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**Proposal for a Council directive introducing freedom of establishment  
and freedom to supply services in respect of self-employed persons engaged  
in dealings in real estate (Group 640 ISIC) and business services  
(Group 839 ISIC) (Articles 54 and 63 of the Treaty)**

(submitted by the Commission to the Council on 24 July 1964)

*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<sup>(1)</sup>, and in particular Title IV A thereof;*

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

*Having regard to the proposal of the Commission;*

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

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

*Whereas under the General Programmes any discriminatory treatment based on nationality regarding establishment and the supply of services in the sphere of real estate and in that of business services (not elsewhere classified) is to be eliminated before the end of the second year of the second stage;*

*Whereas in order to simplify procedure, these two groups of activities are covered by a single directive introducing freedom of establishment and freedom to supply services;*

*Whereas certain activities in the sphere of real estate and in that of business services not elsewhere classified are not covered by the present directive, either because these activities belong to branches which will be the subject of separate directives, or because, in accordance with the provisions of the General Programmes, they will not be liberalized until a later stage;*

*Whereas separate directives will be issued concerning restrictions on the movement and residence of all self-employed persons<sup>(3)</sup> and concerning any necessary co-ordination*

*of the guarantees that Member States require of companies in order to protect the interests of members and of third parties;*

*Whereas, for the purpose of applying the provisions regarding the right of establishment and freedom to supply services, companies will be assimilated to individual nationals of Member States, subject only to the conditions laid down in Article 58 and, in some cases, on condition that there is a real and permanent connection with the economy of a Member State; and whereas therefore no additional condition may be imposed before they may enjoy the benefit of these provisions, and in particular no special licence shall be required of them that is not required for home companies; and whereas notwithstanding such assimilation Member States may still require that joint stock companies operating in their country be known under the style laid down in the laws of the Member State under which they were incorporated, and that they indicate on the commercial stationery they use in the host country the amount of capital subscribed;*

*Whereas in accordance with the provisions of the General Programme for the removal of restrictions on freedom of establishment, restrictions on the right to join a trade or professional organization are to be eliminated in so far as the professional activity of the party concerned requires the exercise of this right;*

*Whereas the treatment of wage-earning and salaried workers accompanying a person supplying services or acting on his behalf is subject to the regulations made under Articles 48 and 49 of the Treaty;*

*Whereas provisional measures may be adopted, if need be, pending directives concerning the co-ordination and recognition of diplomas or other qualifications;*

*Has adopted the present directive:*

PART ONE

*Article 1*

Member States shall remove the restrictions listed in Title III of the General Programmes for the removal of restrictions on freedom

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

(2) *ibid.*

(3) *ibid.*, No 56, 4 April 1964, p. 845.

of establishment and on freedom to supply services where these affect the natural and legal persons listed in Title I of these Programmes — hereinafter described as “beneficiaries” — in so far as such restrictions concern pursuit of the activities referred to in Articles 2 and 4.

## PART TWO

### Activities to which the present directive applies

#### TITLE 1

#### Dealings in real estate

##### Article 2

1. The provisions of the present directive shall apply to self-employed persons engaged in the activities connected with real estate listed in Annex I of the General Programme for the removal of restrictions on freedom of establishment (Group ex 640), with the exception of the activities mentioned in Article 3 of the present directive.

2. The group includes all dealings in real estate on the part of persons or companies who derive income from the ownership, possession, purchase, sale, lease or management of real estate whether developed or undeveloped, and in particular from premises used for industrial, commercial or professional purposes or as dwellings, or from rights pertaining to these types of property, or from intermediary activities in dealings relating to such properties or rights.

3. Restrictions on the said activities shall be removed in respect of all persons, howsoever designated, who pursue them. The designations used at present in the Member States for the branches concerned are the following:

##### *In Belgium:*

agence immobilière — makelaar in onroerende goederen  
agence de location — verhuuragentschap  
gérance d'immeubles — beheerbureau van onroerende goederen

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

Immobilien — Hypotheken- und Finanzmakler,  
Immobilientaxator, Immobilienschätzer,  
Immobilienfachverständiger,

Immobilienhändler, Grundstücksverwertungsgesellschaften,  
Baubetreuer,  
Immobilien-, Haus-, und Vermögensverwalter (einschliesslich der Einziehung von Mietforderungen von den Mietern der verwalteten Grundstücke oder Räume).

##### *In France:*

marchands de biens et agents immobiliers, lotisseurs,  
administrateurs de biens, gérants et régisseurs d'immeubles,  
syndics de copropriété,  
agences de location,  
promoteurs d'opérations de construction, sociétés immobilières sous leurs diverses formes.

##### *In Italy:*

intermediario nell'acquisto, nella vendita o nell'affitto o locazione di terreni urbani e fondi rustici;  
intermediario nell'acquisto, nella vendita o locazione di fabbricati ad uso di abitazione, albergo, pensione, autorimesse o ad uso commerciale, industriale o professionale;  
agenzie od imprese, par la compra-vendita di immobili per gli usi predetti;  
agenzia o imprese di riscossione di canoni di affitto, di fondi rustici o di locazione di immobili urbani.

##### *In Luxembourg:*

agence immobilière,  
gérance d'immeubles,  
société immobilière.

##### *In the Netherlands:*

makelaars in onroerende goederen, tussenpersonen in onroerende goederen (niet zijnde makelaars),  
woningbureaus, woonruilcentrales, bouwen bemiddelingsbureaus, administratiekantoren van onroerende goederen.

#### Article 3

In the matter of dealings in real estate, the present directive is not applicable to self-employed activities in the following branches, which are the subject of other directives:

a) Agriculture and forestry, whether or not practised by companies or associations (Classes 01 and 02 ISIC);

- b) Financial institutions (Group 620 ISIC);
- c) Land surveyors (Group 6401);
- d) Architects occupied as such (ex Group 833 ISIC);
- e) Building contractors occupied as such (Group 400 ISIC);
- f) Intermediaries in commerce, industry and crafts (Group 611 ISIC);
- g) Travel agencies (Group 718 ISIC);
- b) The hotel and catering trades (Group 853 ISIC).

## TITLE II

Business services not elsewhere classified

### Article 4

1. The provisions of the present directive shall apply to self-employed persons engaged in the activities connected with "business services not elsewhere classified" listed in Annex I of the General Programme for the removal of restrictions on freedom of establishment (Group 839) with the exception of the activities mentioned in Article 5 of the present directive.

2. Without prejudice to the provisions of Article 6, these activities may be sub-divided as follows:

- a) Employment agencies;
- b) Detective agencies, inquiry agencies, security services;
- c) Advertising agencies and services;
- d) The organization of commercial events (in particular industrial and trade fairs (*jour-nées commerciales*), exhibitions etc.);
- e) Services ancillary to office work, including the hiring of mechanical and electronic office equipment; translation services;
- f) Consultant services on economic, financial, commercial and organizational matters;
- g) Literary and artistic professions;
- b) Other business services not elsewhere classified mentioned in Group 839 (e.g. those of valuers, experts, interpreters).

### Article 5

In the matter of "business services not elsewhere classified", the present directive is not applicable to the following activities of

self-employed persons, which are the subject of other directives:

a) The activities of banks and insurance companies (e.g. financing institutions, etc.) and professions incidental to these (e.g. stock-brokers, insurance consultants, insurance agents, etc.) (Groups 620 and 630 ISIC);

b) The activities of intermediaries in commerce, industry and crafts (e.g. manufacturers' sales agents, commercial brokers, etc.) (Groups 611 ISIC);

c) Services incidental to transport (Group 718 ISIC);

d) Legal services and the activities of tax consultants (Groups 831 and 833 ISIC);

e) Activities which may be pursued by accountants (Group 832 ISIC);

f) Activities in motion pictures, the theatre, sport and entertainment (in particular the promotion of sporting events and theatrical employment agencies) (Class 84 ISIC);

g) Self-employment in activities connected with the press (ex Group 839 ISIC).

## TITLE III

Activities excluded by virtue of special provisions of the Treaty

### Article 6

1. The provisions of the present directive shall not apply to activities which in a given Member State involve the exercise of public authority [Article 55 (1)]. These activities are:

a) *The placing of workers in employment:*

*In the Federal Republic of Germany:* Labour exchanges and unemployment insurance, by virtue of Article 35 of the relevant law (AVAVG);

*In Belgium:* Labour exchanges for whose services a charge is made, by virtue of the royal decree of 10 April 1954;

*In France:* Labour exchanges (decree of 24 May 1945);

*In Italy:* Labour exchanges, by virtue of Articles 11 and 12 of Law No. 628 of 22 July 1961;

*In Luxembourg:* Labour exchanges, by virtue of the Grand Ducal decree of 30 June 1945 concerning the establishment of a national employment office;

*In the Netherlands:* Labour exchanges, by virtue of the "Arbeidsbemiddelingswet" of 29 November 1930.

b) *The organization of trade fairs and markets in so far as this is reserved for public authorities*

2. Special provisions for foreign nationals which are admissible under Article 56(1) also remain unaffected until such time as they are co-ordinated in pursuance of Article 56(2).

These special provisions are at present the following:

*In all Member States:* Provisions concerning rural watchmen and forest keepers.

*In Italy:* Articles 133 seqq. of the consolidated law relating to public security and Articles 249-260 of the regulation made thereunder, which stipulate that sworn watchmen and keepers must be of Italian nationality, since they have duties similar to those of the judicial police.

### PART THREE

#### Restrictions to be removed

##### Article 7

1. The Member States shall remove any restrictions:

a) Which 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) Which 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. 55 d, text of 5 February 1960 (*Bundesgesetzblatt* I, p. 61, amendment p. 92); regulation of 30 November 1960 (*Bundesgesetzblatt* I, p. 871);

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:*

i) By the requirement of a foreign trader's identity card (decree-law of 12 November 1938, decree of 2 February 1939, law of 8 October 1940, law of 10 April 1954, decree No. 59-852 of 9 July 1959);

ii) By the requirement of French nationality for the proprietor and managerial and administrative staff of private inquiry agencies and detective agencies (Law No. 891 of 28 September 1942, *Journal officiel* of 30 October 1942);

iii) By the requirement of French nationality for estimates by public valuers and expert consultants (*commissaires-priseurs*) at their offices when the valuation must be done by an officially appointed expert (law of 27 ventôse, year IX);

d) *In Italy:*

i) By the requirement of Italian nationality for official valuers (*stimatori pubblici*) and experts (*periti ed esperti*) (royal decree No. 2011 of 20 September 1934, Article 32 No. 3);

ii) By the requirement of Italian nationality for registration on the *Ruolo dei mediatori* (Law No. 253 of 21 March 1958);

iii) By the requirement of Italian nationality for free-lance interpreters (*interprete indipendente*) (Article 123 of Testo Unico delle leggi di Pubblica Sicurezza, approved by royal decree No. 773 of 18 June 1931, and Articles 234, 236, 239 of the regulation made thereunder, approved by royal decree No. 635 of 6 May 1940);

iv) By the requirement of Italian nationality for private inquiry agents (*Testo unico delle*

*leggi di pubblica sicurezza*, Article 134), or for ownership of an inquiry agency or establishment providing security guards, when this is not excluded by Article 6 (*agenzie investigative, servizi di informazione e sorveglianza*);

c) *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).

