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COUNCIL DIRECTIVE

of 30 November 1970

laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in the wholesale coal trade and in respect of activities of intermediaries in the coal trade (ISIC ex Group 6112)

(70/523/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 establishment,[1] 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 services,[2] 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 Parliament[3];

Having regard to the Opinion of the Economic and Social Committee[4];

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 wholesale coal trade; whereas:

— in some cases there is freedom to take up and pursue such activities;

— in other cases there are restrictive provisions, which either restrict the freedom to import coal from a Member State to traders who can prove they have already sold a minimum tonnage of coal, or impose legal requirements as to professional qualifications, namely possession of a certificate of professional ability or an equivalent diploma;

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 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, proof of the following:

(a) sales of a comparable tonnage over a corresponding period in the country of origin or in the country whence the person concerned comes;

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[1] OJ No 2, 15.1.1962, p. 36/62.
[2] OJ No 2, 15.1.1962, p. 32/62.
[3] OJ No C 51, 29.4.1970, p. 4.
[4] OJ No C 108, 26.8.1970, p. 20.

(b) pursuit of the occupation for a reasonable period of time in the country whence the person concerned comes, such period being in the sufficiently recent past to ensure that such person possesses professional knowledge equivalent to that required of the host country's own nationals;

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 the activities of self-employed persons referred to in paragraph 2.

2. The activities in question are those covered by the Council Directive[1] of 30 November 1970 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in the wholesale coal trade and of activities of intermediaries in the coal trade (ISIC ex Group 6112).

Article 2

Where, in a Member State, the taking up of activity as an importer of coal from another Member State is subject to the condition that the applicant shall have sold, over a specified period, a minimum tonnage of coal in the territory of the host Member State, that Member State shall accept as sufficient qualification the fact that the person concerned has, over a corresponding period, acting either in an independent capacity or in a managerial capacity, sold a like quantity of coal in his country of origin or in the country whence he comes.

[1] OJ No L 267, 10.12.1970, p. 14.

Article 3

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 the fact that the activity in question has been pursued in another Member State for three years either in an independent capacity or in a managerial capacity, on condition that, unless the host Member State allows a longer interruption of professional activity on the part of its own nationals, such activity shall not have ceased more than two years before the date when the application provided for in Article 4 (2) is made.

Article 4

1. A person shall be regarded as having pursued an activity in a managerial capacity within the meaning of Articles 2 and 3 if he has pursued such activity in an undertaking in the 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 responsibility for one or more departments of the undertaking.

2. Proof that the conditions laid down in Article 2 or in Article 3 are satisfied shall be established by certificates issued by the competent authority or body in the country whence the person concerned comes, which such person shall submit in support of his application for authorisation to pursue the activity in question in the host country.

3. Member States shall, within the time limit laid down in Article 6, designate the authorities and bodies competent to issue the certificates referred to in paragraph 2 and shall forthwith inform the other Member States and the Commission thereof.

Article 5

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

Article 6

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 7

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

Article 8

This Directive is addressed to the Member States.

Done at Brussels, 30 November 1970.

For the Council

The President

H. D. GRIESAU