting of directives for removal of restrictions consideration should therefore be given to whether the removal of restrictions should be preceded, accompanied or followed by mutual recognition of diplomas, degrees and other certificates of professional competence, and by co-ordination of laws, regulations and administrative instructions concerning admission to and exercise of the activities in question. This procedure is expressly prescribed in Title V of the Programme on establishment and in Title VI of the Programme on services.

In the drafting of the present proposal, consideration was given to the problems involved in mutual recognition of diplomas, degrees and other certificates of professional competence, as well as those involved in the co-ordination of laws, regulations and administrative instructions. Preliminary studies were begun but it has not been possible to complete them. It was therefore decided to go ahead with preparation of a directive on transitional measures intended, as stated in section 1c) above, to facilitate

conditions of admission and make it possible to overcome the most serious difficulties arising out of diversity in national legislations.

3. *Commentary*

Article 1

It should be noted that the directive applies to companies as well as individuals.

Article 2

It is most important for an entrepreneur to have at his disposal reliable information about the legislative provisions to which he will be subject in the host country. This is equally important in projects envisaging establishment and in those involving provision of services. Especially during the transition period it may happen that familiarity with foreign legislation is inadequate. No competent organizations for issuing such information have been specified. It is for the Member State to settle this point in such a way that information is supplied promptly and reliably. The applicant has no legal right to such information, which moreover, is given without commitment; but the information must be given promptly.

Article 3

This provision is intended to ensure freedom of movement for persons. It provides that in a State where admission to a commercial activity is subject to the possession of professional training, a national of another Member State is admitted if he can submit proof that he has previous experience in this particular branch.

The periods of professional activity required in order to benefit from the transitional measures were calculated on the basis of the most exacting regulations — in countries where professional training is compulsory — so as to avoid prejudice to nationals obliged to comply with the aforesaid regulations. Any State, however, which imposes regulations and which prescribes less rigorous conditions for its own nationals may curtail the periods mentioned in Article 3.

In any case shorter periods have been prescribed for those possessing a certificate of previous training.

The fact that the required conditions have been fulfilled may also be proved by means of diplomas, degrees or other certificates. Here Articles 53 and 62 will be applied, and the degree of freedom achieved must also be maintained so far as administrative recognition of certificates for admission to the profession is concerned⁽¹⁾.

Professional skills acquired by workers of another Member State in the host country, though not expressly mentioned in the directive, may be taken into consideration in cases where such workers become self-employed.

Article 4

This article is intended to avoid any distortions arising after the abolition of discriminatory measures in States which impose no conditions on admission to the profession.

In all cases a cautious approach is needed to prevent the States from making illusory the free movement of persons which it is desired to achieve. The Commission, accordingly, will grant the authorizations in question only after receiving a fully supported application, and then for a limited period only. Article 4 cannot be objected to as incompatible with the Treaty, since during the transition period the Council can decide on gradual removal of restrictions in the manner prescribed.

Article 5

In connection with the requirements laid down in Article 3 for eligibility to benefit from the transitional measures, it is recognized that the applicant need not necessarily have exercised in an independent capacity the profession in which he has requested authority for establishment or provision of services in countries where these activities are regulated. Because the professions dealt with in the directive are in practice often exercised by companies and since, as a result, the entrepreneur's responsibilities are borne by highly qualified managerial staff, the application of the transitional measures has been extended to such persons.

Article 5 specifies that not only the manager of a parent company or the manager of a branch company may be considered as a

⁽¹⁾ Thorn Report on the Programme for services, section 54 (European Parliament; document of 1 March 1961).

“manager” but also an assistant manager who bears responsibilities comparable to those of the head of the firm.

Article 6

Titles V and VI of the General Programmes specify that not only the conditions but also the duration of the transitional regulations will be established in preparing the directives.

The Commission emphasizes that the validity of the transitional measures can in no case be prolonged beyond the transitional period.

Proposal for a Council directive on freedom of establishment and freedom to supply services in a self-employed capacity in retail trade (Group ex 612 ISIC) (Art. 54(2) and 63(2) of the Treaty)

(submitted by the Commission to the Council on 13 April 1965)

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54(2 and 3) and Article 63(2 and 3) thereof;

Having regard to the General Programme for the removal of restrictions on freedom of establishment⁽¹⁾, and in particular Title IV C thereof;

Having regard to the General Programme for the removal of restrictions on freedom to supply services⁽²⁾, and in particular Title V C thereof;

Having regard to the proposal of the Commission;

Having regard to the opinion of the European Parliament;

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

Whereas the General Programmes provide for the removal, after the expiry of the second year of the second stage of the

Article 8

The transitional measures do not legally tie the hands of Member States; they retain the right to make laws, regulations and administrative instructions in the field of activities relative to Groups 852 and 853 ISIC for which no co-ordinating measures have as yet been adopted.

The obligation to inform the Commission is designed to prevent the aggravation of existing disparities.

transition period and before the end of the second stage, of all discriminatory treatment based on nationality in the matter of establishment and the supply of services in the retail trade sector;

Whereas “company” in the sense of Article 58(2) of the Treaty also includes co-operative societies, even if they engage only in the resale of the products of their own members;

Whereas, for the application of the rules governing right of establishment and freedom to supply services, the equivalence of companies to individuals who are nationals of Member States is subject only to the conditions set out in Article 58, and, where necessary, to the stipulation of a continuous and effective connection with the economy of a Member State; and whereas, in consequence, no additional stipulation may be made and, in particular, no special authorization, not required of domestic companies for the exercise of any economic activity, may be required for them to benefit from these provisions; and whereas this equivalence does not, however, impair the right of Member States to insist that joint stock companies shall operate in their territories under the designation used by the legislation of the Member State where they are incorporated and shall indicate on

⁽¹⁾ Official gazette of the European Communities, No. 2, 15 January 1962, p. 36.

⁽²⁾ *Ibid.*, p. 32.

the business papers they use in the host country the amount of capital subscribed;

Whereas, because of the differences which exist among Member States in the retail trade field, there is advantage in specifying as exactly as possible the activities which the present directive covers;

Whereas, a separate directive will free the activities of pedlars and hawkers, including the resale of goods on markets, except resale from fixed installations in covered markets which comes under the scope of the present directive;

Whereas hiring activities not covered in other directives come under the scope of this directive;

Whereas resale or hiring of goods may be carried on not only to private persons or households for their private consumption, but also possibly in a secondary or accessory way to small users for their professional needs;

Whereas this directive covers the resale or hiring of goods which have been processed, treated or packaged in accordance with normal practices in the profession concerned;

Whereas this directive must also cover the activities of an industrial or artisan producer established in the territory of a Member State and there selling his own products to the final consumer, except when such products are sold in a single place within the territory, as this last form of sale is already covered by the directive concerning production;

Whereas this directive must also cover retail selling and auctioning;

Whereas this directive does not cover retail trade in medicines and pharmaceutical products, and whereas these activities will be freed later under the provisions of the General Programmes;

Whereas this directive also does not cover retail trading in toxic products and pathogenic agents, and whereas it has been seen that these activities involve special problems of public health protection, taking into account the laws and regulations in force in the Member States;

Whereas, in accordance with the General Programme for the removal of restrictions on freedom of establishment, the restrictions on the right to join professional organizations must be eliminated where the professional activities of the person in question involve the exercise of that right;

Whereas the system applicable to wage-earners accompanying the supplier of services or acting on his behalf is governed by the arrangements pursuant to Articles 48 and 49 of the Treaty;

Whereas special directives, applicable to all self-employed activities, have been or will be issued to cover movement and stay of beneficiaries and, where needed, the co-ordination of guarantees which Member States demand of companies both in the interests of partners and of outside parties;

Whereas, in certain Member States, retail trading in various products is subject to regulations covering access to the profession, and whereas various Member States may if necessary introduce such regulations; and whereas, for this reason, certain transitional measures to facilitate access to and exercise of the profession by the nationals of other Member States are included in a separate directive,

Has adopted the present directive :

Article 1

Member States shall remove, for the individuals and corporations mentioned in Title I of the General Programmes for the removal of restrictions on freedom of establishment and freedom to supply services, hereinafter called "beneficiaries", the restrictions specified in Title III of the said Programmes in respect of access to and exercise of the activities mentioned in Articles 2 and 3.

Article 2

1. The provisions of the present directive shall apply to self-employed activities in the retail trades, except to those concerned with medicines and pharmaceutical products or toxic products and pathogenic agents (Group ex 612 ISIC).

These provisions shall not apply to the commercial activities of pedlars and hawkers, or of salesmen operating on non-covered markets and persons who, in covered markets, do not sell from booths permanently fixed to the ground.

2. For the purposes of the present directive any individual or corporation habitually and professionally buying goods in his or its own name and on own account and reselling them direct to the final consumer, shall be deemed to engage in retail trading activities.

The goods may be resold in the original state, or after processing, treating or packaging, in accordance with normal practices in the retail trades.

The present directive also covers the activities of tobacco retailers (*débits de tabacs*) in France and Italy.

3. The provisions of this directive also cover the retail selling by manufacturers established in the host country who themselves sell their products to the final consumer, where these activities are not covered by the Council directives concerning:

i) Freedom of establishment and freedom to supply services in self-employed activities in the extractive industries (ISIC Major Groups 11-19);

ii) Freedom of establishment and freedom to supply services in self-employed activities in the food and beverages industries (ISIC Major Groups 20-21);

iii) Freedom of establishment and freedom to supply services in self-employed processing activities (ISIC Major Groups 23-40 — Industry and crafts).

4. Under the conditions set out in the foregoing paragraphs activities concerned with the hiring of goods, where not mentioned in other directives, are also included in this directive.

Consequently, those activities listed in the International Standard Industrial Classification of all Economic Activities (Statistical Office of the United Nations, Statistical Papers, Series M, No. 4, Rev. R.1. New York 1958) which are shown in the annex do not come within the province of this directive.

Article 3

The provisions of this directive shall also apply to the self-employed activities of an intermediary who, normally and in the course of his professional duties, conducts retail sales by auction on behalf of others.

Article 4

The provisions of this directive shall not cover activities which are part of the exercise of public authority in Member States. These are as follows:

In France:

a) Activities entrusted by the State to licensees and managers of "*débits de tabacs*", such as receiving declarations of taxpayers subject to indirect taxation and of issuing "*titres de mouvement*" and transshipment bonds against payment of fiscal taxes;

b) The sale by auction of movables and merchandise by public servants or officials of Ministries;

In Italy:

The sale by auction of goods by public brokers (*pubblici mediatori*);

In Germany, Belgium, Luxembourg and the Netherlands:

The participation of bailiffs and notaries in auction sales.

