II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 29 June 1982

on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in certain services incidental to transport and travel agencies (ISIC Group 718) and in storage and warehousing (ISIC Group 720)

(82/470/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 49, 57 and 66 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas, pursuant to the Treaty, all discriminatory treatment based on nationality with regard to establishment and provision of services is prohibited as from the end of the transitional period; whereas the principle of such treatment based on nationality applies in particular to the right to join professional organizations where the professional activities of the person concerned necessarily involve the exercise of this right;

Whereas, moreover, Article 57 of the Treaty provides that, in order to make it easier for persons to take up and pursue activities as self-employed persons, directives are to be issued for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States;

Whereas, in the absence of mutual recognition of diplomas and of immediate coordination, it nevertheless appears desirable to facilitate the attainment of freedom of establishment and freedom to provide services in respect of the activities falling within ISIC Groups 718 and 720 by the adoption of measures intended primarily to avoid causing exceptional difficulties for nationals of Member States in which the taking up of such activities is not subject to any conditions;

Whereas, in order to prevent such difficulties arising, the main object of the measures should be to allow, as sufficient qualification for taking up the activities in question, excluding transport activities proper, in host Member States which have rules governing the taking up of such activities, the fact that the activities have been pursued in the country of provenance for a reasonable period of time, such period being, in cases where no previous training is required, sufficiently recent to ensure that the person concerned possesses professional knowledge equivalent to that required of the host country's own nationals;

(1) OJ No 73, 23. 4. 1966, p. 1099/66.
(2) OJ No 201, 5. 11. 1966, p. 3475/66.
(3) OJ No 17, 28. 1. 1967, p. 284/67.

Whereas the activity in question must have been pursued and any vocational training received in the same branch of trade as that in which the beneficiary wishes to establish himself in the host Member State, where the latter country imposes this requirement on its own nationals;

Whereas, in accordance with the general principles of the Treaty as to equality of treatment and with the judgments of the Court of Justice on this matter, the freedom to provide services in each Member State is exercised on the same terms as such State imposes in its laws and regulations on its own nationals engaged in the same activity; whereas it is incumbent on Member States, when they adopt the measures necessary to comply with this Directive, to ensure equivalence of conditions for their own nationals and nationals of other Member States as regards their freedom to engage in the activities concerned, with particular reference to operating conditions and financial guarantees required;

Whereas, in so far as in Member States the taking up or pursuit of the activities referred in this Directive is also dependent in the case of employed persons on the possession of general, commercial or professional knowledge and ability, this Directive should also apply to this category of persons in order to remove an obstacle to the free movement of workers and thereby to supplement the measures adopted in Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community [1];

Whereas, for the same reason, the provisions relating to proof of good repute and proof of no previous bankruptcy should also apply to employed persons,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall adopt the measures set out in this Directive in respect of establishment or provision of services in their territories by natural persons and companies or firms covered by Title I of the General Programmes [2] (hereinafter called 'beneficiaries') in the sector of activities coming within Article 2.

2. This Directive shall also apply to nationals of Member States who, as provided in Regulation (EEC) No 1612/68, wish to pursue as employed persons activities coming within Article 2 of this Directive.

Article 2

This Directive shall apply to the activities appearing in Annex I of the General Programme for the abolition of restrictions on freedom of establishment, ISIC Groups 718 and 720.

These activities shall comprise in particular:

A. (a) acting as an intermediary between contractors for various methods of transport and persons who dispatch or receive goods and who carry out various related activities:

(aa) by concluding contracts with transport contractors, on behalf of principals;

(bb) by choosing the method of transport, the firm and the route considered most profitable for the principal;

(cc) by arranging the technical aspects of the transport operation (e.g. packing required for transportation); by carrying out various operations incidental to transport (e.g. ensuring ice supplies for refrigerated wagons);

(dd) by completing the formalities connected with the transport such as the drafting of way bills; by assembling and dispersing shipments;

(ee) by coordinating the various stages of transportation, by ensuring transit, reshipment, transhipment and other terminal operations;

(ff) by arranging both freight and carriers and means of transport for persons dispatching goods or receiving them;

(b) assessing transport costs, and checking the detailed accounts;

(c) hiring railway cars or wagons for transporting persons or goods;

[1] OJ No L 257, 19. 10. 1968, p. 2.
[2] OJ No 2, 15. 1. 1962, pp. 32/62 and 36/62.