## PART FOUR

### Common provisions

#### *Article 8*

1. The Member States shall ensure that beneficiaries of the present directive may join trade or professional organizations on the same conditions and with the same rights and duties as nationals of the country concerned.

2. In the case of establishment, the right to membership of a trade or professional organization includes the right to stand for election and the right to be elected or appointed to executive posts within the organization concerned. These executive posts may, however, be reserved for nationals when the organization in question exercises public authority by virtue of some provision of a law or regulation.

3. In the Grand Duchy of Luxembourg membership of the Chamber of Commerce or of the Chamber of Trade (*Chambre des Mériers*) does not entitle beneficiaries of the present directive to take part in elections to executive bodies.

#### *Article 9*

Member States shall not grant to their nationals moving to another Member State in order to engage in one of the activities defined in Articles 2 and 4 any aid which would have the effect of influencing the conditions of establishment.

#### *Article 10*

1. When a host country requires that its own nationals wishing to engage in one of the activities listed in Articles 2 and 4 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 made 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. The same shall apply when in the home country or country of origin certificates are not issued attesting the absence of non-judicial sanctions, such as removal from office, withdrawal of licence or striking off the professional register.

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 12, the authorities or bodies competent to issue the aforesaid documents, and shall forthwith inform the other Member States and the Commission thereof.

#### *Article 11*

Member States in which admission to the profession in question is subject to the taking of an oath shall see that the oath as worded can also be taken by foreign nationals. Where this is not so, the Member State shall prescribe some other suitable form of words to the same effect.

#### *Article 12*

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

#### *Article 13*

The present directive is addressed to the Member States.

## Explanatory memorandum

### 1. Introduction

a) The General Programme for the removal of restrictions on freedom of establishment was adopted by the Council on 18 December 1961, being based on Article 54 (1) of the Treaty. In Title IV A (time-table) the Programme lays down that restrictions on freedom of establishment shall be effectively removed before the end of the second year of the second stage of the transition period for the activities listed in Annex I of the aforesaid Programme. This Annex includes dealings in real estate (Groupe 640) and "other business services not elsewhere classified" (Group 839).

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

c) In accordance with Article 54 (2) and Article 63 (2) the Commission hereby submits to the Council the text of a directive designed to give effect to the programmes in respect of these activities.

Before approving the directive, which it may do by qualified majority, the Council is obliged under the said articles to consult the Economic and Social Committee and the European Parliament.

d) The Commission feels it desirable to append a detailed commentary to the proposal, explaining the grounds for its provisions and expressing the opinion of the Commission on certain points put forward by the Member States in the course of the preparatory work.

### 2. The object of the directive

The directive is intended to cover the groups of activities listed in Annex 1 of the General Programme for which no directive has yet been proposed.

It relates therefore to Group 640, which concerns dealings in real estate, and Group 839, which includes such activities of Class 83 (business services) as are not included in the other sub-groups of that class.

All the activities have one thing in common: they are not concerned with industrial production but, from an economic point of view, pertain to commerce or services. Certain firms engage in activities that belong partly to one group and partly to the other.

In the interests of clarity the directive is divided into four parts:

Part 1: Beneficiaries

Part 2: Activities included

Part 3: Restrictions to be removed

Part 4: Common provisions.

### 3. Comments on the articles

#### PART ONE

*Article 1:* The wording is similar to that adopted for other directives previously submitted.

#### PART TWO

Part Two is sub-divided into three titles:

Title I: Dealings in real estate (Articles 2 and 3)

Title II: Business services not elsewhere classified (Art. 4 and 5)

Title III: Activities excluded by virtue of special provisions of the Treaty (Art. 6).

*Article 2:* The General Programme does not amplify the content of the group "Dealings in real estate". The purpose of Article 2 of the directive is to state explicitly which activities are affected.

*Paragraph 1* therefore refers to the nomenclature group (ex 640). Here there is an "ex group" because, according to Annex II to the time-table of the General Programme (1), one profession — land surveying — is not to be liberalized until the end of 1965.

*Paragraph 2* describes the activities affected, and here the wording closely follows the commentaries on the UN Nomenclature that was used in drawing up the time-table (2). The following are included: all types of dealers in real estate, that is, operators, developers and agents. It is a necessary condition that the beneficiaries should derive their income from the ownership or possession of real estate, or from intermediary activities or rights connected therewith. These conditions may be fulfilled by individuals as well as companies.

The duties of property managers may include rent collecting.

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

(2) International Standard Industrial Classification of all economic activities (ISIC), United Nations Statistical Office, Statistical Papers, Series M, No 4, Rev. 1, New York 1958.



*Paragraph 3* gives the designations most commonly used for these activities in the Member States.

*Article 3* gives a list (not intended to be exhaustive) of the activities which very frequently have points of contact with those in Group 640 but which, by their nomenclature, belong to other groups and are the subject of other directives.

These directives may have the same timetable as Group 640 (e.g. commercial intermediaries, travel agencies, finance institutions, building contractors, etc.).

*Article 4:* It is harder to decide as to the content of the group "Business service not elsewhere classified". This is because it is a residual group intended to embrace all the activities which, although belonging to Group 83 ("Business services"), could not well be fitted into the separate sub-groups of legal, accounting and technical professions.

In order to be as precise as possible, paragraph 2 of this article divides the contents of Group 839 into eight sub-groups. These sub-groups together form a summary of the activities which, according to the index of the UN Nomenclature <sup>(1)</sup>, belong to this group.

By means of this index, the activities concerned can be arranged in the order in which they appear in Annex I of this Explanatory Memorandum.

As regards the various sub-groups, the following explanations are called for:

a) In all Member States the placing of workers in employment is normally a matter for the public authorities. Article 55 will therefore be applicable.

This dates from conventions with the ILO. Private employment agencies still exist in some countries because they were already operating before the conventions came into force.

Employment agencies for theatrical entertainers, musicians and actors in motion pictures and on the stage belong to Group 842 (to be liberalized by the end of 1969).

b) In Italy and France private detectives, inquiry agents and security guards must be nationals of the country concerned.

c) Publicity services play an important part in the development of the Common Market. Here in particular, any restriction whereby advertising agencies can only work for foreign clients must be eliminated.

d) In some Member States certain trade fairs and exhibitions are organized by public corporations. Where the latter exercise statutory powers it will be possible to invoke Article 55.

e) Office service include also the hiring of office machines.

f) Among financing and consultant services, it is difficult to determine those which belong to other sub-groups of Class 83.

This is true in particular of activities for which in one or other of the Member States a university degree or diploma is required. The present directive is aimed in the first place at removing restrictions. It is supplemented by a directive concerning accountants. Certain consultant services have been excluded from the directive because they come within the scope of the "accountants" directive. This was done in order to adhere to the General Programme which says of Group 832:

"832, accounting, auditing and business consultant services (all work of this kind done by self-employed persons however described)."

This distinction is also in line with the "International recommendations in statistics of distribution, Statistical Office of the United Nations, Series M, No. 26, New York, 1958".

g) The literary and artistic professions are unrestricted in all the Member States and pose no problem as regards liberalization.

b) The residual group comprises all activities of Group 839 which could not be included in any of the above sub-groups.

*Article 5* gives a list — as does Article 3 for dealings in real estate — of the activities which are the subject of other directives. This clarification appears advisable because the activities are often closely related.

Among the activities of Group 839 press work is dealt with separately in order to take the special interests of this sector into consideration.

*Article 6* indicates the exceptions which by virtue of certain articles of the Treaty apply to various activities. An authoritative interpretation, however, can be given only by the Court of Justice, but there should be no doubt that Article 55 is applicable to the placing of workers in employment. The application of Article 56 on the other hand is a more difficult question.

It is desirable that the same activities should be treated in the same way in all Member States, and there should therefore be no divergent conclusions as to the applicability

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

of Article 56. In the case of detective agencies, inquiry agencies and security services, existing discriminations must therefore be removed in a uniform manner.

### PART THREE

*Article 7: (Restrictions)* Complete freedom of establishment and freedom to supply services will not be achieved by the mere fact that this directive lifts restrictions on them. It will be supplemented in certain important respects by other directives issued separately.

This will be the case as regards restrictions on entry and residence or, particularly in the supply of services, restrictions affecting the equipment used in performing these services (Title V A of the General Programme relating to the supply of services) or on the transfer of funds (Title V B).

Furthermore this directive does not affect movements of goods and capital, since these are dealt with in special provisions of the Treaty. Another important adjunct is equality of treatment for persons who accompany the supplier of a service, as required by the regulations made under Articles 48 and 49.

Article 7 lists as examples a number of cases in which the laws of Member States contain restrictions. Here paragraph 1 underlines the principle of equality of treatment for foreign nationals and in particular prohibits any discriminatory administrative practice. The Commission will give special attention to this matter in order to prevent freedom of establishment from being hampered by the use of discretionary powers, consideration of needs or the like.

### PART FOUR

*Article 8:* Another important case for assimilation is membership of trade or professional organizations. This applies also to Luxembourg. The only rights which are not conceded to foreign nationals are the right to vote and the right to stand for election to the administrative bodies of professional chambers. This is because of the part which the latter play in the drafting of legislation; in accordance with the law of 4 April 1924 (Art. 29, 32) the chambers must be consulted on important Bills, budgetary questions, etc.

Finally, the measures based on this directive will be supplemented also by regulations concerning cartels and the abuse of dominant positions (Art. 85 and 86 of the Treaty).

Similarly, the general ban of Article 7 will be applicable when foreign nationals are subject to discrimination by reason of contractual or statutory stipulations of private law. Nor, by the terms of the Treaty, the General Programme and the directive, can the identity cards for foreign nationals in use in Belgium and France be replaced by others.