Article 5

1. Member States shall remove restrictions which:

a) Prevent beneficiaries from settling in the receiving country or from supplying services on the same terms and with the same rights as nationals;

b) Result from administrative practices whose effect is to apply discriminatory treatment to the beneficiaries compared with that received by nationals.

2. Foremost among the restrictions to be removed were those which forbid or limit establishment or freedom to supply services by beneficiaries in the following ways:

a) In the German Federal Republic

i) By requiring them to possess a travelling salesman's card ("*Reisegewerbekarte*") in order to canvass third parties in the field of the professional activities of the latter (Paragraph 55 d, *Gewerbeordnung*, version of 5 February 1960; regulation of 30 November 1960);

ii) By making the issue of the aforementioned "*Reisegewerbekarte*" subject to economic requirements ("*Bedürfnisprüfung*"), and by the territorial limitations imposed by this document (Paragraph 55 d, *Gewerbeordnung*, version of 5 February 1960; regulation of 30 November 1960);

iii) By obliging foreign corporations wishing to engage in professional activities within the Federal territory to obtain a special permit (Paragraph 12, Gewerbeordnung and Paragraph 292, Aktiengesetz);

iv) By the fact that for foreigners the grant of permits for the retail sale of explosives is subject to proof or requirement in some Länder and in others to the minimum of three years' residence in the Federal Republic;

v) By the fact that persons engaged in the retail sale of arms and ammunition within the meaning of paragraph 7(3) and paragraph 3(2) of the Waffengesetz of 18 March 1938 must be of German nationality;

vi) By the fact that permission to engage in retail sale in arms and ammunition is refused to corporations, both foreign and domestic, whose capital is chiefly under foreign control (paragraph 10 of the implementing regulation to the Waffengesetz dated 19 March 1938);

b) *In Belgium*

By the obligation to hold a "professional card" (Royal decree No. 62 of 16 November 1939; departmental orders of 17 December 1945 and 11 March 1954);

c) *In France*

i) By the obligation to hold a foreign trader's identity card (decree-law of 12 November 1938, law of 8 October 1940);

ii) By privation of the right to renew commercial leases and of the proprietor's right of repossession (decree of 30 September 1953, Article 38);

iii) By the reciprocity stipulation on trade in carrier pigeons by foreigners (law of 27 June 1957 and decree of 22 April 1958);

iv) By exclusion from trade in hunting, defensive and sporting weapons (decree-law of 18 April 1939 and decree of 14 August 1939);

v) By the French nationality requirement to engage in retail tobacco trade (decree of 29 September 1810 and law of 2 August 1872);

vi) By the requirement, for companies holding special authorizations to import and offer for consumption finished petroleum products, that the Chairman of the Board of Directors, the Managing Director and the majority of the Board of Directors

must be of French nationality, and by obliging the holder of the authorization to reserve a part of the administrative, technical and commercial posts in the firm for staff of French nationality (law of 10 January 1925);

d) *In Italy*

i) By insisting on Italian nationality as a condition for operating establishments for retail sale of salt and tobacco (Law No. 1293 of 22 December 1957);

ii) By exclusion from trade in carrier pigeons (Law No. 3086 of 13 December 1928);

e) *In Luxembourg*

By the limited validity of permits granted to foreigners, under Article 21 of the Luxembourg law of 2 June 1962 (*Mémorial* A No. 31, 19 June 1962).

Article 6

1. It shall be incumbent upon Member States to ensure that the beneficiaries of the present directive enjoy the right to become members of professional organizations on the same terms and with the same entitlements and duties as nationals.

2. In the event of permanent establishment this right of membership shall entail eligibility or right to be appointed to executive posts in the professional organizations. However, such executive posts may be reserved for nationals in cases where the organization concerned participates in the exercise of public authority by virtue of laws or regulations.

3. In the Grand Duchy of Luxembourg, being a member of the Chamber of Commerce or the Chamber of Trades shall not necessarily mean that beneficiaries are entitled to vote when the governing bodies are elected.

Article 7

Member States shall refrain from granting to their nationals travelling to another Member State to exercise one of the activities referred to in Articles 2 and 3 any assistance likely to distort the conditions of establishment.

Article 8

1. Where the host country requires of its own nationals seeking permission to engage in any of the activities referred to in

Articles 2 and 3 proof of honourable character and/or proof that they have never been declared bankrupt, that country shall accept as sufficient proof from nationals of other Member States a certificate based on police records or, failing this, a similar document issued by the appropriate legal or administrative authority in the country of origin or the country from which the applicant has come, showing that these requirements are complied with.

If it is not the practice to issue such a certificate in the country of origin or the country from which the applicant has come, the interested party may submit in lieu thereof an affidavit sworn by him before a legal or administrative authority, a notary or a qualified professional body in the country concerned.

2. When the host Member State requires of its own nationals seeking to engage in retail trade in arms, ammunition and explosives or the sale of alcoholic beverages certain conditions of morality or reputeability, proof of which is not contained in the document mentioned in paragraph 1, sub-paragraph 1, this State shall accept as sufficient proof for nationals of other Member States a declaration delivered by the appropriate legal or administrative authority of the country of origin, or the country from which the applicant has come, showing that these requirements are complied with.

Annex to Article 2, paragraph 4, second part

The following activities covered by the Groups of the International Standard Industrial Classification of all Economic Activities (Statistical Office of the United Nations, Statistical Papers, Series M, No. 4, Rev. 1, New York 1958) do not fall within the scope of the present directive :

- 012 Rental of farm machinery
- 640 Real estate agencies, letting
- 713 Hiring of cars, vehicles and horses
- 718 Hiring of railway carriages and trucks

Such certificates shall deal with the precise facts required by the host country.

3. Documents issued in accordance with paragraphs 1 and 2 shall not be more than three months old at the time they are presented.

4. Within the time-limit laid down in Article 9 below Member States shall name the authorities and bodies competent to issue the above-mentioned documents, and shall immediately inform the other Member States and the Commission accordingly.

5. When the host Member State requires proof of financial standing, that State shall consider attestations issued by authorities or banks in the country of origin or country from which the interested party came as equivalent to those issued in its own territory.

Article 9

Member States shall take the necessary steps to comply with this directive within six months from its notification, and shall inform the Commission without delay of the action taken.

Article 10

The present directive is addressed to the Member States.

- 839 Machinery hiring services for enterprises
- 841 Hiring of films and equipment
- 842 Agencies for hiring and equipping theatres
- 843 Hiring of pin-tables, bicycles, pleasure boats
- 853 Letting rooms
- 854 Renting of clean linen
- 859 Renting of clothes and costumes.

Explanatory Memorandum

I. INTRODUCTION

1. *Object of the directive*

a) On 18 December 1961 the Council, acting in accordance with Article 54(1), adopted the General Programme for the removal of restrictions on freedom of establishment⁽¹⁾.

Title IV C of the Programme (time-table) stipulates that in respect of the activities listed in Schedule II of the Programme restrictions on freedom of establishment shall be removed between the final date specified in paragraph A and the end of the second stage of the transition period (i.e. between 31 December 1963 and 31 December 1965).

In Schedule II, under Group ex 612, mention is made of the retail trade activities except some whose exclusion is explained in Point II (3) of this explanatory memorandum.

b) The General Programme for the removal of restrictions on freedom to supply services, approved by the Council on 18 December 1961⁽²⁾, refers in Title V C to the time-table fixed for the implementation of the programme for freedom of establishment.

c) In accordance with Articles 54(2) and 63(2) the Commission hereby submits to the Council the text of a directive for the implementation of those provisions of the programme which concern activities in Group ex 612.

These Articles require the Council, before adopting the directive by qualified majority, to consult the Economic and Social Committee and the European Parliament.

d) The Commission has judged it useful to include with its draft directive a commentary explaining its proposals and giving its opinion on certain observations made by national experts during the preliminary work.

2. *Economic considerations in brief*

The chief aim of the Treaty of Rome with regard to freedom of establishment and freedom to supply services is the removal

of restrictions which in some States hinder access to and exercise of self-employed activities for nationals of other Member States. The freedom is in any case not absolute: the sole aim is to guarantee the same conditions for foreigners as for nationals.

It should be noted that the structures of the retail trade are fairly dissimilar, and that their only real common feature is a tendency to develop, although at different paces, towards similar forms.

In each country there is an increasingly distinct trend towards "integrated" activities (large stores, single-price stores, supermarkets, self-service shops, chain stores, consumers' co-operatives, large mail order firms) and "semi-integrated" activities (groups of retailers, voluntary chains, etc.).

In the German Federal Republic, this pattern developed far and fast during the post-war period. Voluntary integration has spread and the shops/population ratio is now among the best in Europe.

In France also the tendency towards integration is remarkable and is accompanied by a growing trend towards "non-specialization" in trade.

In Italy, very different social and economic conditions from those prevailing in the other countries have made progress towards integration slower. The number of small and very small establishments is extremely large in absolute figures and this explains the very high shops/population ratio.

In the Netherlands, trade has always been highly developed. During the post-war period, a considerable growth in the number of shops was recorded, but it has remained fairly well below population increase. In addition, the total increase in establishments is related to the spread of chain stores. This indicates another tendency, i.e. towards larger firms.

In Belgium, the shops/population ratio is the highest in the Six. This is because shop-keeping is often not an independent activity but is additional to some other principal activity.

A great number of the shop-keepers endeavour in this way to round out family budgets rather than to obtain a real professional income.

⁽¹⁾ Official gazette No. 2, 15 January 1962, p. 36.

⁽²⁾ *Ibid.*, p. 32.

The situation in Luxembourg is quite unusual. The small size of the country has encouraged the development of direct relations between producers and consumers, and hence the number of commercial establishments is quite small.

The outstanding feature of the system in Luxembourg is the existence of restrictive legislation forbidding certain forms of distribution, such as single-price and multiple stores, co-operatives and emporia.

II. THE SCOPE OF THE DIRECTIVE

1. *Nomenclature*

The directive covers activities in Group ex 612 mentioned in Schedule II of the General Programmes. The Schedules were drawn up on the basis of the ISIC nomenclature "International Standard Industrial Classification of all Economic Activities", Series M, No. 4, Rev. 1, New York 1958, Statistical Papers of the United Nations.

The present directive follows the ISIC nomenclature as there is at the moment no Community nomenclature for commercial activities, although work on this has already been in progress for a long time.

2. *Conditions which the activities to be liberalized must fulfil*

The Commission has observed that definitions regarding the retail trades vary widely from one Member State to another. To avoid ambiguities and errors in the application of the provisions, the activities dealt with in this directive have therefore been exactly defined.

a) The activities must be the normal professional occupation of an individual or a corporation buying and selling in his or its own name and on his or its own behalf.

