

INFORMATION

RIGHT OF ESTABLISHMENT

FREE MOVEMENT OF DOCTORS INSIDE THE EEC

137/76

On 16 June 1975, the Council of Ministers adopted two directives, providing :

First, the mutual recognition of doctors' diplomas, certificates or other degrees and including measures designed to facilitate the effective use of the right of establishment and freedom to offer services; and

Secondly, to coordinate the laws, regulations and administrative practice affecting the activities of the medical profession.

These directives are rounded off by two decisions and two recommendations adopted on 16 June 1976. The member States of the EEC will have until 20 December 1976 to comply with the directives.

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One of the fundamental aims of the Treaty of Rome is to create a big economic space inside which all frontiers will be eliminated and free circulation permitted for goods, capital and people.

For the free circulation of goods, the action was quick; and even though the customs union, which came into operation on 1st July 1968, does not settle quite all the problems about the movement of goods across frontiers, the problem was materially less complicated than was the case with the movement of people.

X-656/76-F(E)

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In this field the first task for the Community was to deal with the movement of workers which meant the majority of wage-earners. Since 1968 it has been possible for these workers to move where they wish inside the European Community and carry on with their job there.

There was more difficulty when it came to the liberal professions, the exercise of which is customarily dependent on having been awarded a diploma or degree and usually to possessing the nationality of the country in which the profession is carried on.

In practice the liberal professions are usually very closely linked with a social and cultural environment, which makes the practitioners much less interchangeable than is the case with normal industrial activities. Moreover, the laws and regulations to which they are subject are of a strictly national character.

When it came to doctors this set up a number of unexpected situations. For example, a Belgian student could carry on his studies in France and emerge with the diploma of a doctor of medicine. On the other hand, the principle was clear that he could not practice in France, because he had not French nationality; but equally he could not practice in Belgium because, though his nationality was right, his diploma was wrong, the only medical diploma recognised in Belgium being that awarded by the Belgian universities.

Such situations of course border on the absurd in any genuine community, and it was specifically to avoid them that articles 52 and 59 of the Treaty of Rome lay it down that there shall be elimination -- first, of all restrictions to the free establishment of the citizens of any member country in the territory of another member; and secondly, of all restrictions on the freedom to offer services inside the Community; and it is stipulated all such restrictions shall be cleared away before the end of the period transition -- i.e. 31 December 1969. Until 1974, it was the official Community doctrine that these two articles were not immediately operative, but required specific implementing texts.

In 1974, however, two rulings were handed down by the European Community's Court of Justice, which resulted in a basic change in the position. These were, the Reyners and van Binsbergen (1) judgments. The rule in Reyners case confirms that article 52 has the direct effect of prohibiting any discrimination based on nationality,

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(1) Court of Justice decisions of 21 June 1974 (Jean Reyners) and 3 December 1974 (van Binsbergen).

and thus affects the relationships between member States and those subject to their jurisdiction setting up rights for individuals which it is the duty of the national courts of justice to defend.

This example means that, since it is established that the nationality obstacle has been null and void since the end of the transition period, the Belgian doctor with a French degree is entitled to practice in France. This is a limited decision, however; for it does not entitle the same doctor, Belgian though he is, to practice as a doctor in Belgium with his French degree.

This was put right by the directive of 16 June 1975 (1), which provided that the recognition of doctors' diplomas and degrees should be mutual.

It is now possible, therefore, for any doctor in the European Community who holds a doctor's diploma or degree, awarded in any country of the Nine-nation Community and included on a list given in the directive, to practice his profession in any of these countries. The directive recalls that any nationality-based discriminatory treatment in regard to establishment and the freedom to offer services has been prohibited since the end of the transition period, and therefore provides for recognition of diplomas, certificates and other medical degrees opening to the holder access to the practice of medicine, together with diplomas, certificates and other doctors' degrees of a specialised character; and it contains other provisions to facilitate the effective exercise of the right of establishment and the free offering of services.

Every Community State will now recognise the diploma of the general practitioner and the medical specialist awarded by the responsible authorities in any of the other States to its own nationals or to nationals of any other Community country, and entitling the holder to practice the art of healing on the territory of the awarding country. In the case of doctors or specialists diplomas awarded before the directive came into force and implying certification of less than the minimum training now required, the provision is that the rights so obtained be respected.

The second directive (*) provides for the coordination of laws, regulations and administrative practice in regard to the medical profession.

(1) Directive No. 75/362 of 16 June 1975 -- Official Journal of the European Communities, No. L 167, dated 30 June 1975.

(*) Directive 75/363 of 16 June 1975 -- Official Journal of the European Communities, No. L/167, dated 30 June 1975.

The question of recognising one another's medical diplomas necessitated some coordination of the training requirements. It was considered necessary to require minimum rules of duration and standards, but that the member States themselves could be left free to organise the teaching. In each member country, therefore, the exercise of the medical profession, whether in private practice or on a salaried basis, will be conditional on the holding of a diploma awarded only on certification of training up to specified quantity and quality criteria. It will guarantee a total training period of at least six years studies, or 5 500 hours theoretical and practical teaching given, in or under the responsibility, of a university.

In addition, the Council set up the two following bodies :

- a) the consultative committee for medical training, consisting of three experts from each Community country -- one each from the appropriate medical body, the university medical faculties and the competent government department.

The task of this committee will be, to help ensure comparable training levels throughout the Community in the preparation for general practice or specialised medicine.

- b) a committee of senior civil servants from public health departments.

Its mandate will be, to make a joint examination of any major difficulties which may arise in the application of the measures adopted by the Council and report to the Commission.

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The achievement of free circulation for the medical profession is an important event in the history of the European Community.

It is a decision of special interest, because it is the very first to make use of the principle of non-discrimination on national grounds for purposes of a liberal profession, and includes the mutual recognition of professional diplomas. These measures should give a new impulse to work already in progress by the EEC institutions for other liberal professions.

All this amounts in fact to the recognition of one of the basic rights of the European citizen -- the right to move. It is worth remembering that in the Community there are about 450 000 doctors.