The regulations which exist in some States governing entry to professions in the services sector cannot, however, be considered discriminatory. Where they make it more difficult for nationals of other Member States to enter the profession, the aim should rather be co-ordination or appropriate provisional measures to facilitate entry.

*Article 9: (Aids)* In addition to the restrictions mentioned in Article 7, this Article calls for the elimination of measures of assistance (in accordance with Title VII of the Establishment Programme). The object is to prevent distortion of the conditions of establishment (Art. 54 (3 h) of the Treaty).

It is impossible to state in advance precisely what distorts the conditions of establishment in individual cases. The Member States have not mentioned cases in which exceptions are explicitly provided for, as was done in the agricultural sector <sup>(1)</sup>. There exceptions were made in view of the special nature of establishment in agriculture and customs which only exist in this sector.

*Article 10: (Integrity)* Article 10 is intended to make it easier for nationals of Member States to produce proof of integrity. In France, for example, foreign nationals are required under the law of 30 August 1947 to furnish proof that they have had no conviction in the last two years, have not been declared bankrupt, etc. The new provision lays down that documents of the home country, issued by a competent authority, shall also be accepted as sufficient proof in the host country.

As not all Member States issue certificates based on police records, this provision is important because it allows other equivalent documents to be submitted, such as certificates of good conduct issued by the police, which can also be obtained by individuals. Where, as in France, national regulations also require that the applicant should not have been declared bankrupt, foreign nationals must also furnish proof to this effect. In these cases too, the intention is to make it easier for them to furnish proof.

(1) Directive of the Council of 2 April 1963, official gazette of the European Communities, No 62, 20 April 1963, p. 1323.

Paragraph 2 is complementary to the provisions on this subject in other directives. When there is a professional register for a certain profession, the applicant must be able to prove that he has not been struck off the register for misconduct.

It goes without saying that being struck off the professional register is only of serious consequence when this has been done because of conduct reflecting upon the applicant's integrity.

*Article 11: (The taking of oaths)* Entry to a profession may sometimes be more difficult in that the applicant is required to take an oath. As a national of another Member State he may find the prescribed form of

words repugnant, particularly where it has a religious aspect.

When the directive was in preparation, consideration was given to the advisability of co-ordination or mutual recognition of diplomas for the professions concerned.

As a general rule, there are no special conditions governing permission to engage in the activities which are the subject of the present directive. But as particularly high standards of qualification are required in certain countries, it was found difficult to determine what practical experience in the country of origin might be considered as equivalent. Such matters can only be settled after careful examination.

## ANNEX

### List of activities in group 839 having certain similarities (except activities connected with the press)

#### Sub-group 1

##### *Placing workers in employment*

1. Employment agency.
2. Employment agency excluding theatrical and radio.
3. Nurses' registry.
4. Teachers employment agency.

#### Sub-group 2

##### *Detective agency, inquiry agency, burglary protection service*

1. Night watchman and security guard service.
2. Detective agency.
3. Credit inquiry agency.

#### Sub-group 3

##### *Advertising services*

1. Advertising agency.
2. Advertising sample distributing service.
3. Bill posting agency.

4. Bill-board advertising service.
5. Commercial art studio.
6. Commercial artist.
7. Mail advertising service.
8. Outdoor advertising service.
9. Publicity service.
10. Window dresser.
11. Advertising copy writer.

#### Sub-group 4

##### *Trade fairs and exhibitions*

1. Agricultural fair operation.
2. Exhibition, excluding athletic, operation.
3. Exposition operation.
4. Fair, except amusement, operation.

#### Sub-group 5

##### *Office services*

1. Address listing service.
2. Addressographing service.

3. Mimeographing service.
4. Business machine rental service.
5. Classified mailing list compiling and selling.
6. Multigraphing service:
  - i) Duplicating,
  - ii) Roneographing,
  - iii) Polycopying.
7. Photostating.
8. Stenographic service.
9. Translating service.
10. Typing service.
11. Mailing service.

Sub-group 6

*Financing and advisory services*

1. Consultant actuary.
2. "Better business" bureau.
3. Business consultant.
4. Economic and statistical consultant.
5. Economist\*.
6. Efficiency expert.
7. Executive placement consultant.
8. Financial analysts\*.
9. Management consultant\*.
10. Personnel management service.
11. Non-governmental statistical and economic service\*.
12. Statistician\*.

\* The activities so marked are not affected by the present directive, as they are covered by the directive on Group 832 (accounting, etc.)

13. Quotation service.
14. Correct time indicating service.
15. Debt-collecting.
16. Press-cutting service.

Sub-group 7

*Literary and artistic professions*

1. Writer.
2. Playwright.
3. Poet.
4. Lecturer.
5. Art sculptor.
6. Art painter.
7. Damask designing service.
8. Lace designing service.
9. Textile designer.
10. Costume designing service.
11. Fashion consulting service
12. Fashion designing service.
13. Boot and shoe pattern designing service.
14. Shoe designing service.

Sub-group 8

*Other services in Group 839 (e.g. valuers, interpreters, etc.)*

1. Customs broker.
2. Customs tariff specialist.
3. Assessors, except real estate or insurance.
4. Interpreters.

# Proposal for a first directive of the Council on the co-ordination of procedures for the conclusion of public works contracts

(submitted by the Commission to the Council on 28 July 1964)

*The Council of the European Economic Community,*

*Having regard* to the Treaty establishing the European Economic Community, and in particular Articles 7, 54, 63, 100 and 223 thereof;

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

*Having regard* to the General Programme for the removal of restrictions on freedom to supply services, and in particular Title V, C, e, 1 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 simultaneous realization of freedom of establishment and freedom to supply services with regard to public works contracts concluded in the Member States for governments, their local or regional authorities or other public corporations requires, side by side with the removal of restrictions, the co-ordination of national procedures for the conclusion of such contracts:

*Whereas* this co-ordination must, however, respect as fully as possible the current procedures and practices of the Member States;

*Whereas* the Council of Ministers in its declaration appended to the aforementioned General Programmes has indicated that co-ordination should be based on certain principles as to the prohibition of technical specifications with discriminatory effects, adequate publicity for public works contracts, the elaboration of objective criteria for participation, and the establishment of procedure for joint oversight of the observance of these principles;

*Whereas* it is important to ensure that bodies operating the railways in the Community are not subject to different arrangements, when awarding works contracts, owing to their different legal status, and whereas therefore

the present directive should not apply to railways run by national boards, pending a special directive on this point;

*Whereas* it is necessary to provide for exceptional cases in which the provisions to co-ordinate procedures need not be applied, but also explicitly to limit the number of such cases;

*Whereas* public works contracts worth less than 60 000 units of account seem unlikely to attract competition at Common Market level, and it is therefore reasonable that the provisions for co-ordination should not be applied to them;

*Whereas* for practical reasons, Community-wide publicity cannot apply to all contracts subject to the provisions for co-ordination, and it is advisable to fix for the transitional period degressive limits of 1 million 600 000 and 300 000 units of account;

*Whereas* it is desirable to set up an Advisory Committee in pursuance of Article 54 (3 b) to assist the Commission in examining any problems arising in implementing the present directive, and also with a view to preparing future Community regulations concerning public works, and in order to fulfil one of the requirements mentioned in the declaration of the Council referred to above;

*Has adopted the present directive:*

## TITLE I

### General provisions

#### Article 1

1. a) Public works contracts are written contracts between the contractor, on the one hand, and, on the other, the bodies awarding the contract as defined in sub-paragraph b) below, for the construction, maintenance or demolition of a building work referred to in Article 2 b) of the "first directive concerning the participation of firms in the execution of building work for governments, their local or regional authorities or other public corporations";

b) The following are held to be the awarding bodies in the six Member States: governments, their local or regional authorities and the bodies listed under a) in the Annex of the directive mentioned above.

c) For public works contracts, the awarding bodies shall apply their national procedures, subject to the provisions of the present directive;

d) The procedures for the conclusion of public works contracts shall be compulsory except in cases where the consideration for the work to be carried out consists not only in a price but also in the right to make use of the finished work during a specified period. In this case the awardee of the contract may have recourse to a system of concessions. Where the concessionaire is an awarding body referred to under b), he shall be obliged, for works to be carried out by third parties, to observe the national procedures for the conclusion of public contracts, adapted to conform with the provisions of the present directive;

e) The provisions of the present directive shall not apply to public works contracts relating to railways. The conditions under which works contracts are awarded by the bodies operating the railways in the six Member States will be the object of a special co-ordinating directive.

2. For the purpose of the present directive:

a) The term "contractor" shall be understood in its widest connotation, to include without distinction the words "contractor" in the strict sense, "enterprise", "builder" and "firm or company" as defined in Article 58 of the Treaty;

b) A contractor who has submitted a tender is here termed the "tenderer"; a person who, as a result of the advertisement referred to in Article 8, second paragraph, has applied to take part in a limited tender is here termed the "candidate".

#### Article 2

1. National procedure by which any interested contractor may submit a tender shall be subject to the common rules of the present directive regarding open tender within the meaning of Articles 6-10, 13, 14, 18, 20-26, 28 and 29.

2. National procedures by which tenders may only be submitted by contractors who have been invited to do so shall be subject to the common rules regarding limited tender within the meaning of Articles 6-9, 11-13, 15, 16 and 18-29.

3. Contracts concluded in the cases referred to in Article 5 shall be subject only to the common rules of Articles 6, 7 and 17 with the exception of contracts concluded in the case referred to under Article 5 j), which

latter shall remain subject to all the common rules except those of Title III of the present directive.

4. Contracts referred to under Nos. 1, 2 and 3 shall also come under the provisions of Articles 30-37 concerning the Advisory Committee on public works contracts.

#### Article 3

The common rules contained in the present directive, as well as the provisions of Article 5, shall be applied in the circumstances mentioned in Article 2 to public works contracts estimated to be worth not less than 60 000 units of account (EMA).

The common rules of publication referred to in Articles 8-17 do not apply to contracts estimated to be worth less than:

i) 1 million units of account (EMA) during the period 1 January 1965 to 31 December 1965;

ii) 600.000 units of account (EMA) during the period 1 January 1965 to 31 December 1967;

iii) 300 000 units of account (EMA) from 1 January 1968.

The suspension provided for in Article 5 of the directive referred to in Article 1 (1 a) above shall not give Member States the right to suspend the publication required by Title III.

The equivalence between amounts in units of account and amounts in national currency is given in the Annex.