This condition marks off these commercial activities from those of intermediaries already freed by Directive 64/224/CEE of 25 February 1964.

b) The goods must be sold to the final consumers. This will avoid confusion between the classification of retail and wholesale activities.

Final consumers will be private persons and households, in so far as they buy for their own private consumption. Exceptionally, and to take account of a practice followed in

all countries, the directive allows that sales may also be made on a secondary and subsidiary basis to small professional consumers.

Retail sales of their own products by manufacturers, in so far as this is a necessary concomitant of production and is carried out in a single establishment, has already been freed, as this was clearly advisable in accordance with directives on processing activities⁽¹⁾. If sales are carried out at several points, an independent commercial activity clearly exists, and the present directive must therefore be applied.

c) *The activities must be of a permanent nature*

Although this condition is not explicitly stated, it follows from the exclusion from the scope of the present directive of the activities of pedlars and hawkers, sales on non-covered markets and, in covered markets, sales from installations not firmly fixed to the ground.

These activities are excluded because, although covered by Group ex 612, they are included in Schedule IV of the General Programme and will be freed later by a special directive.

d) *The directive covers retail trade in all categories of goods*

The reasons for the exceptions to this principle are given in paragraph 3.

It should further be pointed out that assembly and repair operations, in so far as these constitute activities which are secondary and complementary to sales, should be considered as freed by this directive. The same applies to processing, treatment and packaging as normally practised in the retail trades.

3. *Retail trade activities excluded from the directive*

a) The directive does not cover activities in sub-group ex 6122 (distribution at retail of pharmaceuticals and drugs), specified in Schedule III, and trade in toxic products and pathogenic agents.

A Community definition of branded pharmaceuticals and drugs has already been given in a special directive⁽²⁾. It should

⁽¹⁾ See Article 2 paragraph 3 of Council Directive 64/428/CEE and Article 2 paragraph 2 of Council Directive 64/429/CEE, published in the official gazette of the European Communities, No. 117, 23 July 1964.

⁽²⁾ "Council directive of 26 January 1965 on the harmonization of laws and regulations concerning branded pharmaceuticals, official gazette of the European Communities, No. 22, 9 February 1965, p. 369."

be stressed here that toilet products, cosmetics, etc. cannot be considered as pharmaceuticals and must therefore be freed. In the case of trade in toxic products and pathogenic agents, the Council, after approving the General Programmes, and in view of the special nature of this sector, decided that the freedom of sales, both wholesale and retail, should be achieved on the basis of a single special directive. The draft of this directive, which is already being worked out by the various Commission services, will be sent to the Council in the near future.

b) Article 55 paragraph 1 of the Treaty, concerning the exercise of public authority, explains the exclusion from the scope of the present directive of the activities listed in Article 4 thereof.

4. *Special problems*

a) Retail sale of tobacco

The sale of tobacco is covered by the present directive. France and Italy asked that tobacco retailers (*débitants de tabac*) in their countries should be exempted by virtue of Articles 55 (first paragraph) and 37 of the Treaty, respectively.

The Commission considers that since it deals with exceptions Article 55, first paragraph, should be interpreted restrictively and limited to such activities within a profession as include the exercise of public authority. The Commission has therefore listed in Article 4 those activities of tobacco dealers in France which meet that criterion, whilst freeing all their other activities.

As regards Article 37, the Commission notes that this provision is included in the Title covering the free movement of goods. Free movement of persons is a general principle (Article 3 c) subject only to exceptions expressly provided for. The adjustment of monopolies covered by Article 37 cannot therefore be an obstacle to the application of rules on the free movement of persons.

b) Retail auction sales

The index to the ISIC classification⁽¹⁾ includes amongst activities in Group ex 612

⁽¹⁾ Indexes to the International Standard Industrial Classification of all Economic Activities, Series H, No. 4, Rev. 1, Add. 1 Indexed Edition, United Nations publication (Sales No. 59 XVII 9).

not only those of retail trades, but also the activities of the intermediary who carries out retail auction sales on behalf of others.

In keeping with this attitude, Article 3 has extended the scope of the directive to these activities.

Wholesale auction sales have already been freed by Directive 64/224/CEE of 25 February 1964.

In principle it may be said that in the Member States the same laws are common to both wholesale and retail sales.

In some States these activities come under the heading of exceptions which, as pointed out in Article 4 of this directive, are admissible under Article 55 of the Treaty.

c) Hiring of goods

A special form of activity — the hiring of goods — has recently grown up alongside the retail trades proper in the various countries.

This is normally a secondary activity to retail trade and is carried on in the same shops, although there are a growing number of businesses specializing in hiring. At various places in the schedules to the General Programmes examples are given of the hiring of certain types of goods. These activities, which have been collated in a list attached to this directive, will be freed by special directives to be adopted at different dates in the future.

It seemed opportune to provide in the present directive for the freeing of the hiring of all other types of goods for which no date of liberalization has yet been provided, because the goods are not expressly mentioned in the schedules to the General Programmes. One reason for this is the close connection between retail trade and hiring.

III. REMOVAL OF RESTRICTIONS

1. Article 5(1) lays down the principle of equal treatment as between nationals and foreigners, and recalls the prohibition on discriminatory administrative practices.

The Commission will pay particular attention to this field so that freedom of establishment shall not be indirectly limited by discretionary decisions, examinations of economic need, etc.

Paragraph 2 on the other hand contains a list of examples of restrictions actually in force under national laws.

The foreigner's cards, required by France and Belgium, may not be replaced by other documents without violating the Treaty, the General Programme and this directive.

2. It must be emphasized that complete freedom of establishment and freedom to supply services will be achieved not only on the basis of this directive, which removes restrictions, but also of others which supplement it on important points.

Amongst these are the Council directive on the removal of restrictions on movement and residence of nationals of the Member States within the Community in the field of the establishment and supply of services, adopted on 25 February 1964, and the directives which will have to be issued concerning the object on which or with the aid of which the service is provided (Title V A of the General Programme for the removal of restrictions on freedom to supply services) and the transfer of funds (Title V B).

3. The present directive takes no account of the movement of goods and capital either, as this is governed by special provisions in the Treaty.

4. Article 6 affirms the principle of the right to join professional organizations, which includes eligibility to stand as candidates and the right to vote at elections to executive posts in these bodies. Eligibility is not recognized when these organizations participate in the exercise of public authority. In Luxembourg, where Articles 29 and 32 of the law of 4 April 1924 provide that professional organizations must be consulted on important draft laws and on budgetary problems, foreigners are excluded even from the right of taking part in the election of the governing bodies of these organizations.

5. The aim of Article 7 is to ensure, in accordance with Article 54(3 h), that the conditions of establishment are not impaired.

IV. HONOURABLE CHARACTER

Article 8 provides that documents issued by an appropriate authority in the country of origin shall be sufficient proof in the host country.

Since extracts from police records are not issued in all Member States, this provision is particularly important, as it means that similar documents, such as good conduct certificates issued by the police which even private persons can obtain are recognized as equivalent. In addition, when, as in the case in France, national regulations stipulate that the interested party shall not previously have been declared bankrupt, the foreigner must also provide such proof, but even in this case the procedure must be simplified for him.

For certain sensitive trading sectors, such as the resale of arms, ammunition, explosives, or of alcoholic beverages, certain Member States require high standards of morality and standing. To enable these States to offer nationals to other Member States the same guarantees as they offer their own nationals, the directive introduces the principle that non-nationals must be in possession of documents issued by the authorities in their country of origin or the country from which they have come, and that these should be to all intents and purposes the same as those required of nationals.

V. TRANSITIONAL MEASURES

When working out the directive, the Commission examined the necessity of transitional measures governing the recognition of qualifications and the co-ordination of laws and regulations on retail trade activities.

Already at the time it approved the General Programmes, the Council emphasized that such mutual recognition would involve careful preparation, especially in the retail trade field. This has been undertaken by the Commission, but is not yet complete. To have waited until this preparatory work was finished would, however, have meant delaying the directive on the removal of restrictions. It therefore seemed preferable to provide for transitional measures in a special directive to be adopted and brought into force at the same time as the present directive. As admission to the profession is governed by regulations in the Netherlands, the German Federal Republic and Luxembourg, these transitional measures are intended to facilitate such admission for nationals of other Member States wishing to exercise their activities in these countries.

Proposal for a Council directive
on transitional measures affecting self-employment in retail trade
(Group ex 612 ISIC),
(Art. 54(2), Art. 57(1), Art. 63(2) and Art. 66 of the Treaty)
(submitted by the Commission to the Council on 30 March 1965)

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54(2), Article 57(1), Article 63(2) and Article 66 thereof;

Having regard to the General Programme for the removal of restrictions on freedom of establishment⁽¹⁾, and in particular Title V, second and third paragraphs thereof;

Having regard to the General Programme for the removal of restrictions on freedom to supply services⁽²⁾, and in particular Title VI, second and third paragraphs thereof;

Having regard to the proposal of the Commission;

Having regard to the opinion of the European Parliament;

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

Whereas the General Programmes, as well as providing for the removal of restrictions, also recognize the need to examine whether such removal should be preceded, accompanied or followed by the mutual recognition of degrees, diplomas and other qualifications and by co-ordination of laws and regulations on access to and exercise of these activities, and whether, pending such recognition and co-ordination, transitional measures should be adopted as and when required;

Whereas conditions are not imposed in all the Member States for access to and exercise of retail trades and in some cases such access and exercise are unrestricted while in others an appropriate certificate or diploma is essential for entry into the profession;

Whereas the Council, when approving the General Programmes, noted that any co-ordination or multilateral recognition of qualifications for the retail trades gives rise to problems whose solution needs detailed preparation;

Whereas it is consequently not possible to carry out the proposed co-ordination simultaneously with the removal of restrictions and whereas the question of co-ordination will have to be postponed until a later date;

Whereas, failing such immediate co-ordination, it nevertheless appears desirable to facilitate the supply of services in the activities in question by temporary measures such as those provided for in the General Programmes, and this primarily to avoid abnormal difficulties for nationals of Member States where no qualifications are required for access to these activities;

Whereas, to avoid this consequence, the transitional measures should mainly consist of accepting, as a sufficient condition for access to the activities in question in host states having regulations on admission to them, the actual pursuit of the profession in the country from which the beneficiary came for a reasonable and not too remote period in cases where prior training is not demanded as proof that he has equivalent professional qualifications to those required of nationals;

Whereas the periods fixed in this directive concerning the exercise of the profession in the country of origin are only maximum time-limits, and the host country is free to reduce them;

Whereas the practical experience and, where appropriate, training in the profession, must have been acquired in the same branch as that in which the beneficiary wishes to establish himself in the host country, if that country imposes this condition on its own nationals;

*Whereas the temporary measures already adopted concern, *inter alia*, the professional activities of the intermediary who conducts by wholesale auctions on behalf of others, and whereas the conditions contained in this directive can be made applicable to sales by auction and retail;*

Whereas the temporary measures adopted by means of this directive apply to the self-employed activities in the retail trades

⁽¹⁾ Official gazette No. 2, 15 January 1962, p. 36.