(d) taking certain temporary or permanent measures in the name of and on behalf of a shipowner or sea transport carrier (with the port authorities, ship's chandlers, etc.);

(e) acting as an intermediary in the sale, purchase or hiring of ships;

B. (a) organizing, offering for sale and selling, outright or on commission, single or collective items (transport, board, lodging, excursions, etc.) for a journey or stay, whatever the reason for travelling;

(b) arranging, negotiating and concluding contracts for the transport of emigrants;

C. (a) receiving all objects and goods deposited, on behalf of the depositor, whether under customs control or not, in warehouse, general stores, furniture depots, coldstores, silos, etc.

(b) supplying the depositor with a receipt for the object or goods deposited;

(c) providing pens, feed and sales rings for livestock being temporarily accommodated while awaiting sale or while in transit to or from the market;

D. (a) carrying out inspection or technical valuation of motor vehicles;

(b) measuring, weighing and gauging goods.

Article 3

In respect of the activities listed in Article 2, the usual titles current in Member States are given below for guidance:

Belgium

A. Commissionnaire de transport
Vervoercommissionair
Courtier de transport
Vervoermakelaar
Commissionnaire-expéditeur au transport
Commissionair-expediteur bij het vervoer
Commissionnaire affréteur
Commissionair-bevrachter
Commissionnaire-affréteur routier
Commissionair-wegbevrachter
Affréteur routier
Wegbevrachter
Affréteur fluvial
Binnenvaartbevrachter of rivierbevrachter
Affréteur maritime
Scheepsbevrachter
Agent maritime
Scheepsagent
Courtier de navires
Scheepsmakelaar

B. Agent de voyages
Reisagent
Agent d'émigration
Emigratieagent

C. Entrepositaire
Depothouder

D. Expert en automobiles
Deskundige inzake auto's
Peseur — mesureur — jaugeur juré
Beëdigde wegers, meters en ijkers

Germany

A. Spediteur
Abfertigungsspediteur
Güterkraftverkehrsvermittler
Schiffsmakler
Vermieter von Eisenbahnwagen und Eisenbahnwaggons

B. Reisebürounternehmer
Auswanderungsagent

C. Lagerhalter

D. Kraftfahrzeugsachverständiger
Wäger

Denmark

A. Speditør
Skibsagent

B. Rejsebureau

C. Opbevaring

D. Vejer og måler
Bilinspektør og bilassistent

France

A. Commissionnaire de transport
Courtier de fret routier
Dépositaire de colis
Courtier de fret de navigation intérieure
Agent maritime
Agent consignataire de navires

B. Agent de voyage

C. Entrepositaire
Exploitant de magasin général

D. Expert en automobiles
Peseur — mesureur juré

Greece

A. Πράκτορας μεταφορῶν
Ναυτικός πράκτορας
'Εφοδιαστής πλοίων
Ναυλομεσίτης ἐπαγγελματικῶν τουριστικῶν πλοίων καί πλοιαρίων
Ναυλομεσίτες πλοίων

B. Πράκτορας γιά ἐπιβατικά ἀκτοπλοϊκά πλοῖα
Τουριστικά γραφεῖα:
1. Γενικοῦ τουρισμοῦ
2. 'Εσωτερικοῦ τουρισμοῦ
3. Tour operator
Πράκτορες μεταναστεύσεως καί ἀντιπρόσωποί τους

Γ. Γενικές ἀποθῆκες

Δ. Πραγματογνώμονες ἐπί τροχαίων ἀτυχημάτων

Ireland

A. Forwarding agent
Shipping and forwarding agent
Shipbroker
Freight agent
Shipping agent
Air freight agent
Road haulage broker