#### Article 4

In computing the amounts referred to in Articles 3, 5 and 28, the prices of supplies to be incorporated in the work but forming the subject of a separate contract shall be taken into consideration in addition to the amounts of the public works contracts.

#### Article 5

The bodies that award public works contracts may do so without applying the common rules of the present directive, save those of Articles 6, 7 and 17, in the following cases:

a) When no tenders or no regular tenders have been submitted after recourse has been had to one of the procedures laid down in the present directive, or when the tenders submitted are unacceptable having regard to national provisions compatible with the requirements of Title IV:

b) For works the execution of which is reserved exclusively for a contractor holding patents or licences relating to inventions or improvements, or exclusive import or utilization rights granted by the producer for supplies or techniques related thereto, or when the work can only be carried out by a single contractor or supplier, irrespective of whether he is established within the Community or not;

c) Where no monopoly exists either *de jure* or *de facto*, but for technical reasons the work can manifestly be given only to a particular contractor, irrespective of whether he is established within the Community or not;

d) For the repair or restoration of works of an artistic nature, which can only be entrusted to experienced artists or specialized technicians, irrespective of whether they are established within the Community or not;

e) For work which is only undertaken for purposes of research, testing, study or improvement;

f) Only so far as is strictly necessary, when owing to unforeseen circumstances the awardee of the contract is confronted with an urgent need that does not allow of the delay involved in other procedures;

g) When the object of the contract is of a secret nature;

h) For additional work which was not comprised in the initial project or in the first contract concluded, and which owing to an unforeseen circumstance is necessary for the execution of the work as therein described, provided that this additional work is given to the contractor who carried out the said work:

i) When this work cannot for technical or economic reasons be separated from the principal contract without great inconvenience to the awardee of the contract; or

ii) When this work, although separable from the initial contract, is strictly necessary to complete it;

However, the combined amount of contracts concluded under i) and ii) above must not exceed 50% of the initial amount of the first contract;

i) In exceptional cases where the nature of work or the uncertainties which it involves do not allow of a sound estimate and where the work must consequently be done on a "costs plus" basis; the awarding authorities shall inform the Advisory Committee of any case in which the present provision is applied;

j) During the transitional period, should price formation be in fact shielded from the normal play of competition within the Community, and provided that the number of contractors who are nationals of other Member States and who are invited to tender is not less than one third of the total number of contractors invited to tender. Provided that in such case the contractors invited to tender must conform to the standards for selection laid down in Chapter I of Title IV of the present directive and the contract shall be awarded in conformity with the rules of Chapter 2 of the said title. Member States shall inform the Advisory Committee of any case where recourse has been had to the present provision.

Each year before the end of March the Member States shall send to the Advisory Committee a statement of the number and amounts of contracts awarded under a) to j) during the previous year. As far as possible they shall list separately the contracts awarded by virtue of each of these provisions.

This obligation relates to contracts worth over 1 million units of account (EMA) during the period 1 January 1965 to 31 December 1965, over 600 000 units of account (EMA) during the period 1 January 1966 to 31 December 1967, and over 300 000 units of account (EMA) from 1 January 1968.

## TITLE II

### Common rules relating to technical specifications

#### Article 6

For the purposes of the present directive, technical specifications regarding public works contracts include all the technical stipulations contained, in particular, in the general and special articles and conditions of contract which permit a piece of work, a building material, a product or an article to be supplied to be described objectively (as to quality, performance, etc.), so that this piece of work, building material, product or article may be suitable for the use for which the awardee of the contract intends it.

These technical specifications include all mechanical, physical and chemical characteristics, classification and standards, conditions of inspection, trial and acceptance of the works or of the components and materials which enter into these works. Technical specifications also apply to construction techniques or methods and all other conditions of a technical nature which the awardee of the contract may require, under general

or special regulations, for the completed works or for the components or materials which enter into these works.

If among the projects meriting consideration there is one that has been drawn up with a system of calculation of the work that is different from that of the country awarding the contract but compatible with the requirements of the articles and conditions of contract, the department commissioning the work must examine the project in the light of the justifications and explanations supplied by the tenderer.

#### *Article 7*

The technical specification referred to in Article 6 must not present or involve any discriminatory effect.

The above paragraph applies to all discriminatory laws, regulations and administrative practices that constitute restrictions on freedom to supply services within the meaning of the first paragraph of Article 60 of the Treaty and of Title III of the "General Programme for the removal of restrictions on freedom to supply services", and also to any form of discrimination that may occur when an individual contract is concluded and is embodied, in particular, in the articles and conditions relating to it. As regards discriminatory laws, regulations or administrative practices hindering the import of goods, Articles 31, 32 (first paragraph) and 37(7) remain applicable.

Any technical requirement which has the effect of favouring one or more enterprises, either directly or indirectly, to the detriment of enterprises in the other States of the Community, or of excluding one of these latter enterprises, is held to be discriminatory within the meaning of the present directive.

In particular, specifications which contain the following indications where these are not justified by the nature of the project concerned are held to be discriminatory:

1. Mention of the brand name of a particular product, appliance or material or of the firm manufacturing or selling it, even if the name is followed by the words "or the like" or "or equivalent"; or a similar effect produced simply by reference to catalogues or prospectuses;

2. Mention of particular patents, types, categories, models or processes or reference to objects already forming part of the works or to catalogues, or any other oblique reference to objects already forming part of the works or to catalogues, or any other oblique references to particular makes or sources;

3. The name of any place or origin, working, extraction, manufacture or production;

4. Stipulation of characteristics or specifications of a technical or other nature such as to favour a particular make or source or to exclude it outright.

Where there are Community standards or precise rules of equivalence, the general and special articles and conditions of contract must observe them. Where there are not, the technical specifications shall appear in the general and special articles and conditions of contract and appended documents, with a description of the methods of inspection, trial, acceptance and calculation, unless an exception can be justified by the nature of the work concerned.

There is no discrimination when national standards are laid down as technical specifications, except when Community standards or rules of equivalence as referred to in the foregoing paragraph are in existence.

### TITLE III

#### Common rules regarding publication

#### *Article 8*

The publication provided for in the present directive is intended to ensure the widest possible competition whether in open or in limited tenders. To this end, it brings to the notice of contractors of other Member States projects for which public bodies in the Member States are proposing to award contracts.

More particularly, in limited tenders, publication is intended to enable contractors of the Member States to show their interest by applying to the awarding bodies for an invitation to tender on the terms stipulated.

#### *Article 9*

Bodies which wish to award a contract for public works by open or limited tender shall announce their intention in the form of a notice.

This notice shall be sent to the Commission of the EEC and published in full in the official gazette of the European Communities in the official languages of the Community, the text in the original language being the only authentic one.



When the accelerated procedure provided for in Article 12 is adopted, the notice is published in the four editions of the official gazette of the European Communities but in the original language only.

The official gazette of the European Communities shall publish the notice referred to in the foregoing paragraphs within ten days from the date of posting, and in the case of the accelerated procedure of Article 12 within six days from the date of posting.

Publication in the official gazette or, in the absence of these, in the specialized organs of the country awarding the contract must not be effected before the aforementioned date of posting and must include mention of this date.

The body which will award the contract must be in a position to provide proof of the date of posting.

#### *Article 10*

For open tenders, the final date for the receipt of tenders shall be fixed by the body which will award the contract at not less than 35 days from the date on which the notice is dispatched. Any additional information which may be requested must be furnished by the awarding body at least six days before the final date fixed for the receipt of tenders.

When tenders can only be submitted after a visit to the site or after documents appended to the articles and conditions of contract have been examined on the spot, or if a detailed survey is required, the final date for the submission of tenders shall be not less than 49 days from the date on which the notice is dispatched.

#### *Article 11*

For limited tenders, the final date for the receipt of applications for invitations to tender shall be fixed by the body which will award the contract at not less than 21 days from the date on which the notice is dispatched.

The awarding bodies shall write simultaneously to the accepted candidates, inviting them to submit their tenders, and they may decide at their discretion when these invitations shall be dispatched.

The final date for the submission of tenders shall be fixed by the body which will award the contract at not less than 21 days from the date on which the written invitation is dispatched. Any additional information which may be requested must be furnished by the awarding body at least six days before

the final date fixed for the submission of tenders.

When tenders can only be submitted after a visit to the site or after documents appended to the articles and conditions of contract have been examined on the spot, or if a detailed survey is required, at least 35 days shall be allowed for the submission of tenders.

#### *Article 12*

In cases of urgency where the time-limits laid down in the foregoing article would be impracticable, the body inviting tenders may apply the shorter time-limits set out hereunder:

- i) For the receipt of applications for invitations to tender, not less than 12 days from the date of dispatch of the notice;
- ii) For the submission of tenders, not less than 8 days from the date of invitation.

Any additional information which may be requested must be furnished by the inviter at least 4 days before the final date fixed for the submission of tenders.

Awarding bodies may decide at their discretion how soon invitations to tender shall be dispatched.

Applications for invitations to tender and invitations to submit a tender may be made by letter, telegram, telex or telephone.

#### *Article 13*

The notice published in the official gazette of the European Communities shall contain all information necessary to give contractors a clear enough picture of the work that will be required and the conditions attached to it.

The notice published in national official gazettes, or, in the absence of these, in specialized organs, shall not contain any information other than that published in the official gazettes of the European Communities.

#### *Article 14*

For open tenders, the notice shall at least state:

- a) The date when it was dispatched to the official gazette of the European Communities;
- b) That the contract will be awarded by open tender;

c) The place where the work is to be carried out, the nature and extent of the requirements, and the general features of the work; if the contract is divided into several lots, the size of the different lots and whether it is possible to tender for one lot, for several lots or for the whole; in the case of contracts whose object, in addition to the eventual execution of the work, is the drawing-up of schemes, only such indications as are necessary to enable contractors to understand the aim of the contract and to submit schemes corresponding to this aim;

d) The time which would be allowed for the execution of the contract;

e) The address of the department which will award the contract;

f) The address of the department to which requests for the special articles and conditions of contract and additional documents must be directed, and the final date by which this request must be made, together with the amount and method of payment of the sum payable to obtain these documents;

g) The address of the department which will supply additional information about the articles and conditions of contract or about the work, together with the days and times when such information can be obtained;

h) The final date by which tenders and appended documents containing the technical description of the tender must be submitted, the address to which they must be sent and the language or languages in which they must be written;

i) The documents to be enclosed with the tender to provide proof of the technical qualifications and business capacity of the tenderer in accordance with the conditions laid down in Articles 20-26;

j) The persons who will be present at the opening of the tenders and the time and place thereof;

k) Indications as to the sureties or other guarantees required by the body awarding the contract, in whatever form;

l) The methods of financing and payment for the work done and/or references to the texts in which they are set out;

m) The formal conditions for the acceptance of the tender or references to the texts in which they are set out;

n) Whether groups of contractors must, in order to be allowed to tender, assume a definite legal form;

o) The criteria for awarding the contract in conformity with Article 28;

p) The length of time during which tenderers must maintain their tenders.