⁽²⁾ *Ibid.*, p. 32.

dealt with in Article 2 of Council Directive No. 65/.../CEE, independently of the sometimes divergent definitions given by Member States of these activities;

Whereas it is necessary to authorize states which have no regulations governing access to the activities in question to demand, where necessary, for one or more activities proof from nationals of other Member States of their qualifications to exercise the activity in question in the country from which they came, in order to prevent a disproportionately high influx of persons who would not have been capable of satisfying the conditions of access and exercise required in that country;

Whereas such authorization can, however, only be given with great caution, for, if they were too general, they would be likely to hinder free movement, and whereas it is therefore important to limit them both in time and scope and to vest in the Commission, in accordance with the general provisions of the Treaty on the application of the safeguard clauses, the responsibility for authorizing their implementation;

Whereas the measures laid down by this directive will no longer be needed when the co-ordination of the conditions on access to and exercise of the activity in question and the mutual recognition of degrees, diplomas and other qualifications have been achieved; and whereas furthermore they will in any event have to be abolished at the end of the transition period because, thereafter, there could be no question of their replacing the machinery explicitly required by the Treaty, such as the co-ordination of national regulations and the mutual recognition of the qualifications governing, in each country, access to and exercise of the self-employed activity in question as far as may be necessary to facilitate such access and exercise,

Has adopted the present directive :

Article 1

1. Member States shall adopt, under the conditions set out below, the following transitional measures concerning the establishment on their territory of the individuals and corporations referred to in Title I of the General Programmes and the supply of services by such individuals and corporations, hereinafter called the beneficiaries, in the sector of self-employed activities mentioned in paragraph 2.

2. The activities in question shall be those specified in Council directive of ... on freedom of establishment and freedom to supply services for self-employed activities in the retail trades (Group ex 612 ISIC) ⁽¹⁾, except those of the intermediary who engages in auction and retail sales on behalf of others.

3. With regard to the application of transitional measures, the professional activities of the intermediary undertaking auction and retail sales on behalf of others shall be subject to the provisions of Article 2 and the following articles of the Council directive of 25 February 1964 on transitional measures in the field of wholesale trade and activities as intermediaries in commerce, industry and the handicrafts ⁽²⁾.

Article 2

Member States in which access to and exercise of any of the activities mentioned in Article 1(2) is subject to the possession of certain qualifications shall be responsible for notifying any beneficiary requesting it, before settling or before taking up a temporary occupation, of the appropriate regulations covering his prospective occupation.

Article 3

Where a Member State makes access to or exercise of any of the activities referred to in Article 1(2) subject to the possession of general commercial or technical knowledge and general qualifications, it shall recognize the actual exercise of such activity in another Member State as sufficient proof of such knowledge and qualifications in the following cases :

a) If the person concerned has worked on his own account or in a managerial capacity for three consecutive years;

b) If the person concerned has worked on his own account or in a managerial capacity for two consecutive years, provided that he can prove that he received prior training for the profession in question, leading to an award recognized by the state or considered fully adequate by a competent professional body;

c) If the person concerned has worked on his own account or in a managerial capacity for two consecutive years, and can prove

⁽¹⁾ Official gazette No.

⁽²⁾ *Ibid.*, No. 56, 4 April 1964, pp. 857-59.

that he has worked on behalf of another party for at least three years in the profession in question;

d) If the person concerned has worked for three consecutive years on behalf of another party and can prove that he has received appropriate prior professional training leading to award of a certificate recognized by the state or considered fully adequate by a competent professional body.

In the cases covered by a) and c) above, the activities must not have been terminated more than ten years before the application specified in Article 5(2) is lodged.

Article 4

1. Where in a Member State access to or exercise of any of the activities referred to in Article 1(2) is not subject to the possession of particular knowledge and of general commercial or professional skills such Member State may, in the event of serious difficulties arising from the application of the Council directive specified in Article 1(2), request authorization from 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 the country from which they come.

This right may not be exercised in respect of persons coming from a country which does not make the possession of such knowledge a condition of admission to the occupations in question, nor of persons who have been resident in the host country for at least five years.

2. Upon receipt of a duly motivated request from the Member State concerned, the Commission shall at once establish the terms and implementing details of the authorization mentioned in paragraph 1 of this Article.

Article 5

1. The phrase "in a managerial capacity" as used in Articles 3 and 4 shall be understood to cover any person having occupied,

in an industrial or commercial establishment in the sector concerned, the post of

a) Manager (chef d'entreprise), or branch manager;

b) Assistant to the entrepreneur or manager if this involves the same degree of economic and commercial responsibility as that of the entrepreneur or manager represented.

2. Proof that the conditions specified in Articles 3 or 4(1) have been fulfilled shall be in the form of an attestation by the competent authority or organization in the country from which the interested party came and which he must submit in support of his application to engage in the activity or activities in question in the host country.

3. Member States shall nominate, within the time-limit specified in Article 7, the authorities and organizations competent to provide the attestations mentioned above, and shall immediately inform the other Member States and the Commission thereof.

Article 6

The provisions of the present directive shall remain in force within the limits of the transitional period until such time as the provisions concerning the co-ordination of national regulations on access to and exercise of the activities in question are put into effect.

Article 7

Member States shall take the necessary steps to comply with the present directive within six months of notification and shall at once inform the Commission of these steps.

Article 8

Member States shall also give the Commission due notice of any subsequent major provision of municipal law they wish to adopt within the province of this directive.

Article 9

This directive is addressed to all Member States.

Explanatory Memorandum

1. Subject of the directive

a) On 18 December 1961 the Council, acting in accordance with Article 54(1) of the Treaty, approved the General Programme for the removal of restrictions on freedom of establishment⁽¹⁾. To put this Programme into practice, the Commission submitted to the Council draft directives for the removal of restrictions on freedom of establishment for the activities listed in Schedules I and II of the Programme.

b) The General Programme for the removal of restrictions on freedom to supply services, which was also adopted by the Council on 18 December 1961⁽²⁾, refers in Title V C to the time-table laid down for implementing the programme on establishment. The provisions mentioned above therefore also cover the removal of restrictions on freedom to supply services.

c) The Commission hereby submits to the Council, in pursuance of Articles 54(2), 57(1), 63(2) and 66, the text of a directive to implement these Programmes in the field of activities in the retail trades (Group ex 612 ISIC). This directive is concerned with transitional measures which, until co-ordination is achieved, are aimed at facilitating access to the profession (Titles V and VI respectively of the Programmes).

The Council must consult the Economic and Social Committee and the European Parliament before deciding, by qualified majority, on the Commission's proposal.

2. Notes on the directive

a) The removal of restrictions in the case of foreigners alone will not suffice to ensure free movement of persons in the fields of establishment and supply of services. The profession in all cases can only be exercised in accordance with the conditions laid down by the host country. If these are liberal, the country will exert a certain attraction; on the other hand, if they are restrictive and difficult to fulfil even for nationals, they may prevent foreigners from pursuing the profession.

When drawing up the directives for the removal of restrictions, the question of whether such removal should be preceded, accompanied or followed by the mutual

recognition of diplomas, certificates and other qualifications must be considered, as must also be the co-ordination of laws and regulations concerning access to and exercise of these activities.

This method is expressly specified in Title V of the Programme for establishment, and in Title VI of the Programme concerning the supply of services.

b) When adopting these programmes, the Council made the following declaration, with more special reference to the problems of the retail trades :

"When approving the General Programme the Council noted that the problems of co-ordinating laws and regulations and of mutual recognition of diplomas, certificates and other qualifications arise for handicrafts and retail trades and that, in view of the careful preparation which may be necessary to solve these problems, temporary measures would seem to be called for to avoid certain distortions which might arise from the removal of restrictions. The Council therefore requests the Commission to bear these points in mind when drawing up the directives."

c) Work on the directive for the removal of restrictions confirmed the Council's forecasts that co-ordination would give rise to problems, and it was therefore decided to draw up a directive on transitional measures (as pointed out in 1(c) to facilitate conditions of entry and deal with the most serious difficulties arising from the diversity of national legislations.

3. Existing arrangements in the various Member States concerning access to and exercise of retail trade activities

A brief summary of the present state of national legislations seems called for here to show in which countries the transitional measures will have to be applied.

a) In Belgium, although the law of 24 December 1958 on the introduction of conditions for the exercise of the activities in question in small and medium-sized concerns is still in force, there are no regulations as yet in any sector.

b) In the Federal Republic of Germany on the other hand, permits to carry on retail trade activities are conditional upon can-

⁽¹⁾ Official gazette No. 2, 15 January 1962, p. 36.

⁽²⁾ *Ibid.*, p. 32.

didates showing proof of the necessary qualifications. This may be done in the following ways :

i) *For retail trade in general goods*

By producing proof of commercial apprenticeship and two years of practical training; or five years of practical experience of which two must have been spent in a managerial capacity; or

by passing a special examination (Chamber of Commerce);

ii) *For retail trade in foodstuffs*

By producing proof of commercial apprenticeship and three years' work in a specialized commercial establishment; or

by taking a special examination after a period of more than two years practical training in a specialized establishment; or

by five years in a specialized capacity, of which two as a manager; or

by passing a special examination (Chamber of Commerce).

c) In France, no special professional qualifications are required.

d) In Italy, under Decree-law No. 2174 of 16 December 1926 licences are issued by the commune for commercial activities.

They are granted after an examination of the economic need for a new establishment in a given area. Their issue is not however dependent on diplomas or compulsory preparatory training in the branch concerned

e) In Luxembourg the law of 2 June 1962 introduced the principle that the applicant must furnish proof of the necessary professional qualifications.

The applicant must therefore possess a certificate of qualification or hold an equivalent diploma or certificate issued by the administrative commission showing that he is properly qualified after the requisite period of apprenticeship in the branch for which he is seeking authorization.

f) In the Netherlands, knowledge of commercial methods has been a necessary condition since 1937; a law passed in 1954 extended this obligation to 45 commercial sectors. In some cases professional qualifications and proof of solvency are required in addition to the necessary commercial knowledge.

