

COUNCIL DIRECTIVE

of 15 October 1968

laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in the food manufacturing and beverage industries (ISIC Major Groups 20 and 21)

(68/366/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the General Programme for the abolition of restrictions on freedom of establishment¹ and in particular the second and third paragraphs of Title V thereof;

Having regard to the General Programme for the abolition of restrictions on freedom to provide services² and in particular the second and third paragraphs of Title VI thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament³;

Having regard to the Opinion of the Economic and Social Committee⁴;

Whereas, besides making provision for the abolition of restrictions, the General Programmes provide that it should be examined whether such abolition should be preceded, accompanied or followed by mutual recognition of diplomas, certificates and other evidence of formal qualifications, and by the co-ordination of provisions laid down by law, regulation or administrative action concerning the taking up and pursuit of the activities in question, and whether, if need be, transitional measures should be adopted pending such recognition or co-ordination;

Whereas not all Member States impose conditions for the taking up and pursuit of activities in the food manufacturing and beverage industries; whereas the definition of small craft industry, and hence the dividing line between small craft activities and industrial activities, varies from one Member State to

another; whereas, moreover, while in some cases there is freedom to take up and pursue small craft activities, in other cases there are stringent provisions making the taking up and pursuit of those activities subject to possession of formal qualifications;

Whereas the Council, at the time of approving the General Programmes, found that in respect of small craft industries co-ordination and recognition pose problems the solution of which requires detailed preparation;

Whereas it is therefore not possible to effect the co-ordination provided for at the same time as the abolition of restrictions; whereas such co-ordination must be effected at a later date;

Whereas, in the absence of immediate co-ordination, it nevertheless appears desirable to make it easier to attain freedom of establishment and freedom to provide services in respect of the activities in question by the adoption of transitional measures of the kind envisaged in the General Programmes; whereas this should be done primarily in order 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 transitional measures should be to allow, as sufficient qualification for taking up the activities in question in host States which have rules governing the taking up of such activities, the fact that the occupation has been pursued in a Community country other than the host country 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; whereas transitional measures applicable to clearly defined activities may at the same time provide that Member States, pending mutual recognition of diplomas, certificates and other evidence of formal qualifications, will henceforth consider enrolment in the professional register of

¹ OJ No 2, 15.1.1962, p. 36/62.

² OJ No 2, 15.1.1962, p. 32/62.

³ OJ No 23, 5.2.1966, p. 349/66.

⁴ OJ No 14, 25.1.1966, p. 206/66.

another Member State as sufficient evidence of knowledge and ability;

Whereas in respect of activities of self-employed persons falling within ISIC Major Groups 23—40 (Industry and small craft industries) the Council has already adopted a Directive on transitional measures,¹ and whereas the present Directive must be harmonised with those transitional measures;

Whereas, owing to differences in the views taken by the various Member States of certain of the activities falling within the provisions of the Council Directive² of 15 October 1968 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in the food manufacturing and beverage industries (ISIC Major Groups 20 and 21), it can happen that an activity which in one State is regarded as falling within the food manufacturing industry or the beverage industry may in another be regarded as falling within retail trade or within the personal services sector; whereas, to resolve any difficulties caused by such differences, the definitions given in the laws of the host country should be referred to in each case in order to determine which Directive on transitional measures should be applied;

Whereas, as regards States which do not make the taking up of the activities in question subject to any rules, in order to avoid a disproportionate influx into those States of persons who are unable to satisfy the conditions laid down in respect of the taking up and pursuit of such activities in the country whence they come, provision should be made for those States to be authorised, where appropriate and in respect of one or more activities, to require nationals of other Member States to furnish proof that they are qualified to pursue the activity in question in the country whence they come;

Whereas, however, considerable caution should be exercised in granting such authorisations, for, if too generally applied, they might hinder freedom of movement; whereas they should therefore be limited, both as to their period of validity and as to their scope, and, as is generally provided in the Treaty in respect of the administration of protective measures, the granting of such authorisations should be entrusted to the Commission;

Whereas the main purpose of the measures provided for in this Directive will disappear once the co-ordination of conditions for the taking up and pursuit of the activities in question and the mutual recognition of diplomas, certificates and other formal evidence of qualifications has been achieved;

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States, acting in accordance with the provisions hereinafter laid down, shall adopt the following transitional measures in respect of establishment or provision of services in their territories by natural persons or companies or firms covered by Title I of the General Programmes (hereinafter called 'beneficiaries') wishing to engage in activities as self-employed persons in the food manufacturing and beverage industries.

2. The activities in question are those covered by the Council Directive of 15 October 1968 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in the food manufacturing and beverage industries (ISIC Major Groups 20 and 21).

Article 2

Where, according to the law of a Member State, certain activities fall not within the food manufacturing industry or the beverage industry but rather within retail trade or within the personal services sector, the appropriate Directive laying down detailed provisions concerning transitional measures in the field in question shall apply to those activities in that Member State.

Article 3

Member States in which the taking up or pursuit of any activity referred to in Article 1 (2) in 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 occupation which he proposes to pursue.