#### Article 15

For limited tenders, the notice shall at least give:

a) The information referred to in points a), b), c), d), e), n) and o) of Article 14;

b) The final date by which applications for invitations to tender must be submitted, the address to which they must be sent and the language or languages in which they must be written;

c) The final date by which invitations to submit tenders will be sent out by the department which will award the contract;

d) The information that must be included in the application for an invitation to tender in the form of declarations which are subject to subsequent verification and which enable the technical qualifications and business capacity of the candidate to be assessed in accordance with the conditions laid down in Articles 20-27.

#### Article 16

For limited tenders, the invitation to tender shall include at least:

a) The information referred to in points f), g), h), i), k), l), m) and p) of Article 14;

b) Reference to the notice mentioned in Article 15;

c) Mention of the documents to be enclosed to support the declarations furnished by the candidates in conformity with Article 15 d).

#### Article 17

Public bodies which award contracts may at their discretion publish in the official gazette of the European Communities notices of public works contracts of which publication is not compulsory under the present directive, provided that they are worth not less than 60 000 units of account.

### TITLE IV

#### Common rules regarding participation

#### Article 18

The criteria for participation comprise standards for the selection of contractors and criteria for the award of contracts.

The body which will award the contract shall verify the suitability of contractors who are not excluded under the terms of Article 20 by applying the criteria of business, financial and technical capacity referred to in Articles 23-26, the contract being awarded according to the criteria laid down in Chapter 2 of the present title.

#### Article 19

In the case of limited tender as defined in Article 2(2), the body which will award the contract shall select from among candidates possessing the qualifications required under Articles 20-26 those whom they will invite to tender.

Where individual cases are examined by the Advisory Committee, non-discrimination as regards nationality shall be presumed if the number of candidates who are nationals of the other Member States, have the qualifications required under Articles 20-26 and are invited to tender, is not less than one third of the total number of accepted candidates.

Where there is an insufficient number of candidates who are nationals of other Member States and have the qualifications required under Articles 20-26, the body which will award the contract cannot claim this presumption unless all the said candidates are invited to tender.

### CHAPTER 1

#### CRITERIA FOR SELECTION OF CANDIDATES

##### Article 20

A contractor may be debarred from entering into the contract:

a) If he is in a state of bankruptcy or liquidation, or has suspended activities, or is party to a settlement in court or subject to a scheme of composition, or is in any similar situation resulting from other such proceedings provided for in national laws or regulations;

b) If he is the object of bankruptcy proceedings, a settlement in court, a scheme of composition or other such proceedings provided for in national laws or regulations;

c) If a final judgment has been pronounced against him for an offence relating to his professional conduct;

d) If, in a professional matter, he has committed an offence or serious misdemeanour or has to the certain knowledge of

the body awarding the contract acted in bad faith;

e) If he is in default on the payment of social security contributions in accordance with the regulations of the State where he is established or those of the State in which the contract is to be awarded;

f) If he has been guilty of false declarations when furnishing information as required by the present chapter.

The contractor shall present a certificate issued by a competent authority, or, where the national laws do not so permit, a declaration, to the effect that he is not in any of the situations mentioned in a), b), c), d) or e).

If the contractor is in one of the situations mentioned in a) or b), a declaration stating the financial situation of the firm and its capacity to carry out the works satisfactorily may be required in order to enable him to be a party to the contract.

##### Article 21

An awarding body which excludes a firm on any of the grounds set out in Article 20 shall inform the Advisory Committee to this effect.

If the contractor concerned so requests, the awarding body shall inform him of the reasons for his exclusion if the latter is based on sub-paragraphs a), b) or c) of Article 20.

##### Article 22

Any contractor wishing to tender for a public works contract may be asked to supply proof that his name is entered in the professional register of the State of the Community in which he is established: for Germany, the "Handelsregister" and the "Handwerksrolle"; for Belgium the "registre du commerce" or "handelsregister"; for France, the "registre du commerce"; for Italy, the "Registro della Camera di Commercio, Industria o Agricoltura"; for Luxembourg, the "registre du commerce" and the "rôle de la Chambre des Métiers"; for the Netherlands, the "handelsregister".

##### Article 23

The contractor may furnish proof of his financial standing and capacity to undertake the work:

a) By bank references:

b) By presentation of the balance-sheets of the firm, or of extracts from them, in cases where publication of balance-sheets is required

by the company law of the State where the contractor is established;

c) By a declaration stating the overall turnover of the firm and its turnover of building works for the last three financial years.

The body which will award the contract shall state in the notice or invitation to tender which of these references will be required.

In the absence of the above means of proof, the contractor shall be permitted to furnish proof of his business and financial capacity by any other document.

#### Article 24

Proof of the technical capacity of the contractor and of the persons referred to under e) below may be furnished:

a) By the educational and professional certificates held by the managerial staff of the firm and, in particular, by the technical staff responsible for directing works;

b) By certificates stating the works executed and/or directed during the last five years, their amount, the period when and the place where they were carried out, and whether the technical rules were observed and the work was satisfactorily completed;

i) In the case of works executed and/or directed for public bodies, the certificate shall be drawn up or endorsed by the competent authority; it shall be handed to the contractor or, if it is not the practice of that authority to hand over such certificates direct, it shall be sent by the latter, at the request of the contractor, to the interested public authorities in the other Member States;

ii) In the case of work executed and/or for individuals, the certificate must be given where possible by the principal or, as the case may be, by the person in charge of the works, and in this latter case it must be endorsed by the principal;

c) By a declaration stating the tools, material and technical equipment which the contractor has available to carry out the work in question;

d) By a declaration stating the average number of workers employed over the year by the firm during the last three years;

e) By a declaration indicating the firms of consultant architects and civil engineers, whether they are associated with the contracting firm or not, in cases where the body which will award the contract requires that the contractor should call on their services, or if the contractor intends to do so.

The body which will award the contract shall state in the notice or in the invitation which of these references will be required.

#### Article 25

1. On the entry into force of the present directive Member States which have official registers of approved contractors shall revise them in the light of Article 20, subparagraphs a) to d) and f) and Articles 22-24.

2. Firms so registered may, for each contract, submit to the awarding body a certificate of registration made out by the competent authority.

3. Such registration, duly certified by the competent authority, shall constitute for the awarding bodies of the other Member States presumptive evidence of approval of the contractor within the meaning of Article 20 a)-d), f) and Articles 22-24 for works of the type carried out by this contractor.

Information which is implied by official registration cannot be called in question. However, as regards the payment of social security contributions, an additional certificate may be required from every registered contractor for each contract.

The bodies awarding public works contracts in the other Member States shall accord the benefit of the above provisions only to firms established in the country which drew up the official register.

4. For the registration of foreign contractors no proofs and declarations may be required other than those which are required of national contractors and in no case other than those provided for in Articles 20 and 22-24.

5. Those of the Member States which have official registers must make known to the other Member States the address of the bodies to whom applications for registration may be made.

#### Article 26

The bodies which will award the contract shall decide which references are to be furnished by the contractor in conformity with the last paragraph of Article 20 and Articles 22-25 according to the nature, extent and cost of the works to be carried out and having regard to the methods of financing and payment that have been decided upon in conformity with Articles 14 and 16.

### Article 27

In the first phase of the procedure for limited tender, candidates shall fulfil the requirements of Articles 20 and 22-25 by simple declaration.

The body that will award the contract shall ask for supporting documents to be produced only at the time when tenders are submitted, except in the case referred to in the second paragraph of Article 20.

## CHAPTER 2

### CRITERIA FOR AWARD OF CONTRACTS

#### Article 28

The criteria for the award of contracts may be:

- i) Either the lowest price only;
- ii) Or different criteria varying according to the contract in question, such as price, transport costs, time for completion, running costs, profitability or, where firms are invited to submit competitive schemes or where alternative plans are provided for or required, the technical merit.

When several criteria are applied, the awarding body shall wherever possible mention them in the notice in descending order of importance. He may also assign to each of these criteria a coefficient in order to set a precise figure on its importance.

During the transitional period, the body awarding the contract may adopt the criterion of price, calculated according to current national rules, for contracts estimated at less than 1 million units of account (EMA) during the period 1 January 1965 to 31 December 1965, 600 000 units of account (EMA) for the period 1 January 1966 to 31 December 1967, and 300 000 units of account (EMA) from 1 January 1968 to the end of the transitional period.

#### Article 29

1. The financial terms, such as payment in advance or on account and manner of payment shall be indicated for each contract, in conformity with Articles 14(1) and 16 a). The body awarding the contract shall adhere strictly to these terms and may not allow any other financial arrangement to be a consideration in awarding the contract.

2. When the works require the contractor to deliver supplies, it must be stated in the special articles and conditions whether or not the prices specified include transport.

3. When the time to be taken to carry out the work as stated in the notice is adopted as a criterion for the award of the contract, the special articles and conditions shall indicate how this criterion will apply.

The special articles and conditions shall also state whether and to what amount penalties will be imposed or bonuses paid if the works are completed later than or in advance of the date agreed in the contract.

4. The special articles and conditions of contract shall define the standards by which the technical merit of the works which are the subject of the contract will be assessed in cases where this criterion can be applied in conformity with Article 28, sub-paragraph ii).

## TITLE V

### Role of the Commission Advisory Committee for public works contracts

#### Article 30

The Commission of the European Economic Community shall be assisted by an Advisory Committee when examining disputes and problems arising from measures taken by the Member States to give effect to the directives for the removal of restrictions on freedom of establishment and freedom to supply services in the matter of public works contracts and for the co-ordination of procedures for the conclusion of public works contracts. To this end, the Advisory Committee shall be charged, in particular:

a) To draw up formal opinions for the Commission on specific cases referred to it by the Commission or by one of the members of the Committee relating to the implementation of the directives and the application by the national authorities of the rules governing the participation of nationals and companies of the other Member States in works commissioned by the public authorities or public corporations of a Member State;

b) To study, in relation to the application of the directives, the desirability of amendments or supplementary provisions.

### *Article 31*

The Member States shall furnish the Committee, at the request of its chairman, with all information relevant to the discharge of its task.