The states in which these transitional measures will come into effect are therefore the Federal Republic of Germany, Luxembourg and the Netherlands.

4. Comments on the chief articles

Article 1

This article specifies that the transitional measures shall apply only to retail trade activities and not extend to intermediaries who sell by auction, although all these activities are included in the same directive.

In the case of intermediaries in the retail trades, it seemed more profitable to apply the same transitional measures as those for intermediaries in the wholesale field, since conditions of access are identical for the two sectors in the six countries. This justifies the reference to Article 2 and the following articles of the Council directive of 25 February 1964 (64/222/CEE).

It should also be noted that not only individuals but also corporations are beneficiaries under the transitional measures.

Article 2

It is very important for an entrepreneur to have reliable information on the legal provisions to which he will be subject in the host country. This applies both for any plan of possible establishment and for the supply of services. During the Common Market transition period in particular it is quite possible that interested parties will not be fully familiar with foreign legislation.

The body competent to distribute information is not specified. It is incumbent upon the Member State to ensure that the channels are rapid and efficient. The applicant has no absolute right to such information, which is in any case supplied without commitment, but it must be issued quickly.

Article 3

This article aims at freeing movement of persons. Under it, in a state where admission to a commercial activity is subject to the possession of professional qualifications the citizen of another Member State will be admitted if he can prove that he has already acquired some experience in the sector in question. The length of professional experience necessary to benefit

from the transitional measures has been worked out on the basis of the most severe conditions — where professional experience is compulsory — so that nationals who have to fulfil these conditions shall not be at any disadvantage. These periods are the same as those provided for in Directive 64/222/CEE on transitional measures in the field of activities in the wholesale trades and as intermediaries in trade, industry and handicrafts for nationals of a Member State able to prove that they have carried on retail trading in a self-employed capacity.

This directive however introduces certain new ideas compared with the earlier one. It provides that, under certain conditions, even periods of employment in a wage-earning capacity may be taken into consideration to benefit from the transitional measures when similar opportunities for admission are provided for nationals in states where the profession is subject to regulations. It should further be pointed out that Member States in which regulations are not severe are free to shorten the time-limits mentioned in Article 3. In any case, shorter periods have been envisaged for persons holding a certificate proving preliminary training.

Compliance with the required conditions may also be proved by the production of diplomas, certificates and other awards already accepted as indication of equivalent knowledge. In this case Articles 53 and 62 will be applied, and the degree of liberalization achieved will also have to be maintained as regards recognition by the authorities of certificates for purposes of admission to the profession⁽¹⁾.

Professional skills acquired by workers from another Member State in the host country, although not specifically mentioned in the directive, may be taken into consideration when such workers transfer from a wage-earning to a self-employed occupation.

In the case of "mixed" activities, it would seem logical that the host country where regulations are in force should be able to demand of the foreign person or corporation wishing to settle or supply services possibly higher qualifications than are required of its nationals.

⁽¹⁾ Thorn report on the programme for the supply of services, Point 54 (European Parliament, 1961-1962 session document of 1 March 1961.)

Article 4

The aim of this article is to avoid distortions which might arise, after the removal of discrimination, in states without entry qualifications to the profession.

Care must be taken at all times to ensure that states do not render illusory the freedom of movement of persons which should be achieved. The Commission will therefore grant authorizations only on substantiated requests, and for a limited period. Article 4 is quite compatible with the provisions of the Treaty, since, during the transition period, the Council can decide to lift these provisions gradually and by specific procedures.

Article 5

With respect to the conditions required under Article 3 to benefit from the transitional measures, it is recognized that it shall not be absolutely necessary to have carried out in a self-employed capacity the activity in respect of which permission to become established or to supply services is sought in those countries where the activity is subject to regulations. Since in practice commercial activities are often exercised by firms, and consequently the entrepreneurial responsibilities fall on highly qualified employees such as "directors of firms" who work in a managerial capacity, it has seemed reasonable to extend to such persons the benefit of the transitional measures.

Article 5 expressly states that for this purpose not only the head of a parent firm or of a branch thereof, but also an assistant manager with responsibilities corresponding to those of a head of firm, may be considered as a director of a firm working in a managerial capacity.

Article 6

These transitional measures can have only temporary validity. Titles V and VI of the General Programmes therefore provide that not only the conditions of the temporary system but also its duration shall be fixed when the directives are being worked out.

The Commission draws the attention of all concerned to the fact that the validity of the transitional measures may in no case extend beyond the end of the transition period.

Article 8

The transitional measures may not have the effect of paralysing the legal processes of the states, which shall retain their right to pass laws and introduce regulations

for those retail trade activities for which co-ordination measures have not yet been adopted.

The obligation to inform the Commission will prevent any aggravation of existing disparities.

Proposal for a Council directive on freedom of establishment and freedom to supply services in a self-employed capacity in the food and beverage industries (ISIC Major Groups 20 and 21)

(submitted by the Commission to the Council on 15 April 1965)

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 54 (2 and 3) and 63 (2 and 3) thereof;

Having regard to the General Programme for the removal of restrictions on freedom of establishment⁽¹⁾ and in particular Title IV C thereof.

Having regard to the General Programme for the abolition of restrictions on the freedom to supply services⁽²⁾, and in particular Title V C thereof;

Having regard to the proposal of the Commission;

Having regard to the opinion of the European Parliament.

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

Whereas the General Programmes provide for the abolition, before the end of the second stage, of all discriminatory treatment based on nationality in respect of establishment and the right to supply services in the food and beverage industries; whereas in this respect, no distinction is made in the Programmes between industrial enterprises and artisan enterprises as far as the date of liberalization is concerned; whereas it is not feasible to set a later date for liberalization in respect of artisan enterprises, in view of the fact

that the legal definitions of artisan activities diverge too widely from one country to another and since distortions might arise if liberalization took place at different dates in respect of enterprises of identical economic structure; whereas, moreover, the co-ordination of legislation governing artisan activities would require a formidable amount of preparatory work which would serve merely to delay the application of liberalization measures; whereas, however, the abolition of restrictions on foreigners must be accompanied by transitional measures — laid down in a special directive — designed to offset the consequences of disparities between national laws;

Whereas, in respect of activities relating to the processing of cereals, certain national regulations prohibit the construction of new mills and any increase in the capacity of the existing milling plant; whereas this does not mean that the application of the present directive to this sector of activity will serve no useful purpose; whereas the main objective is to ensure that the restrictions imposed in the Member States on the taking over of existing enterprises by nationals of other Member States are abolished;

Whereas the present directive does not apply to the manufacture of foodstuffs or beverages which are to be considered as medicines or drugs; whereas these activities will be liberalized under another directive;

Whereas the present directive does not apply to the primary production of foodstuffs or beverages by farmers, for example viticulture, forestry, hunting and fishing,

⁽¹⁾ Official gazette of the European Communities, No 2, 15 January 1962, p. 36.

⁽²⁾ *Ibid.*, p. 32.

or the processing of fish carried out on board fishing vessels or factory ships; whereas these activities will be liberalized under other directives;

Whereas, since the adoption of the General Programmes, a special EEC nomenclature of industrial activities has been drawn up under the title "Nomenclature des industries établies dans les Communautés européennes" (NICE) (Nomenclature of Industries in the European Communities); whereas, while it uses the same decimal classification, this nomenclature, containing references to the national nomenclatures, is better adapted to the needs of the Community's Member States than the ISIC (International Standard Industrial Classification of all Economic Activities); whereas it would consequently be advisable to adopt the NICE for the classification of activities to be liberalized when a directive relates to many activities which for the purpose of easier implementation must be specified, provided the timetable laid down in the General Programmes and resulting from the adoption of the ISIC is not thereby modified; whereas in the case in point the adoption of the NICE can have no such effect;

Whereas specific directives applicable to all self-employed activities and dealing with the entry and residence of the beneficiaries and, to such extent as required, directives for the co-ordination of the guarantees required in the Member States of companies to protect the interests of members and of third parties have been or are to be laid down;

Whereas in conformity with the provisions of the General Programme for the removal of restrictions on freedom of establishment, the restrictions concerning membership of trade organizations must be abolished wherever the professional activities of the person concerned involve such membership;

Whereas the assimilation of companies, for the purpose of applying provisions on the right of establishment and freedom to supply services, to natural persons being nationals of the Member State is subject only to the conditions laid down in Article 58 and, if necessary, to that of an effective and continuous link with the economy of a Member State; and whereas consequently no further condition, in particular no special authorization not required for a national company to carry on business, may be required to enable

them to benefit by these provisions; and whereas such assimilation nevertheless does not impair the power of the Member States to require that companies should operate in their country under the style used in the laws of the Member State under which they were incorporated and indicate the amount of their subscribed capital on the business stationery used by them in the host country;

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

Whereas the effective liberalization of the activities covered by the present directive requires the liberalization of the sale of goods, including retail sales, though the conditions of competition in the retail sector, the liberalization of which will be dealt with under a particular directive, must not be interfered with;

Has adopted the present directive :

Article 1

The Member States shall abolish in favour of such individuals or corporations as are mentioned in Title I of the General Programmes for the removal of restrictions on freedom of establishment and freedom to supply services, hereinafter called beneficiaries, the restrictions mentioned in Title III of the said Programmes as far as concerns pursuit of the activities mentioned in Article 2 below.

Article 2

1. The provisions of the present directive shall apply to all self-employed activities in the food manufacturing and beverage industries listed in Schedule II of the General Programme for the removal of restrictions on freedom of establishment, Major Groups 20 and 21.

These activities correspond to those listed in Major Groups 20 A, 20 B and 21 of the NICE, which is specially adapted to the structural characteristics of the European manufacturing industries; the activities concerned are listed in an annex to the present directive.

2. The provisions of the present directive shall also apply to the selling activities of manufacturers marketing their own

products, whether wholesale or retail. However, where the self-employed activities connected with trade in the products in question have not been liberalized under other directives, such activities must be confined to sales in a single establishment situated in the country of production.

Article 3

The following activities shall be excluded from the scope of the present directive in all member countries :

a) The primary production of foodstuffs and beverages through agriculture, forestry, hunting and fishing (Major Groups 01, 02, 03 and 04 of the ISIC) and especially viticulture (Group 011) and the processing of fish carried out on board fishing vessels (Group 042 of the ISIC).

b) The manufacture of medicines and drugs.