Article 4

1. Where, in a Member State, the taking up or pursuit of any activity referred to in Article 1 (2) 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, subject to the provisions of paragraphs 2 and 3 of this Article, the fact that the activity in question has been pursued in another Member State for any of the following periods:

- (a) six consecutive years either in an independent capacity or as a person responsible for managing an undertaking; or
- (b) three consecutive years either in an independent capacity or as a person responsible for managing

¹ OJ No 117, 23.7.1964, p. 1863/64.

² OJ No L 260, 22.10.1968, p. 9.

an undertaking, where the beneficiary can prove that for the occupation in question he has received at least three years' previous training, attested by a certificate recognised by the State, or regarded by the competent professional body as fully satisfying its requirements; or

- (c) three consecutive years in an independent capacity, where the beneficiary can prove that he has pursued the occupation in question for at least five years in a non-independent capacity; or
- (d) five consecutive years in a managerial capacity, not less than three years of which were spent in technical posts with responsibility for one or more departments of the undertaking, where the beneficiary can prove that for the occupation in question he has received at least three years' previous training, attested by a certificate recognised by the State or regarded by the competent professional or trade body as fully satisfying its requirements.

In the cases referred to in subparagraphs (a) and (c) pursuit of the activity shall not have ceased more than ten years before the date when the application provided for in Article 5 (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.

2. The Federal Republic of Germany shall, in respect of the taking up and pursuit of the activity of technical manager of a dairy or of a milk processing undertaking, accept as sufficient evidence the fact that the activity in question has been pursued in another Member State for any of the following periods:

- (a) eight consecutive years either in an independent capacity or as a person responsible for managing an undertaking, on condition that pursuit of the activity did not cease more than ten years before the date when the application provided for in Article 5 (3) is made; or
- (b) four consecutive years either in an independent capacity or as a person responsible for managing an undertaking, or for six consecutive years in a managerial capacity, not less than three years of which were spent in technical posts with responsibility for one or more departments of the undertaking, where the beneficiary can prove that for the occupation in question he has received at least three years' previous training, attested by a certificate recognised by the State or regarded by a competent professional body as fully satisfying its requirements.

3. Proof of professional competence to be a technical manager of an undertaking manufacturing special foods for babies and children, or dietetic foods, may in Italy be furnished by the person concerned in the form of a diploma issued in another Member State corresponding, as regards the level attained and occupational training received, to the diploma required under Italian law, thereby permitting the person concerned to be enrolled, only in respect of the activity concerned, on a special professional register. The person concerned shall at the same time furnish proof that he has pursued an activity in the field in question, in an independent capacity, or as a person responsible for managing an undertaking, or as technical manager, over a period of at least three consecutive years in another Member State.

Article 5

For the purpose of applying Article 4:

1. Member States in which the taking up and pursuit of any occupation referred to in Article 1 (2) is subject to the possession of general, commercial or professional knowledge or ability shall, with the assistance of the Commission, inform the other Member States of the main characteristics of that occupation (description of the activities covered by the occupation).
2. The competent authority designated for this purpose by the country whence the beneficiary comes shall certify what professional activities were actually pursued by the beneficiary and the duration of those activities. Certificates shall be drawn up having regard to the official description of the occupation in question supplied by the Member State in which the beneficiary wishes to pursue such occupation, whether permanently or temporarily.
3. The host Member State shall grant authorisation to pursue the activity in question on application by the person concerned, provided that the activity certified conforms to the main features of the description of the activity communicated pursuant to paragraph 1 and provided that any other requirements laid down by the rules of that State are satisfied.

Article 6

1. Where, in a Member State, the taking up or pursuit of any activity referred to in Article 1 (2) is not subject to the possession of general, commercial or professional knowledge or ability, that State may, if serious difficulties result from the application of the Council Directive referred to in Article 1 (2), request from the Commission authorisation, for a limited

period and in respect of one or more specified activities, to require from nationals of other Member States who wish to pursue those activities in its territory proof that they possess the qualifications required for the pursuit of such activities in the country whence they come.

Use shall not be made of this power in respect of a person who comes from a country which does not make the taking up of the activity in question subject to proof of particular knowledge, or in respect of a person who has lived in the host country for at least five years.

2. On receipt of a request from the Member State concerned stating the reasons on which it is based, the Commission shall forthwith specify the conditions on which the authorisation provided for in paragraph 1 of this Article will be granted and lay down detailed rules concerning its implementation.

3. Where serious difficulties result from the application of the Council Directive referred to in Article 1 (2), the Grand Duchy of Luxembourg may be authorised by the Commission, for such period and subject to such conditions as the Commission shall determine, to suspend application of the provisions of Article 4 of this Directive in respect of one or more specified activities.

Article 7

The provisions of this Directive shall remain applicable until the entry into force of provisions relating to the co-ordination of national rules concerning the taking up and pursuit of the activities in question.

Article 8

Member States shall, within the time limit laid down in Article 9, designate the authorities and bodies competent to issue the above-mentioned certificates and shall forthwith inform the other Member States and the Commission thereof.

Article 9

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

Article 10

This Directive is addressed to the Member States.

Done at Luxembourg, 15 October 1968.

For the Council
The President
G. SEDATI