### *Article 32*

The members of the Committee shall be officials designated by the Member States — one full member and one alternative per country. Alternates may attend all meetings.

The members of the Committee may call on the assistance of other officials in an expert capacity.

The Committee may if it sees fit consult any other person for the examination of specific cases.

The Commission shall defray the travelling and subsistence expenses of members and alternates.

The Member States shall defray the travelling and subsistence expenses of experts and other persons consulted.

### *Article 33*

The chairman of the Committee shall be an official of the Commission of the European Economic Community. He may be assisted by technical advisers.

The chairman shall have no vote.

Secretarial services shall be provided by the Commission.

### *Article 34*

Without prejudice to the provisions of Article 214 of the Treaty, the members of the Committee, experts, officials of the Commission and technical advisers shall be bound to secrecy regarding their discussions.

### *Article 35*

The Committee shall be convened by its chairman, either on his own initiative or at the request of one of its members.

### *Article 36*

Two thirds of the members shall constitute a quorum. Each member, or in his absence his alternate, shall have one vote.

The opinions of the Committee shall be motivated. They shall be adopted by an

absolute majority of the votes cast; they shall be accompanied by a statement of the views expressed by the minority where the latter so requests.

### *Article 37*

The Committee shall draw up rules of procedure as necessary.

## TITLE VI

### Final provisions

#### *Article 38*

For the last two subdivided periods defined in Article 3, second paragraph, which precede the end of the transitional period, the limits for application of the common rules regarding publication may be revised at any time until six months before they come into force.

The time limits laid down in Articles 10, 11 and 12 may be revised after 1 July 1965.

The cases referred to in Article 5 j) and in the last paragraph of Article 28, will be reviewed at the end of the transitional period.

#### *Article 39*

In order to adapt their national procedures to the provisions of the present directive, the Member States shall bring into force the necessary laws, regulations or administrative provisions within six months from notification of the present directive and shall notify the Commission thereof forthwith.

#### *Article 40*

The Member States shall inform the Commission of any further proposed laws, regulations or administrative provisions which they contemplate adopting in matters relating to procedure for the conclusion of public works contracts.

#### *Article 41*

The text of the annex to the present directive is an integral part thereof.

#### *Article 42*

The present directive is addressed to the Member States.

## ANNEX

*Limits of application of the measures of co-ordination laid down in the directive on public works contracts*

1. Equivalence between units of account (EMA) and national currencies (parities of the International Monetary Fund) :

Unit of account EMA	Belgian or Luxembourg franc	Deutsche Mark	French franc	Italian lira	Guilder
1	50	4	4.93706	625	3.62
60 000	3 000 000	240 000	296 223,6	37 500 000	217 200
300 000	15 000 000	1 200 000	1 481 118	187 500 000	1 086 000
600 000	30 000 000	2 400 000	2 962 236	375 000 000	2 172 000
1 000 000	50 000 000	4 000 000	4 937 060	625 000 000	3 620 000

2. Equivalence adopted (round figures) for the purposes of the directive :

Unit of account EMA	Belgian or Luxembourg franc	Deutsche Mark	French franc	Italian lira	Guilder
1	50	4	4.93706	625	3.62
60 000	3 000 000	240 000	300 000	40 000 000	250 000
300 000	15 000 000	1 200 000	1 500 000	200 000 000	1 000 000
600 000	30 000 000	2 400 000	3 000 000	400 000 000	2 000 000
1 000 000	50 000 000	4 000 000	5 000 000	600 000 000	3 500 000

# Proposal for a Council regulation laying down supplementary provisions for the organization of the market in fruit and vegetables

(submitted by the Commission to the Council on 24 July 1964)

## Explanatory memorandum

Measures so far adopted for gradually bringing into effect a common organization of markets in the fruit and vegetable sector have dealt chiefly with:

i) Establishing common rules for competition by progressively applying quality standards and by eliminating aids liable to distort competition between Member States;

ii) Abolishing obstacles to trade between Member States by progressively reducing customs duties on imports and, for products covered by the annexes to Regulation 23 <sup>(1)</sup>, by progressively eliminating quantitative restrictions or measures with equivalent effect.

These measures have undoubtedly helped to establish freedom of movement for the goods produced and caused production to veer slightly in the direction of regional specialization. The experience gained in the two years since Regulation 23 came into force, confirms the view — already expressed — that these measures are not sufficient to prevent the price of market-garden produce from falling so steeply on Community markets as to jeopardize the aims of Article 39.

When in addition the provisions of Regulation 23, Article 3(2) are taken into account, it appears highly desirable to establish common rules so that appropriate machinery should exist at Community level for stabilizing the market and balancing supply and demand as far as possible at a normal price level allowing a fair return to producers.

The adoption and application of these rules are warranted by the fact that fruit and vegetables which constitute an important part of all agricultural output (from 7% to 25% according to country), are in many areas of the Community the principal source of income for farmers.

The present proposal accordingly makes provision for:

i) Measures for the better organization of producers by encouraging the formation of groupings within which members would

undertake, in the interests of market stability, to observe certain rules on production and marketing;

ii) A system of Community measures to put back on a sound footing the market for certain fruit and vegetables which are particularly important to horticulture in the Community;

iii) The standardization of systems of trading with non-member states.

## I. Organization of producers

The effect which producers' groupings can have in such matters as regularizing supply at regional level can be looked upon as a factor of the greatest importance in attaining the aims of the common organization of the fruit and vegetable markets. It has therefore been considered necessary to provide in this regulation (Title I) for setting up such co-operatives on the following principles:

1. The Member States will give official approval to producers' groupings which require their members to comply with certain rules on production and marketing (Art. 1):

2. The Member States may promote the formation and facilitate the operation of "approved groupings" by defraying part of their running costs, provided that this assistance is provisional and degressive so as gradually to place more financial responsibility on the producers (Art. 2);

3. Recognition of the role that the groupings can play in regulating the market, in particular by applying a system of withdrawal prices (Art. 3).

Since intervention of this sort by producers' groupings can contribute to maintaining normal price rates and obviating the necessity for action by the Community to replace the market on a sound footing, it seemed appropriate that for products listed in the annex the European Agricultural Guidance and Guarantee Fund should reimburse a large proportion of their expenses in this connection [Art. 13(3)]. The Fund's

(1) See official gazette of the European Communities, No 30. 20 April 1962, p. 965/62.



contribution has been fixed [Art. 4(3)] at a level higher than the minimum purchase price specified in Title II of the present regulation in order to favour the producers who have joined groupings and so to encourage the formation of such organizations.

Together with the draft regulation, a draft resolution has been presented, proposing that the Council should state its views on the advisability of giving priority for help from the Fund to schemes submitted by groupings approved under a Community programme for which the resolution makes provision and whose main purpose is to promote the development of facilities for the storage, handling, presentation and marketing of fruit and vegetables.

## II. Intervention on the market

In order to prevent a collapse of prices at Community level, the implementation of these measures must be accompanied by other measures, which would be applicable throughout the Community, aimed at placing the market on a sounder footing.

Consequently, the present regulation (Title II) lays down a system of intervention limited to produce of great concern to the Community as a whole or of special importance at regional level, particularly for traditional crops which have required heavy investment. The items concerned — cauliflowers, tomatoes, oranges, tangerines or mandarines, dessert grapes, peaches, apples and dessert pears — represent about 80% of the fruit and 35% of the vegetables grown.

The arrangements proposed are based on a prices system which makes it possible to assess the state of the market on the basis of objective criteria; the system includes, for each of the items listed above, the fixing of a guide price and the determination of a market price.

The guide price which the Council fixes annually:

- i) is based on the average of prices over three seasons, on representative producer markets in the Community for indigenous produce commercially and technically defined,
- ii) is set at a level which will so guide producers that surpluses of the particular product are avoided in the Community.

Each business day the Commission calculates the market price for produce identical to that on which the guide price is fixed; this market price shall be the arithmetic mean of daily prices on the same representative markets in the Community.

The character, and consequently the scale, of intervention are determined by the relation between market conditions and price levels. Article 8 of the present draft regulation accordingly provides for two types of intervention:

- i) The first may be applied when the market price is lower than 80% of the guide price for three consecutive days. This price level is very near the point at which a Member State may, in certain circumstances, apply to imports from other Member States the safeguard measures set out in Article 10 of Regulation 23;
- ii) The others are automatically set in motion when the market price is less than 60% of the guide price for three consecutive days — this price level being well below the cost price of the produce concerned.

### *First set of measures [Art. 8(1)]*

After obtaining the opinion of the Fruit and Vegetable Management Committee, and taking into account the nature of the produce for which the market is disturbed, the Commission adopts measures to prevent prices collapsing.

Among the measures to this end set out in Article 8(1), the possibility of a ban on the marketing of part of the produce covered by the standards merits particular attention. This provision complements and extends to Community level the stipulations of the draft regulation "on the application of quality standards to fruit and vegetables marketed in the producing Member State". Article 10 of which allows a Member State up to 31 December 1967 to control supply by suspending the sale on its own market of the lower qualities and smaller sizes of fruit and vegetables after authorization from the Commission in accordance with Article 13 of Regulation 23. The ban on marketing does not apply to produce which, under Article 2 of the draft regulation quoted above, do not have to comply with the common quality standards, i.e. in particular produce sent direct to industrial firms for processing.

### *Further measures [Art. 8(2, 3, 4)]*

If, despite these measures, prices continue to fall, intervention authorities designated by each Member State shall buy in produce at a price fixed by the Council in conformity with Article 6(3).

In order that this intervention may have immediate and telling effect, formalities for setting the machinery in motion have been reduced to a minimum.

To prevent a glut in production, the buying-in price, which may not be more than 50% of the guide price, is determined by prices quoted in the areas most favourable to the crop concerned.

Provision should certainly be made for this form of intervention, which is designed to ensure that in a really serious situation the market shall be relieved of excess quantities which it cannot absorb and producers shall not be left without income: for the measures to be taken under Article 8(1) do not appear to be appropriate for an exceptionally serious crisis on the market, as the ban involved can in practice apply only to a relatively small volume of produce. Producers can hardly be expected to withhold too high a proportion of their crop without compensation.

Since the forms of intervention specified in chapters 1 and 2 may be expected between them to ensure the stability of the markets in the produce listed in the annex, Article 17 of the present regulation lays down that Article 10 of Regulation 23 shall no longer apply to this produce after 1 January 1966.