Article 4

1. The Member States shall abolish all restrictions which, in particular :

a) Prevent beneficiaries of 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 the nationals of the country concerned;

b) Stem from an administrative practice and lead to discrimination between beneficiaries of 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 beneficiaries of the present directive to establish themselves or to supply services is annulled or impaired as in the following ways :

a) *In the Federal Republic of Germany :*

i) By requiring travelling salesmen to hold a special card (Reisegewerbekarte) in order to call on other persons in the course of business (Gewerbeordnung sec. 55d; regulation of 30 November 1960);

ii) By requiring foreign companies to hold a special permit in order to do business in Federal territory (Gewerbeordnung, sec. 12, and Aktiengesetz, sec. 292);

b) *In Belgium :*

By the requirement of a "professional card" (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 (decree-law of 12 November 1938, law of 8 October 1940);

d) *In Italy :*

By requiring the responsible technical director of enterprises manufacturing foodstuffs for babies and children and dietetic products to possess Italian nationality (Article 9, legislative decree of 13 September 1946, No. 233);

e) *In Luxembourg :*

By limiting the term of licences granted to foreign nationals, under Article 21 of the Luxembourg law of 2 June 1962 (*Mémorial* A No. 31 of 19 June 1962).

Article 5

1. The Member States shall see that beneficiaries of this directive may join trade or professional organizations on the same conditions and with the same rights and duties as nationals of the country concerned. In particular the French Republic shall ensure that all beneficiaries :

a) shall have the right to join the "Confédération des industries de traitement des produits de la pêche maritime",

b) shall be eligible for senior posts in the administration of the "Caisse professionnelle de l'industrie meunière".

2. In the case of establishment the right of membership involves eligibility for office in the trade or professional organization. Nevertheless the holding of office may be reserved for nationals where the organization in question exercises public authority by virtue of a law or regulation.

3. In Luxembourg membership of the Chamber of Commerce or of the Chamber of Trade (Chambre des métiers) shall not entitle beneficiaries of this directive to take part in elections to executive bodies.

Article 6

The Member States shall not grant to their nationals moving to another Member State in order to engage in one of the activities defined in Article 2 any aid which would have the effect of influencing the conditions of establishment.

Article 7

1. When a host country requires that its own nationals wishing to engage in one of the activities listed in Article 2 shall furnish proof of good character and/or proof that they have not been declared bankrupt, the said country shall accept as sufficient proof from nationals of other Member States a certificate based on police records (*extrait de casier judiciaire*) or failing that an equivalent document issued by a competent legal or administrative authority of the home country or country of origin, attesting that these conditions are fulfilled.

2. If the home country or country of origin does not issue a certificate attesting that the person concerned has not been declared bankrupt, this may be replaced by an affidavit sworn by the party concerned before a competent legal or administrative authority, commissioner for oaths or

qualified professional body duly authorized for this purpose in the home country or country of origin.

3. Documents issued in conformity with paragraphs 1 and 2 shall not, at the time of presentation, date back more than three months.

4. The Member States shall designate, within the time-limit laid down in Article 8, the authorities or bodies competent to issue the aforesaid documents, and shall forthwith inform the other Member States and the Commission thereof.

5. Where, in the host Member State, guarantees of financial standing are required, the State in question shall accept certificates from banks in the country of origin or residence as the equivalent of certificates issued in its own territory.

Article 8

Member States shall put into effect any measures needed to comply with the present directive within a period of six months from the date of notification and shall inform the Commission thereof immediately.

Article 9

The present directive is addressed to the Member States.

ANNEX

List of activities covered by the directive,

based on the 'Nomenclature des industries établies dans les Communautés européennes' (NICE) (1)

Group	
Major Group 20 A	200 Animal and vegetable fats industries
Major Group 20 B	Food manufacturing industries
	201 Slaughtering, meat processing and canning
	202 Manufacture of dairy products
	203 Canning and preserving of fruits and vegetables
	204 Canning and preserving of fish and other seafood
	205 Manufacture of grain mill products
	206 Manufacture of bakery products
	207 Sugar factories and refineries
	208 Manufacture of cocoa, chocolate and sugar confectionery
	209 Manufacture of miscellaneous food preparations
Major Group 21	Beverage industries
	211 Distilling, rectifying and blending of spirits
	212 Wine industries
	213 Breweries and manufacturing of malt
	214 Soft drinks and carbonated water industries

(1) This list has been drawn up, for the French language, on the basis of the "Nomenclature des industries établies dans les Communautés européennes" (NICE), published as a supplement to the "Statistiques industrielles" series of the Statistical Office of the European Communities, Brussels, June 1963.

Explanatory Memorandum

Introduction

The General Programme for the removal of restrictions on establishment was approved by the Council on 18 December 1961, in pursuance of Article 54(1). The Programme stipulates, in Title IV C (time-table), that the effective removal of restrictions on establishment must take place before the end of the second stage of the transitional period for those activities listed in Schedule II of the said Programme. Schedule II gives a list, in Major Groups 20 and 21, of activities connected with the food manufacturing and beverage industries.

The General Programme for the removal of restrictions on the supply of services, which was also approved by the Council on 18 December 1961, refers in Title V C to the time-table laid down for the implementation of the establishment programme. Thus the directive applies in both the field of freedom of establishment and in that of freedom to supply services.

The Commission hereby submits to the Council, in accordance with Article 54(2), and Article 63(2), the text of a directive for the implementation of the provisions of the Programmes concerning these activities. At the same time the Commission submits the text of a directive concerned with the details of temporary measures designed to supplement measures to remove restrictions.

Under the terms of these articles the Council must, before submitting the directive to a qualified majority vote, consult both the Economic and Social Committee and the European Parliament.

The Commission has considered it desirable to attach detailed commentaries to the proposed directive. In the interest of clarity it should be stressed that wherever possible the two directives have been harmonized with two other directives approved by the Council on 17 July 1964:

a) Freedom of establishment and freedom to supply services in respect of self-employed persons in manufacturing activities coming under ISIC ⁽¹⁾ Major Groups 23-40 (industrial and artisan activities) ⁽²⁾;

b) Transitional measures affecting self-employed persons in manufacturing activities, coming under ISIC Major Groups 23-40 (industrial and artisan activities) ⁽³⁾

The text worked out by the Council in the course of discussions on these directives has been to a large extent incorporated verbatim in the new directives. This procedure is in accordance with the wishes expressed by the government experts who took part in the preliminary studies, since the problems arising in the food and beverage industries are essentially the same as those arising for the earlier directives. Consequently this explanatory memorandum is confined to a fuller explanation of specific points in the present directive not previously dealt with elsewhere.

1. *Activities concerned*

The activities listed in groups 201-209 and 211-214 of the ISIC correspond to those listed in groups 200-209 and 211-214 (Groups 20 A, 20 B and 21) of the NICE ⁽⁴⁾, which is specially adapted to the structural characteristics of European manufacturing industries.

In the same way as for the directive on industrial and artisan activities (Major Groups 23-40) a list of activities to be liberalized is attached as an annex to the present directive on the removal of restrictions in the foodstuffs industries. Article 2 indicates that in the classification of the various activities according to Major Group the NICE is the nomenclature to be referred to. This nomenclature mentions the headings and designations used in the national nomenclatures and thus rules out any cases of ambiguity which would arise if only the ISIC were used. The Commission proposes to the Council that it should include in the minutes of the meeting the statement it made when approving the directive on industrial and artisan activities:

"The Council agrees that if one of the Member States takes the view that despite efforts to achieve harmonization, the annex

⁽¹⁾ "International Standard Industrial Classification of All Economic Activities" (ISIC), prepared by the Statistical Office of the United Nations, Statistical Papers, Series M, No. 4, Rev. 1, New York, 1958.

⁽²⁾ Official gazette, 23 July 1964, p. 1880 sqq.

⁽³⁾ Official gazette, 23 July 1964, p. 1863 sqq.

⁽⁴⁾ "Nomenclature des industries établies dans les Communautés européennes" (NICE). Supplement to the "Statistiques industrielles" series of the Statistical Office of the European Communities 1963.

to this directive and the General Programme for the removal of restrictions on freedom of establishment can still not be brought fully into line, this State may inform the Commission, which shall discuss the matter with the Member States”.

The text of Article 2(2) (marketing activities of manufacturers) has been taken verbatim from the Directive on industrial and artisan activities (Major Groups 23-40). This clause is designed to assist the manufacturer to dispose of his products to the final consumer directly as well as to intermediaries. Otherwise, liberalization of artisan undertakings, for example, would, in economic terms, be incomplete. Marketing is however confined to a single sales point until such time as restrictions on retail trade are also lifted. Here, too, liberalization is scheduled, under the General Programmes, for a date before the end of the second stage of the transition period, in other words during the same period as that during which activities covered by the present directive are to be liberalized. On the question of the marketing of normal accessories, the Commission proposes that the same statement should be made as that included in the minutes of the Council meeting at which the directive on industrial and artisan activities was approved.

“In adopting Article 2(2), the Council takes the view that the marketing activities of manufacturers should, as far as possible, be deemed to cover the sale of the normal accessories of their products, including accessories not manufactured by themselves. It recommends the Member States to interpret these rules along liberal lines.”

The scope of the present directive is determined by the nomenclature adopted by the Council in its General Programmes. But it may prove advantageous, in other fields, to treat certain of the activities concerned as farming activities. Accordingly, a statement is required that the classification adopted in the present directive is no bar to the classification of these activities under agriculture for other purposes. The Commission therefore proposes that the Council include in the minutes of the meeting the following statement :

“The Council agrees that the classification of activities adopted in the present directive on the basis of the General Programmes, notably that concerning the production of wines, in no way precludes the subsequent adoption of measures needed for the attainment of the objectives of the common agricultural policy in the sector under consideration”.

2. *Activities excluded from the directive*

In the annex a list is given of the activities caught by the directive. To avoid misunderstandings, Article 3, however, specifies certain activities which, by their nature, bear some resemblance to the food and beverage industries but which, in accordance with the General Programmes, will be liberalized only at a later date or by means of a different directive.

The manufacture of medicines and drugs, which is to be liberalized under another directive, is another activity excluded from the present directive. The expression may include certain foodstuffs and beverages which are regarded as having medicinal qualities. Definitions have been harmonized under a Council directive of 26 January 1965 on the approximation of laws and regulations on branded pharmaceuticals⁽¹⁾.

The General Programmes state that activities coming under farming, forestry, hunting and fishing are to be liberalized at a later date. For this reason Article 3) a excludes the primary production of foodstuffs and beverages from the scope of the present directive. Wine-growing is considered as a branch of agriculture and is not included in the directive, but the production of wine — save by wine-growers themselves from their own grapes — and the manufacture of wine-based beverages are classified as industrial activities in both the ISIC and the NICE.