B. Travel agent
Tour operator
Air broker
Air travel organizer

C. Bonder
Warehouseman
Market or lairage operator

D. Motor vehicle examiner

Italy

A. Spedizioniere (commissionario)
Mediatore
Agente marittimo raccomandatario
Mediatore marittimo

B. Agente di viaggio e turismo
Mandatario di vettore di emigrante

C. Esercenti depositi in magazzini doganali di proprietà privata
Esercenti magazzini generali
Esercenti depositi franchi

D. Stimatore e pesatore pubblico

Luxembourg

A. Commissionnaire de transport
Commissionnaire expéditeur au transport

B. Agent de voyage
Agent d'émigration

C. Entrepositaire

D. Expert en automobiles
Peseur

Netherlands

A. Expediteur
Bevrachter
Scheepsmakelaar
Scheepsagent
Verhuren van spoorrijtuigen en spoorwagens

B. Reisbureaubedrijf
Reisagentschap
Emigratieagent

C. Douane-entrepot (publiek, particulier, fictief)
Gewone opslagplaatsen

D. Technische inspectie van motorrijtuigen
Meter, wagen en ijken

United Kingdom

A. Freight forwarder
Shipbroker
Air cargo agent
Shipping and forwarding agent

B. Tour operator
Travel agent
Air broker
Air travel organizer

C. Storekeeper
Livestock dealer
Market or lairage operator
Warehousekeeper
Wharfinger

D. Motor vehicle examiner
Master porter
Cargo superintendent

Article 4

1. Where a host Member State requires of its own nationals wishing to take up one of the activities coming within Article 2 proof of good repute and proof that they have not previously been declared bankrupt, or proof of either one of these, that State shall accept as sufficient evidence, in respect of nationals of other Member States, the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or of provenance showing that these requirements have been met.

2. Where a host Member State imposes on its own nationals wishing to take up one of the activities

referred to in Article 2 (B) certain requirements as to good repute, and evidence that such requirements are satisfied cannot be obtained from the document referred to in paragraph 1, that State shall accept as sufficient evidence, in respect of nationals of other Member States, a certificate issued by a competent judicial or administrative authority in the country of origin or in the country of provenance, indicating that the requirements in question have been met. Such certificate shall relate to the specific facts regarded as relevant by the host country.

3. Where the country of origin or the country whence the foreign national comes does not issue the document referred to in paragraph 1 or the certificate referred to in paragraph 2, furnishing proof of good repute or proof of no previous bankruptcy, such proof may be replaced by a declaration on oath — or, in States where there is no provision for declaration on oath, by a solemn declaration — made by the person concerned before a competent judicial or administrative authority, or where appropriate a notary, in the country of origin or the country whence that person comes; such authority or notary will issue a certificate attesting the authenticity of the declaration on oath or solemn declaration. The declaration in respect of no previous bankruptcy may also be made before a competent professional or trade body in the said country.

Notwithstanding the foregoing, the host Member State may also take into account specific information which it has acquired through its own means.

4. Where in the host Member State proof of financial standing is required, that State shall regard certificates issued by banks in other States as equivalent to certificates issued in its own territory.

5. Documents issued in accordance with paragraphs 1, 2, 3 and 4 shall not be produced more than three months after their date of issue.

6. Member States shall, within the time limit laid down in Article 8, designate the authorities and bodies competent to issue the documents referred to above and shall forthwith inform the other Member States and the Commission thereof.

Article 5

Member States in which the taking up or pursuit of any activity referred to in Article 2 is subject to possession of certain qualifications shall ensure that any beneficiary who applies therefor be provided, before he establishes himself or before he begins to pursue any activity on a temporary basis, with information as to the rules governing the activity which he proposes to pursue.

Article 6

1. Where, in a Member State, the taking up or pursuit of any activity coming within Article 2 (A) (a), (b) or (d) is dependent on the possession of general, commercial, or professional knowledge and ability, that Member State shall accept as sufficient evidence of such knowledge and ability the fact that the activity in question has been pursued in another Member State for any of the following periods:

(a) five consecutive years in an independent capacity or in a managerial capacity; or

(b) either:

— two consecutive years in an independent capacity or in a managerial capacity, where the beneficiary proves that for the activity in question he has received previous training lasting at least three years, attested by a certificate recognized by the State, or regarded by the competent professional or trade body as fully satisfying its requirements, or

— three consecutive years either in an independent capacity or in a managerial capacity, where the beneficiary proves that for the activity in question he has received previous training lasting at least two years, attested by a certificate recognized by the State, or regarded by the competent professional or trade body as fully satisfying its requirements; or

(c) two consecutive years in an independent capacity or in a managerial capacity, where the beneficiary proves that he has pursued the activity in question for at least three years in a non-independent capacity; or

(d) three consecutive years in a non-independent capacity where the beneficiary proves that for the activity in question he has received at least two years of previous training, attested by a certificate recognized by the State or regarded by the competent professional or trade body as fully satisfying its requirements.