### III. Trade with non-member countries

#### 1. Imports (Arts. 9 and 10)

The above measures for organizing the market seem to offer Community producers sufficient guarantees to warrant the removal of all quantitative restrictions and measures with equivalent effect on imports of fruit and vegetables from non-member countries other than those where trade is a state monopoly.

It has also been considered advisable to provide for the possibility of taking safeguard measures in respect of imports from non-member countries which permit practices that result in abnormally low prices for products offered on Community markets; the Member States will be authorized to impose a countervailing charge on these products — the charge to be equal in all Member States. Accordingly the provisions set out in Article 10 of the present regulation replace the draft regulation, based on Article 11(1) of Regulation 23, which was submitted to the Council on 24 July 1962 and provided for a countervailing charge to be levied on certain fruit and vegetable imports from non-member states.

#### 2. Exports (Arts. 11 and 12)

To round off these measures and achieve a truly common agricultural policy in the fruit and vegetable sector, competition between

business concerns in the Community must not be distorted on export markets outside the Community. Articles 11 and 12 of the present draft regulation seek to establish in this sphere equal conditions of competition by extending common quality standards to fruit and vegetables exported to non-member states and by replacing the arrangements for aid at present practised in Member States by a system of refunds to be made, in certain circumstances, on exports outside the Community.

### IV. Financial implications of these measures for organizing the market

Since the provisions for organizing the fruit and vegetable market set out in Regulation 23 and in the present draft regulation may be expected between them to create, in this sector, a single market from 1 January 1966, Article 13 of this draft regulation lays down that all expenses incurred by Member States in implementing Article 4 and Article 8(1 b, and 2) shall be met by the European Agricultural Guidance and Guarantee Fund. Accordingly the second sub-paragraph of Article 13(1) derogates from the provisions for financing the common agricultural policy laid down by Article 5(1) of Regulation 25 (1).

The cost of subsidies laid down by Article 8(1b) is admissible under Article 5(1) of Regulation 17 (2), since these subsidies are intended to provide an alternative outlet for certain produce.

As the withdrawal operations specified in Article 4 and the buying-in operations specified in Article 8(2) are a compulsory part of the common organization of the fruit and vegetable market, the expenditure involved is admissible under Article 6(1) of Regulation 17.

### V. Conclusion

As defined above, the present regulation marks an important stage in the development of a common market for fruit and vegetables. By 1966 the regulation should have established in this sector a single market open to the outside world but maintaining certain guarantees for Community producers. The latter must, however, avail themselves without delay of the organizational possibilities open to them and to the advantages granted them for a period, if they themselves are to help create an organized market protected from major disturbances.

(1) See official gazette of the European Communities, No 30, 20 April 1962, p. 991/62.

(2) *ibid.*, No 34, 27 February 1964, p. 586/64.

**Proposal for a Council regulation laying down supplementary provision for the organization of the market in fruit and vegetables**

*The Council of the European Economic Community,*

*Having regard to the Treaty setting up the European Economic Community, and in particular Articles 42 and 43 thereof;*

*Having regard to Regulation No. 23 on the progressive establishment of a common organization of the market in fruit and vegetables <sup>(1)</sup> and in particular Articles 3(2) and 11(1) thereof;*

*Having regard to the proposal of the Commission;*

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

*Whereas, in order to attain the objectives of the organization of the fruit and vegetable market, Regulation No. 23 provides, on the one hand, that measures already in force shall be extended by the application of Community rules on the operation of the markets, and that the arrangements applied by the Member States to imports from non-member countries shall be unified in the light of the development of the said market organization, on the other.*

*Whereas, in the framework of the rules on the operation of the markets it is important to provide in particular means of enabling the volume of supply to be kept in line with demand;*

*Whereas it should be possible to achieve this balance at a price level guaranteeing as far as possible a fair income to producers; and whereas it is therefore useful, with a view to ensuring this balance, to provide at Community level for measures making possible a fair income to producers; and whereas it is therefore useful, with a view to ensuring this balance, to provide at Community level for measures making possible such intervention on the market of the product in question as may be found appropriate;*

*Whereas, in view of the characteristics of the fruit and vegetable markets, the formation of producer groupings within which members would have to conform to certain rules on production and marketing should contribute to the attainment of these objectives.*

*Whereas provision should therefore be made to facilitate the formation and operation of these groupings: whereas it seems advisable to this end that the Member States should*

*grant them aid to cover a part of their management expenses, and whereas it is nevertheless important that these aids should be dynamic and in particular transitional and degressive, so that the financial responsibility borne by producers shall gradually increase;*

*Whereas, with a view to stabilizing prices, particularly at regional level, it is desirable that these co-operatives should help shape the market by such means as applying a withdrawal price below which the produce of members is withdrawn from the market and made unsuitable for human consumption; and whereas the groupings should in such cases pay compensation to producers whose products are not sold;*

*Whereas it is also advisable, in order to avoid the collapse of prices at Community level and to support the action of the groupings of producers, that measures should be provided which would be valid throughout the Community and would put the market on a sound footing; and whereas it is further necessary in really serious situations which could considerably impair the incomes of producers that the reorganization measures should include — with due consideration for the features of the fruit and vegetable market — the withdrawal of surpluses and at the same time ensure that farmers are given certain compensation at Community level;*

*Whereas these measures of market reorganization and the compensation envisaged must not prejudice the future guidance and adaptation of production in the light of regional specialization; and whereas it is therefore advisable, when the intervention system is being worked out and even more when guide prices and the price on which compensation will be based are being fixed, to take into account the situation of these regions where conditions of production are most favourable and so to avoid in particular overproduction in the Community of the products in question; and whereas it is also advisable to limit the field of application of this system to the market for certain fruit and vegetables whose stabilization is an important element in the producer's income;*

*Whereas the action taken by the groupings of producers may be expected to contribute to keeping prices at a normal level and thus limit recourse to the mandatory action that can be taken at Community level to afford relief in abnormal market situations; and whereas it therefore seems advisable that the Community should bear a part of the expen-*

<sup>(1)</sup> See official gazette of the European Communities, No 30, 20 April 1962. p. 965/62.

diture which the said groupings incur under this head;

*Whereas* the measures provided for by the intervention system may be expected to ensure the stabilization of the market for the products concerned and it is therefore possible for the Member States to waive application of the provisions of Article 10 of Regulation No. 23 in respect of these products;

*Whereas* taken together the provisions for the organization of the fruit and vegetable market offer Community producers sufficient guarantees to warrant the removal of quantitative restrictions and measures with equivalent effect on imports from non-member countries of products under heading 07.01, not included in sub-heading 07.01 A, and headings 08.02 to 08.09 of the common customs tariff;

*Whereas* it is however advisable to be able in special circumstances to take safeguard measures in respect of imports from non-member countries which permit practices that result in abnormally low prices for products offered on the Community market; and whereas there should be a Community procedure by which a countervailing charge could be imposed on these products, the amount being so calculated as to cancel out the effect of the practices referred to above and so obviate the risk that consignments at abnormally low prices to one or more member countries may disturb Community markets and jeopardize efforts to stabilize them;

*Whereas* it is necessary to prevent competition between Community enterprises being distorted in connection with exports for markets outside the Community and it is therefore advisable to establish equal conditions of competition by extending application of the common quality standards to fruit and vegetables exported to non-member countries and by putting in place of the arrangements for aid at present practised in Member States a Community system under which it will be possible to grant refunds on exports to non-member countries as far as this is necessary to safeguard the Community's share in international trade in fruit and vegetables,

*Has adopted the following regulation:*

## TITLE I

### Organization of the producers

#### Article 1

1. The Member States shall recognize as approved groupings of producers of fruit

and vegetables — hereinafter known as approved groupings — those organizations of producers of fruit and vegetables having legal personality and constituted with the object among others, or ensuring concentration of supplies and stability of prices at the production stage for one or more of the products listed in the annexes to Regulation No. 23, provided always:

a) That their statutes contain provisions which include:

i) The requirement that members shall sell through the co-operatives all their output of the product or products in respect of which they are members, with the exception of any quantities which have been the subject of sales contracts concluded before the start of the marketing year and notified to the groupings;

ii) Availability to members of appropriate technical means for the presentation and marketing of the products;

iii) Improvement of the quality of the produce and adaptation of the amounts produced to outlets;

b) That their statutes contain no provision which might limit sales to certain categories of buyer or impose on buyers unequal conditions of competition;

c) That these organizations offer a sufficient guarantee as to the duration and economic importance of their activities.

2. In respect of each approved grouping, and within fifteen days following the date of approval, the Member States shall communicate to the Commission the information necessary for an understanding of its operation and its economic importance, in particular:

i) The statutes of the grouping;

ii) The number of members;

iii) The quantities of products likely to be marketed through the grouping;

iv) A description of plant and technical resources;

v) The sales method used;

vi) Financial resources.

The Commission shall be immediately notified if approval is withdrawn or suspended.

#### Article 2

1. The Member States may grant the approved groupings aid to cover a part of

their management costs, with the exception of costs relating to intervention on the market.

This aid must be limited to the first three years of operation of the approved grouping, reckoned from the date of approval, and may not exceed:

75% in the first year,

50% in the second year,

25% in the third year,

of the management expenditure shown in the balance-sheet for each financial year.

2. Member States may grant the approved groupings:

a) Advances on the basis of management costs shown in the budget estimates established for each financial year by the approved groupings:

b) Advances to cover part of foreseeable expenditure in relation with interventions on the market.

3. Member States shall notify the Commission of measures taken by virtue of this article and of the amount of aid granted and advances made to each approved grouping.

### Article 3

1. For the products listed in the annexes to Regulation No. 23, the approved groupings may fix a price, hereinafter called the withdrawal price, below which their members' products shall not be put on sale and they may then compensate producers for the unsold products, which have to be made unsuitable for human consumption.

2. Approved groupings which intend to apply a withdrawal price system shall notify the Member State which has issued the approval and also the Commission, one month before introducing the system, of:

a) The products to which withdrawal prices apply;

b) The period during which these prices are valid;

c) The level of these prices and, if appropriate, the basis on which they were fixed.

After consulting the Member State concerned the Commission shall authorize the application of the system as notified or shall decide on any necessary changes.

Changes to the system in force can be authorized by the same procedure.

### Article 4

1. For the products listed in the annex, the withdrawal price may not exceed 60% of the guide price and may not be less than 120% of the minimum purchasing price provided for in Article 6.

2. For these same products the amount of compensation to be paid to producers shall be equal to the withdrawal price for quality classes EXTRA and I, and to this price reduced by a standard amount for the other quality classes.