The present directive covers the processing of fish and other seafood only when the processing is done on land. In accordance with the General Programmes, the same activity carried out on board factory ships will not be liberalized until the third stage of the transitional period. Processing plants situated on floating docks or disused vessels are treated as being on land for the purposes of the directive.

Two national monopolies — the French and German alcohol monopolies — are affected by the directive. Nationals and foreigners, however, are accorded the same treatment under both these monopolies, so that the legal situation can remain unchanged from the point of view of the present directive.

Certain Member States have laws forbidding the extension, modification or transfer of milling plant. Again, the Federal Republic of Germany has a complicated

⁽¹⁾ Official gazette No. 22, 9 February 1965, p. 369.

system of dairy regulations governing sales between milk producers and manufacturers: anyone wishing to establish a new enterprise is obliged to seek an "extra quota" from existing enterprises. However, in none of these cases are foreigners as such subject to discrimination, so that it would not be necessary to make any amendments to the present directive as far as these sectors are concerned.

3. *Restrictions*

A scrutiny of restrictions at present in force shows that foreigners are required to satisfy no conditions in the food and beverage industries not already mentioned, for example, in the directive on industrial and artisan activities (Major Groups 23-40). For this reason the present proposal takes over verbatim the wording of the relevant clause in that directive.

There is, however, one exception in the case of Italy. Article 2 Z. 9 of a decree of 30 May 1953 requires enterprises manufacturing food for babies and children and those producing diatetic goods to employ as technical director either a doctor, pharmacist, chemist, biologist or a member of a related profession. Under Article 9 of a decree of 13 September 1946, members of these medical professions must be enrolled on their professional registers, a requirement which presupposes Italian

nationality. In a directive on the abolition of restrictions, the only requirement to be eliminated is the nationality rule; reciprocal recognition of degrees and diplomas will be established, on the other hand, at a later date.

Article 5 establishes the rule for one of the most important aspects of parity of treatment, the right to join trade or professional organizations. Here again, the wording has been taken verbatim from previous directives. This article also mentions two restrictions in one Member State on membership of trade and professional organizations and on eligibility for senior positions in such organizations.

4. *Aid by the governments and proofs of good character, etc.*

Article 6 prohibits Member States from aiding their nationals in any way which might after the conditions governing their establishment in other Community countries. Article 7 settles technical questions connected with the requirement that persons wishing to engage in the activities concerned should furnish proof of good character and/or proof that they have not been declared bankrupt. The wording of these clauses — and of those in Articles 8 and 9 concerned with the implementation of the directive — corresponds to that used in the previous directive.

Proposal for a Council directive on detailed transitional measures applicable to self-employed activities in the food and beverage industries (ISIC Major Groups 20 and 21)

(submitted by the Commission to the Council on 15 April 1965)

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 54(2), 57(1), 63(2) and 66 thereof;

Having regard to the General Programme for the abolition of restrictions on freedom of establishment⁽¹⁾ and in particular Title V, second and third paragraphs;

⁽¹⁾ Official gazette No. 2 15 January 1962, p. 36/62.

Having regard to the General Programme for the abolition of restrictions on freedom to supply services⁽²⁾, and in particular Title VI, second and third paragraphs;

Having regard to the Commission's proposal;

Having regard to the opinion of the European Parliament;

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

⁽²⁾ Official gazette No. 2, 15 January 1962, p. 32/62.

Whereas the General Programmes provide, in addition to the abolition of restrictions, for the consideration of whether this should be preceded, accompanied, or followed by the mutual recognition of diplomas, certificates and other qualifications, as well as for the co-ordination of laws, regulations, and administrative instructions concerning access to the activities in question and the exercise thereof and whether transitional measures will have to be taken pending such recognition or co-ordination;

Whereas in the case of processing activities in industry and crafts falling within Major Groups 23-40 of the ISIC, the Council has already drawn up a directive concerning transitional measures⁽¹⁾, and whereas the present directive must be consistent with the said transitional measures;

Whereas, as regards the food and beverage industries, not all the Member States lay down conditions governing engagement in the activities concerned; whereas the definition of crafts and consequently their demarcation from industry proper varies from one Member State to another; and whereas, furthermore, the practice of crafts is sometimes freely permitted and sometimes governed by strict regulations requiring the possession of appropriate written qualifications;

Whereas, at the time the General Programmes were approved, the Council noted that, in the case of crafts, a number of problems arose in connection with recognition or co-ordination of qualifications the solution of which called for very detailed study;

Whereas it is, therefore, not possible to co-ordinate qualifications and abolish restrictions at the same time, and whereas such co-ordination will have to be effected later;

Whereas, however, in the absence of immediate co-ordination, it would appear desirable to facilitate freedom of establishment and freedom to supply services in the activities concerned by transitional measures, such as those laid down in the General Programmes, mainly with a view to obviating any excessive inconvenience to nationals of Member States in which the pursuit of these activities is not subject to any conditions;

Whereas, to meet this eventuality, the main feature of the transitional measures should be to make it sufficient, in order to engage in the activities concerned in host countries where this is subject to regulations, to have worked in that branch in the country of origin for a reasonable and fairly recent period, in cases where preliminary training is not required, so as to ensure that the beneficiary shall possess professional experience equal to that demanded of the country's own nationals; whereas transitional measures applying to certain specified activities may at the same time stipulate that Member States, pending recognition of diplomas, certificates and other qualifications regard the fact of the person's name appearing in a professional register in another Member State as adequate proof of his possessing the necessary knowledge and experience;

Whereas Member States in which permission to engage in the activities concerned is not subject to regulations should if necessary be authorized, in the case of one or more activities, to require nationals of other Member States to furnish evidence that they possess the qualifications entitling them to pursue the activity in question in their own country, with the object of preventing an influx into these States of persons who would be unable to satisfy the requirements for engagement in the activity concerned in their own country;

Whereas such authorization can, however, be granted only sparingly since, if it were given on too wide a scale, it would be likely to hamper free movement; whereas, therefore, such authorization should be limited in time and in scope and the decision to grant it should lie with the Commission, as is generally provided in the Treaty for the administration of safeguard clauses;

Whereas the measures laid down in this directive will have no further object when conditions governing access to the activity concerned have been co-ordinated, and diplomas, certificates and other qualifications have been mutually recognized;

Whereas, furthermore, they should in any event be abolished on expiry of the transition period, since thenceforward they cannot serve as an alternative to the arrangement explicitly provided for in the Treaty, viz. the co-ordination of national regulations and the mutual recognition of the qualifications required in each country for access to the activities concerned, should this be necessary to facilitate engagement in the said activities,

(1) Official gazette No. 117, 23 July 1964, p. 1863/64.

Has adopted the present directive :

Article 1

1. The Member States shall take, in accordance with the conditions set out below, the following transitional measures for the establishment on their territory of the persons and companies referred to under Title I of the General Programmes as well as to the supply of services by the said persons and companies, hereinafter known as the beneficiaries, operating as self-employed persons in the food and beverage industries.

2. The activities referred to are those covered by the directive of the Council of ... on freedom of establishment and freedom to supply services in respect of self-employed persons in the food and beverage industries (Major Groups 20 and 21 of the ISIC).

Article 2

Member States where permission to engage in any of the activities referred to in Article 1(2) is subject to possession of the necessary qualifications shall ensure that any beneficiary who so desires shall be informed, before setting up in business or temporarily beginning activities, of the regulations governing the activity he proposes to exercise.

Article 3

1. In cases where, in a Member State, the pursuit of any activity referred to in Article 1(2) is subject to the possession of general, professional, or commercial knowledge and experience, that Member State shall recognize as adequate proof of the said knowledge and experience the exercise in another Member State of the activity in question :

a) For six consecutive years either on own account or as general manager; or

b) For three consecutive years either on own account or as general manager in cases where the beneficiary can show that he has received, for the profession concerned, at least three years' previous training, terminating in the award of a certificate recognized by the State or considered fully valid by the competent professional body; or

c) For three consecutive years on own account where the beneficiary can show that he has worked in the branch concerned for an employer for at least five years; or

d) For five consecutive years in a managerial capacity, in which he performed technical duties for a period of at least three years and was responsible for at least a sector of the enterprise, in cases where the beneficiary can show that he has received, at least three years' previous training in the branch concerned, terminating in the award of a certificate recognized by the State or considered fully valid by the competent professional body.

In the cases referred to under a) and c) above, this activity must not have terminated more than ten years before the date when an application is made in accordance with Article 4(3).

2. Unless the beneficiary holds an Italian diploma, he shall be deemed to have supplied proof of qualification to carry out the duties of technical director in a firm manufacturing baby-foods or special foods for children or dietetic foods in Italy only if, on the one hand, he has received the training required by Italian law or comparable training terminating in the award of a diploma issued by another Member State and, furthermore, supplies evidence :

i) That he has exercised the activity concerned within the meaning of paragraph 1, or

ii) That his name is entered in the appropriate professional register of his home country.

Article 4

For the purposes of Article 3 :

1. Member States in which the exercise of a professional activity referred to in Article 1(2) is subject to the possession of general, commercial, or professional knowledge and experience shall inform the other Member States, through the Commission, of the main features of the work involved (description of activities in these professions).

2. The competent authority appointed for this purpose by the home country shall supply attestation describing the professional activities exercised by the beneficiary and indicating the period during which he has worked in the branch concerned. The attestation shall be drawn up in the light of the description of professional activities communicated by the Member State in which the beneficiary wishes to work either permanently or temporarily.

3. The host Member State shall grant authorization to pursue the activity in question at the request of the person concerned, provided that the work described in the attestation agrees in its main features with the description of professional activities communicated in accordance with the provisions of paragraph 1 and provided that any other conditions laid down in the regulations of the host country are fulfilled.

Article 5

1. In cases where, in a Member State, engagement in one of the activities referred to in Article 1(2) is not subject to the possession of general, commercial or professional knowledge and experience, the State concerned may, in the event of serious difficulties resulting from the application of the Council's directive referred to in Article 1(2), request the Commission to grant authorization, for a limited period and for one or more specific activities, to demand that nationals of other Member States wishing to pursue these activities on its territory shall supply evidence that they are qualified to exercise the said activities in their own country.

This option cannot be exercised in respect of persons whose country of origin does not make access to the activity concerned conditional upon supplying evidence of the possession of specific knowledge nor in respect of persons who have resided in the host country for five years or more.

2. At the request of the Member State concerned, the reasons for which must be given, the Commission shall lay down

forthwith the conditions and form of application of the authorization provided for in paragraph 1 of this Article.