2. Where, in a Member State, the taking up or pursuit of any activity coming within Article 2, point A (c) or (e), point B (b), point C or D is dependent on the possession of general, commercial, or professional knowledge and ability, that Member State shall accept as sufficient evidence of such knowledge and ability the fact that the activity in question has been pursued in another Member State for any of the following periods:

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

(b) two consecutive years either in an independent capacity or in a managerial capacity, where the

beneficiary proves that for the activity in question he has received previous training, attested by a certificate recognized by the State, or regarded by the competent professional or trade body as fully satisfying its requirements; or

(c) two consecutive years in an independent capacity or in a managerial capacity, where the beneficiary proves that he has pursued the activity in question for at least three years in a non-independent capacity; or

(d) three consecutive years in a non-independent capacity where the beneficiary proves that for the activity in question he has received previous training, attested by a certificate recognized by the State or regarded by the competent professional or trade body as fully satisfying its requirements.

3. Where, in a Member State, the taking up or pursuit of the activities coming within Article 2 (B) (a) is dependent on the possession of general, commercial, or professional knowledge and ability, that Member State shall accept as sufficient evidence of such knowledge and ability the fact that the activity in question has been pursued in another Member State for any of the following periods:

(a) six consecutive years in an independent capacity or in a managerial capacity; or

(b) either:

— three consecutive years either in an independent capacity or in a managerial capacity, where the beneficiary proves that for the activity in question he has received previous training lasting at least three years, attested by a certificate recognized by the State, or regarded by the competent professional or trade body as fully satisfying its requirements, or

— four consecutive years either in an independent capacity or in a managerial capacity, where the beneficiary proves that for the activity in question he has received previous training lasting at least two years, attested by a certificate recognized by the State, or regarded by the competent professional or trade body as fully satisfying its requirements; or

(c) three consecutive years in an independent capacity or in a managerial capacity, where the beneficiary proves that he has pursued the activity in question for at least five years in a non-independent capacity; or

(d) either:

— five consecutive years in a non-independent capacity where the beneficiary proves that for the activity in question he has recieved previous training lasting at least three years, attested by a certificate recognized by the State or regarded by the competent professional or trade body as fully satisfying its requirements, or

— six consecutive years in a non-independent capacity where the beneficiary proves that for the activity in question he has received previous training lasting at least two years, attested by a certificate recognized by the State or regarded by the competent professional or trade body as fully satisfying its requirements.

4. The host Member State may require of nationals of other Member States, in so far as it so requires of its own nationals, that the activity in question should have been pursued and vocational training received in the same branch of trade as that in which the beneficiary wishes to establish himself in the host Member State.

5. In the cases referred to in paragraphs 1 (a) and (c), 2 (a) and (c) and 3 (a) und (c), pursuit of the activity shall not have ceased more than 10 years before the date on which the application provided for in Article 7 (3) is made. However, where a shorter period is laid down in a Member State for its own nationals, that period may also be applied in respect of beneficiaries.

Article 7

1. A person shall be regarded as having pursued an activity in a managerial capacity within the meaning of Articles 6 (1) and (2) if he has pursued such an activity in an undertaking in the occupational field in question:

(a) as manager of an undertaking or manager of a branch of an undertaking; or

(b) as deputy to the proprietor or to the manager of an undertaking, where such post involves responsibility equivalent to that of the proprietor or manager represented; or

(c) in a managerial post with duties of a commercial nature and with responsibility for at least one department of the undertaking.

2. A person shall be regarded as having pursued an activity in a managerial capacity within the meaning of Article 6 (3) if he has pursued such an activity in an undertaking in the occupational field in question:

(a) as manager of an undertaking; or

(b) as deputy to the proprietor or to the manager of an undertaking or manager of a branch of an undertaking, where such post involves responsibility equivalent to that of the proprietor or manager represented; or

(c) in a managerial post with duties of a commercial nature and with responsibility for at least one department of the undertaking.

3. Proof that the conditions laid down in Article 6 are satisfied shall be established by a certificate issued by the competent authority or body in the Member State of origin or Member State whence the person concerned comes, which such person shall submit in support of his application for authorization to pursue the activity or activities in question in the host country.

4. Member States shall, within the time limit laid down in Article 8, designate the authorities and bodies competent to issue the certificates referred to in paragraph 3 and shall forthwith inform the other Member States and the Commission thereof.

Article 8

Member States shall adopt the measures necessary to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof.

Article 9

Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 10

This Directive is addressed to the Member States.

Done at Brussels, 29 June 1982.

For the Council

The President

P. de KEERSMAEKER