3. In order to finance these withdrawal operations the approved groupings shall constitute for each product an intervention fund to be included in their balance-sheet and supplied by contributions based on the quantities brought on to the market through the approved groupings.

Expenditure incurred by payment of the compensation referred to under (2) above shall be reimbursed by the Member States up to the amount of the minimum purchasing price plus half the difference between this price and the amount of compensation paid, the balance being borne by the grouping.

### Article 5

The Council, deciding by qualified majority on a proposal of the Commission, shall draw up by 30 June 1965 at latest the implementing details of this Title, in particular those concerning:

a) The criteria for determining the economic importance of the groupings;

b) The fixing of the amount of compensation;

c) Reimbursement by the Member States of expenditure incurred in respect of compensation;

d) Supervision of the activities of the approved groupings.

## TITLE II

### Intervention on the market

### Article 6

1. For each product listed in the annex a guide price and a minimum purchasing price shall be fixed annually for each marketing year or for each of the periods into which this year can be divided in the light of the seasonal development of prices.

These prices shall be valid for the whole Community.

2. In determining the guide price,

a) The basis shall be the arithmetical average of the prices quoted for the bulk of the product in question sold on representative producers' markets in each Member State during the three marketing years preceding the date when the guide price comes into force; the product shall be home-grown and of specified commercial characteristics, such as variety or type, quality class, sizing and presentation:

b) Account shall be taken of the guidance to be given to producers in order, in particular, to avoid structural surpluses of the relevant products in the Community.

3. In determining the minimum purchase price, which may not be higher than 50% of the guide price, special account shall be taken of the lowest prices quoted for the bulk of the product in question sold, and which were taken into consideration when the average referred to under 2 a) above was calculated.

4. The Council shall lay down by qualified majority on a proposal of the Commission:

a) The list of representative markets and the definition of the products, and

b) The guide prices and the minimum purchasing prices, according to the following time-table:

Before 1 May for tomatoes and peaches;

Before 1 July for dessert grapes, apples and dessert pears;

Before 1 October for cauliflowers, oranges, tangerines and mandarines.

5. For the initial application of the provisions laid down in this article,

a) The list of representative markets and the definition of the products shall be decided by 30 June 1965 at latest;

b) Member States shall notify the Commission of the prices referred to in 2 a) above, for the marketing years 1962/63, 1963/64 and 1964/65.

*Article 7*

1. For each product listed in the annex Member States shall communicate to the Commission, on each working day throughout the marketing year and for the same representative markets, the prices recorded

for the bulk of sales of the same product for which the guide price was fixed.

2. For each of the products listed in the annex, the Commission shall each working day fix a price, hereinafter known as the market price, valid for the whole Community and equal to the arithmetical average of the daily prices referred to in the preceding paragraph.

*Article 8*

1. In the event of the market price for a given product remaining 80% below the guide price for three successive working days, the Management Committee shall be convoked forthwith and measures to restore the market, valid for the whole Community and implemented by the bodies designated for this purpose by each Member State, shall be decided on in accordance with the procedure in Article 13 of Regulation No. 23.

Such measures may in particular include:

a) A ban on the marketing within the Community for a specified period of products of certain varieties, sizes and quality classes defined by the common quality standards;

b) The granting of bonuses to encourage processing of those quantities of products which cannot be absorbed by the market.

2. In the event of the market price for a given product remaining below 60% of the guide price for three successive working days, purchases shall be made by the intervention bodies designated by each Member State.

3. The Commission shall forthwith give a ruling that the condition laid down in 2 above is fulfilled.

As soon as this ruling has been given the intervening bodies shall be required to purchase at the minimum purchasing price any Community products offered them, on condition that these conform with the common quality standards and have not been the subject of a ban under 1 a) above.

Products purchased by the intervention bodies must be rendered unfit for human consumption.

4. These purchasing operations shall be suspended as soon as the market price has remained equal to or above 60% of the guide price for three consecutive working days, when the Commission shall forthwith give a ruling that this condition is fulfilled.

### TITLE III

#### System of trade with non-member countries

##### Article 9

For products coming under heading 07.01, other than those in sub-heading 07.01 A, and under headings 08.02 to 08.09 of the common external tariff, the Member States shall abolish all quantitative restrictions and measures with equivalent effect on the import of products from non-member countries, except where an exemption has been decided on by the Council, acting by qualified majority on a proposal of the Commission.

##### Article 10

1. A countervailing charge may be levied when products referred to in Article 9 are imported from non-member countries which grant either direct or indirect bonuses or subsidies to exports of these products or which tolerate, encourage or impose commercial practices whose effect is an abnormal reduction in the price of the products exported.

For this countervailing charge to be established it is further necessary that the measures and practices in question should distort or threaten to distort competition, in particular by injuring production in one or several Member States or intra-Community marketing of the products in question.

This countervailing charge, which can be fixed as a standard amount, shall be the same for all Member States. It shall be so calculated that the effect of the measures and practices referred to in the above paragraphs is offset in such a way as to ensure the continued effectiveness of the common customs tariff.

2. The application of a countervailing charge and the fixing of the amount thereof shall be decided on in accordance with Article 13 of Regulation No. 23.

##### Article 11

Products for which common quality standards have been fixed shall be exported to non-member countries only if they correspond to these standards.

In the light, however, of the requirements of the markets for which the products are intended, exemptions may be granted in accordance with the procedure laid down in Article 13 of Regulation No. 23.

2. The exporting Member State shall submit the products exported to non-member countries to a quality check before they leave its territory.

##### Article 12

When the products referred to in Article 9 are exported to non-member countries, it shall be permissible to grant refunds of an amount fixed in relation to price developments in the Community and on the markets of those non-member countries which represent an important outlet for Community production.

The granting of such refunds and the determination of the amount to be refunded by the Member States shall be governed by the procedure laid down in Article 13 of Regulation No. 23 on the basis of the criteria laid down by the Council, voting by qualified majority on a proposal of the Community, at latest by 31 December 1965.

### TITLE IV

#### Final provisions

##### Article 13

1. With effect from 1 January 1966, Regulation No. 25 <sup>(1)</sup> and the implementing provisions thereto shall apply to the fruit and vegetable market.

However, as an exception to the provisions of Article 5 regarding the application to the products referred to in this regulation of Article 3(1 *a*, *b* and *c*) or Regulation No. 25, all eligible expenditure shall be financed by the European Agricultural Guidance and Guarantee Fund with effect from 1 January 1966.

2. For the common organization of the markets for fruit and vegetables, any action taken under Article 8(1 *b*) of this regulation shall be, in accordance with Article 5(1) of Regulation No. 17/64/CEE <sup>(2)</sup>, an intervention on the home market whose aim and effect are identical to refunds in trade with non-member countries.

The Council, voting in conformity with Article 5(2) of Regulation No. 17, shall determine, by 31 December 1965 at latest, details of the aid to be provided by the Agricultural Guidance and Guarantee Fund.

(1) See official gazette of the European Communities, No 30, 20 April 1962, p. 991/62.

(2) *ibid.*, No 34, 27 February 1964, p. 586/64.

3. Expenditure incurred by the Member States in respect of activities arising from the application of Article 4 and of Article 8(2) of this regulation shall be eligible under the Agricultural Guidance and Guarantee Fund by virtue of Article 6(1) of Regulation No. 17/64/CEE.

The Council, voting in conformity with the provisions of Article 6(2) of Regulation No. 17, shall determine by 31 December 1965 at latest the conditions of eligibility for the expenditure referred to in the preceding sub-paragraph.

#### Article 14

The implementing details of Articles 7, 8, 10 and 11 shall be drawn up, by 31 December 1965 at latest, in accordance with the procedure laid down in Article 13 of Regulation No. 23.

#### Article 15

The Council, deciding by qualified majority on a proposal of the Commission, may amend the list of products in the annex, revise the percentages of guide prices referred to in Articles 4 and 8 and take measures derogating from the provisions of this regulation in respect of any of these products.

#### Article 16

At latest by the end of the transitional period provided for in the Treaty, the Commission shall examine in the light of experience and of the results obtained from applying the provisions of Title I whether the provisions of Title II of this regulation should be

maintained or amended and whether in Title I a decision should be taken on the necessary adaptations.

If necessary the Commission will make proposals to the Council, which will decide by qualified majority.

#### Article 17

With effect from 1 January 1966 the provisions of Article 10 of Regulation No. 23 shall no longer apply to the products listed in the annex to this regulation.

#### Article 18

The Member States shall take all necessary action to adapt their laws and regulations so that the provisions of this regulation can be effectively applied from 1 January 1966 onwards. They shall notify the Commission at latest within one month of their adoption of the laws and regulations introduced in implementation of this regulation.

#### Article 19

This regulation shall come into force on the day following its publication in the official gazette of the European Communities.

Nevertheless the date of implementation of the systems of intervention and of trade with non-member countries set up by this regulation shall be 1 January 1966.

This regulation shall be binding in all its parts and directly applicable in each Member State.

## ANNEX

### Common customs tariff number

07.01 B I	Cauliflowers	08.06 A II	Apples (other than cider apples)
07.01 M	Tomatoes		
ex 08.02 A	Sweet oranges	ex 08.06 B	Pears (other than for perry-making)
ex 08.02 B	Tangerines or mandarines		
08.04 A	Dessert grapes	ex 08.07 B	Peaches



**Council resolution on the promotion of technical aids to the presentation and marketing of fruit and vegetables**

*The Council of the European Economic Community,*

*Considering* that the production of fruit and vegetables is an important element of agricultural income in the Community, and that for this reason encouragement should be given to action which would both adapt and guide production and also adapt and improve marketing, and more particularly to action which would developed technical aids to the handling, stocking, presentation and marketing of fruit and vegetables;

*Considering* that Regulation No. .../64/CEE is aimed in particular at promoting the formation of groupings of fruit and vegetable producers whose action in guiding production and putting the market on a sound footing may be expected to contribute effectively to the attainment of the objectives of the market organization for the sector in question;

*Considering* that the action of these groups is all the more effective if they make available to their members the appropriate technical means for the presentation and marketing of their products;

*Considering* that under the terms of the said regulation approval is only granted to groupings which show that they have adequate equipment,

*Agrees* that it is advisable to grant priority in aid from the European Agricultural Guidance and Guarantee Fund to those projects submitted by the co-operatives approved under Regulation No. .../64/CEE which aim, as part of the Community programmes referred to in Article 16 of Regulation No. 17/64/CEE, at promoting technical aids to the storage, handling, presentation and marketing of fruit and vegetables.