Article 6

The provisions of this directive shall apply during the transition period until the entry into force of the provisions concerning the co-ordination of national regulations governing engagement in the activities concerned.

Article 7

The Member States shall nominate, within the period stipulated in Article 8, the authorities or bodies competent to issue the certificates referred to above and shall immediately inform the other Member States and the Commission accordingly.

Article 8

The Member States shall take the necessary measures to comply with the present directive within six months from the date when it was notified to them and shall immediately inform the Commission accordingly.

Article 9

The Member States shall communicate to the Commission the draft of any important provisions of municipal law which they may later intend to adopt in the field covered by the present directive.

Article 10

The present directive is addressed to the Member States.

Explanatory Memorandum

1. Purpose of the directive

The General Programmes for the abolition of restrictions on freedom of establishment and on freedom to supply services were drawn up by the Council on 18 December 1961, in accordance with Article 54 (1) and Article 63(1) of the Treaty.

The Commission now submits to the Council, on the basis of Article 54(2), Article 57(1), Article 63(2) and Article 66, in addition to the proposed directive on the abolition of restrictions affecting self-

employed persons in the food and beverage industries, another proposal for a directive supplementing the earlier one by certain transitional measures. It would be advisable that these two proposals be examined together.

The Commission considers that it would be sufficient for the Council to reach a decision by a qualified majority.

The Council will first have to consult the European Parliament and the Economic and Social Committee.

2. *General considerations*

a) As has already been stated in the explanatory memorandum to the directive on the abolition of restrictions, this draft adheres in the main to the text drawn up by the Council during the discussions on the directive on transitional measures to be taken in industry and crafts (ISIC — Major Groups 23 to 40). Except in one case, discussion of the temporary measures has not raised any new problems as compared with the earlier directive.

b) The abolition of restrictions on establishment and freedom to supply services will not suffice to establish free movement as provided for by the Treaty. The position is that any professional activity can actually be exercised only in certain legal conditions laid down by the host country. Depending on whether these conditions are liberal or restrictive, the country concerned will be more or less attractive to foreigners wishing to exercise a professional activity there.

When the directives for the abolition of restrictions were drawn up, it therefore proved advisable to consider whether the removal of these restrictions should be preceded, accompanied or followed by the mutual recognition of diplomas, certificates or other qualifications as well as by the co-ordination of the laws, regulations and administrative instructions concerning the pursuit of these activities.

This method is explicitly laid down in Title V of the programme on establishment and in Title VI of the programme on freedom to supply services.

When drawing up these programmes, the Council of Ministers made the following statement with particular reference to the problem of crafts:

“At the time of approving the General Programme, the Council noted that the problem of the co-ordination of laws, regulations, and administrative instructions and that of mutual recognition of diplomas, certificates and other qualifications arose in the case of crafts and retail trade and, considering that the solution of these problems would require extremely careful study, it appeared necessary to take transitional measures in order to avoid certain distortions which might result from the abolition of restrictions. It therefore invites the Commission to take these points into consideration when drawing up its directives.”

The same opinion was expressed by the Economic and Social Committee and by the European Parliament (1).

c) The preparation of the directive on the abolition of restrictions afforded confirmation that problems would arise over co-ordination.

These problems are due to the fact that the definition given of crafts and, consequently, their demarcation from industry proper, on the one hand, and the nature and scope of the regulations governing the pursuit of crafts, on the other, differ widely from one Member State to another. By reason of these different definitions, the concept of “crafts” covers very different groups of persons and enterprises in the Member States. Now, in the limited time available it is impossible to achieve any form of prior co-ordination by first of all bringing the various definitions into line.

The directive merely lays down a number of measures to overcome the most serious difficulties resulting from the varying definitions and legislation governing permission to engage in the activities concerned, until such time as co-ordination is attained.

3. *Commentary on the articles*

Article 1

This article is of an explanatory nature. It draws attention to the fact that companies also benefit from the provisions of the directive. If, as for example in Germany, companies may also carry on craft activities, the measures contained in the directive will make it easier to establish that members of a firm so engaged possess any qualifications which may be required.

Article 2

This provision takes account of the fact that it is highly important for an entrepreneur to be informed of the laws, regulations and administrative instructions affecting him, before he commences activities in the host country. This applies both to any intended establishment and to the supply of services. The Member State concerned is to designate the body which will furnish such information. However, this provision does not give the applicant any right to information, any more than it involves any responsibility, but it is expected that the information will be prompt and reliable.

(1) Opinion of the European Parliament (Kreyssig report, section 42 and appendix C, section 59) working documents 1961/62, doc. 1 of 24 February 1961.

Article 3

This provision forms the very substance of the directive, inasmuch as it lays down the conditions under which nationals of Member States possessing no special regulations concerning employment on own account in the branch concerned may set up in business in Member States which do possess such regulations. The principle is that the host country recognizes as a qualification the practical professional experience gained by the applicant. Vocational training is also taken into account.

Paragraph 1

The provisions of this paragraph are the fruit of a lengthy exchange of views held in the Council when the directive on transitional measures to be taken in industry and the crafts (Major Groups 23 to 40 of the ISIC, were drawn up. In the event, the Council agreed with the Commission's view that the exercise of a self-employed professional activity over a fairly long period was a sufficient guarantee that the worker possessed the necessary professional qualifications. The duration of actual exercise of an activity, of which the applicant must supply evidence, was fixed by the Council at six years. The maximum duration fixed for self-employed persons, which includes heads of firms, is taken as a criterion for fixing the maximum periods in the case of the alternative solutions provided for under *b)* and *d)* in paragraph 1. The period for which the beneficiary must have actually been self-employed is reduced by half in cases where he has received at least three years' previous training terminating in the award of a certificate or where he has previously been self-employed for at least five years.

Unlike the previous alternative solutions, the provision under *d)* makes it possible for persons who have hitherto worked only as employed persons to set up in business and supply services as self-employed persons in the host country. This arrangement is brought into line with the other alternative solutions by a correspondingly longer period of activity, during which the beneficiary must have occupied a managerial position.

Paragraph 2

No similar provisions are contained in the directive on transitional measures in industry and the crafts.

This provision was added because, in Italy, responsible technicians in the enterprises referred to are required to hold a diploma. This diploma authorizes the holder, provided that the other conditions laid down by Italian law are satisfied, to enter his names in the appropriate professional register. In taking note of such entries the Member States will simply be acting in anticipation of the later recognition of diplomas, certificates and other qualifications in this field. Italy, the Member State at whose instance the provision was included, makes the assumption that the conditions governing the entry of names in these registers are in general similar to those existing in Italy.

Moreover, the rule still applies whereby the beneficiary may claim to be qualified by furnishing evidence that he has been engaged in the branch concerned in another Member State, although such evidence only takes the place of entry in the register. The beneficiary must in any event produce an appropriate diploma, since this is the only guarantee that his qualifications are equivalent to those of nationals of the country in which he sets up in business. Evidence of previous activity will be taken into account particularly in those countries and professions which have no corresponding professional registers; in addition to these cases, such evidence is also acceptable in cases where these registers exist but the name of the person concerned is not entered in them.

Further comments on Article 3

Finally, diplomas or certificates may, needless to say, be produced as evidence of qualification. In this case, it is necessary also to invoke Articles 53 and 62, according to which the freedom already acquired at the date when the Treaty came into force must be maintained as regards the administrative recognition of certificates qualifying for entry into a branch of activity⁽¹⁾.

By the terms of paragraph 1, in cases where two States require evidence of qualification this may in any event take the form of an attestation that the applicant has previously worked in the branch concerned. However, this example clearly shows that a directive on the recognition of qualifications is necessary and should therefore take the place of the transitional measures as soon as possible.

⁽¹⁾ Thorn report on the programme for the supply of services, section 54 (European Parliament, Session 1961-1962, doc, 1 March 1961).

Article 4

This Article governs the procedure to be followed for issuing attestations of previous experience. Regulations of this kind are necessary because the various fields of activity are not exactly the same in different Member States. This is why the latter must supply each other with their official descriptions of the profession. The authorities in the country of origin are then in a position to draw up attestations of experience in a given activity in the light of the description of this activity in the host country. The latter can then compare the activity actually exercised with its own description and see whether they correspond.

The Commission will recommend the Member States to simplify the types of forms in use.

Other conditions laid down by the host country, such as minimum age, good repute, are of an objective nature and cannot have any discriminatory effect. The applicant should therefore always satisfy them.

Article 5

This article is the counterpart to Article 3; it deals with exercise of the activity, in a country where access is not subject to regulations, by the nationals of States which require evidence of the knowledge and experience gained by the applicant. The purpose of this provision is to avoid distortions which, after the abolition of discrimination, may occur owing to the very pronounced disparities existing between the various national regulations. It is therefore intended to protect countries which have no regulations on these matters.

In order to avoid making the free movement of persons, which has still to be attained, a mere illusion, the Commission will grant the authorization provided for in paragraph 2 only on receipt of an application supported by a statement of reasons and only for a limited period. Article 5 is not open to objection on the ground of any clause in the Treaty, because during the transition period the Council may lay down certain provisions for the gradual abolition of restrictions.

Article 6

The text of this Article differs from that of the corresponding article of the directive on transitional measures in industry and

commerce, inasmuch as it embodies the Commission's view that the interim measures must in any event remain in force only for the duration of the transition period, whether the recognition of diplomas or the co-ordination of laws, regulations and administrative instructions governing engagement in the relevant activities have come into force in the meantime or not. This excludes any possibility that the safeguard clause provided for in Article 5 of the directive may be applied after the expiry of the transition period, since the corresponding provision expressly included in Article 226 of the Treaty is limited in time.

Article 7

The directive authorizes the Member States to designate the competent body for the issue of attestations. The only bodies eligible for this purpose are such as can be relied upon not to issue these attestations merely to accommodate the person concerned, i.e., in practice, exclusively public authorities and public corporations.

Local authorities will also be deemed eligible to issue attestations concerning the activities of executives and, at the same time, to indicate the documents by which evidence of activities has been furnished.

In order to avoid any doubts as to the bodies recognized as being eligible in this respect in the various Member States, the latter must communicate to the Commission and to each other a list of these bodies

Article 8

The period of six months should be sufficient to enable the Member States to put the proposed measures into effect, especially as they have already had to take similar measures in accordance with the earlier directive on transitional measures in industry and the crafts.

Article 9

As the Commission will be informed in advance of any new legislation contemplated by the Member States in the field covered by the directive, it will be able to express an opinion at the drafting stage. This should make it easier for the Commission to carry out the tasks entrusted to it by the Treaty; it will be in a position to counter, as promptly as possible, the constant tendency of national legislations to develop along divergent lines.