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Proposal for a Council regulation on the system governing processed products based on cereals or rice

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

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Regulation No. 19 on the gradual establishment of a common organization of the market in cereals, and in particular Articles 14(3), 19(2 d), 20(2) second sentence, 23(4), and 24 thereof ⁽¹⁾;

Having regard to Regulation No. 16/64/CEE of 5 February 1964 on the progressive establishment of a common organization of the rice market, and in particular Articles 2(5 and 16), 14, and 15(4) thereof ⁽²⁾;

Having regard to the proposal of the Commission;

Whereas Article 14(3) of Regulation No. 19 and Article 2(5), second sub-paragraph, of Regulation No. 16/64/CEE provide that the Council shall adopt the necessary provisions for the application of the levy system to the processed products specified in Articles 1 d) and 1(1 c) respectively of the said regulations;

Whereas it is for the Member States to fix the levy; whereas it is, however, necessary to determine methods of calculating the variable component and to establish the amount of the fixed component;

Whereas the variable component must correspond to the incidence of the levies fixed for the basic products on the prices of the processed products; whereas this incidence can be calculated on the basis of the average levy applicable during a representative period and of the quantity of the basic product necessary for the manufacture of one unit of processed product; whereas, in order to avoid diversions of trade which might arise from the difference in levies as between the Member States and non-member countries, it is unnecessary to take the standard amount into account;

Whereas in the event of a sharp decline in prices, this system of standard amounts might impair the protection necessary for Community industries; whereas, in order to obviate this eventuality, provision must be made for the average levy to be increased;

Whereas, for processed products containing none of the basic products listed in Article 1 a) of Regulation No. 19 and in Article 1(1 b) of Regulation No. 16/64/CEE, the variable component is established in the light of market conditions for the processed products most closely resembling them and with which they are competitive.

Whereas the fixed component in the levy must be established with due regard to the need of protection for the processing industry; whereas it is desirable to establish this component as an absolute value on the basis of the most representative prices; whereas this fixed component must be uniform for each product in all the Member States;

Whereas, however, in order to enable the processing industries to adapt themselves gradually to the system, it is necessary to provide that, for certain products, the amount of the fixed component shall be determined, when the present regulation is brought into force, at a level related to existing levels of protection, and that it shall thereafter be gradually reduced to its final figure;

Whereas, for certain processed products, the industry is already protected by the existing protection of the principal processed product and in this case no fixed component in the levy is needed:

Whereas, however, under Articles 19(2) and 20(2) of Regulation No. 19 and Article 15(4), of Regulation No. 16/64/CEE the Member States may grant refunds on exports of the products specified in the Annex to Regulation No. 19 and in Article 1(1 c) of Regulation No. 16/64/CEE to another Member State or to non-member countries;

Whereas, in intra-Community trade, the purpose of the refund is to align the prices of basic products in the exporting Member State on those in the importing Member State so that the processing industries obtain their supplies on comparable terms; whereas it is therefore desirable to establish a method of calculating the refund such as will enable price differences between the Member States to be taken into account; whereas the difference between threshold prices may be deemed representative of such price differences;

Whereas the purpose of the refund on exports outside the Community is to offset the disparity between the prices of basic products in the exporting Member State and prices

(1) Official gazette of the European Communities, No 30, 20 April 1962, p. 933/62.

(2) *ibid.*, No 34, 27 February 1964, p. 574/64.

on the world market; whereas it is accordingly desirable to establish criteria by which this refund may be granted;

Whereas in view of the special situation of the market in starches and, in particular, of the need for the industry to maintain prices competitive with those of substitutes, it is necessary, notwithstanding Article 19(1) of Regulation No. 19 and pursuant to Article 14 of Regulation No. 16/64/CEE, to provide that basic products for this industry may be supplied, by means of a refund to producers, at a price lower than that which would result from application of the levy system; whereas in view of the lack of conformity in the price policies at present pursued by the Member States, it is desirable to encourage the progressive approximation of the prices of these products by harmonizing refunds to producers;

Whereas the complex composition of the products for livestock feeding listed under heading 23.07 in the Common Customs Tariff raises special problems; and whereas a separate regulation is therefore desirable for such products;

Has adopted the present regulation:

Article 1

The amounts of the levies and refunds for the products or groups of products, hereinafter referred to as "processed products", specified:

a) In the Annex to Regulation No. 19, except the products listed under heading 23.07 in the Common Customs Tariff,

b) In Article 1(1 c) of Regulation No. 16/64/CEE

shall be fixed by the Member States in accordance with the provisions set out hereunder.

TITLE I

Levies

Article 2

1. The variable component in the levy shall be established for 100 kilogrammes of processed products manufactured from the cereals listed in Article 1(a) of Regulation No. 19 or from broken rice — hereinafter referred to as "basic products".

This component shall, for imports in the course of a given month, be calculated on the basis of the average levy applicable to

a quantity hereunder specified of a basic product originating, as the case may be, in a non-member country or in the Member State exporting the processed product.

2. The quantity of basic product referred to in the above paragraph shall be the quantity required to manufacture 100 kilogrammes of processed product.

3. The average levy shall be calculated according to the difference between the threshold price in the importing Member State during the month of import and:

a) In the case of imports from non-member countries, the average of the cif prices, fixed in accordance with the provisions of Article 10 of Regulation No. 19 or Article 4 of Regulation No. 16/64/CEE, for the first 25 days of the month preceding the month of import;

b) In intra-Community trade, the average of the free-at-frontier prices, determined in accordance with the provisions of Article 3 of Regulation No. 19 or Article 5 of Regulation No. 16/64/CEE, for the first 25 days of the month preceding the month of import. This average shall be varied according to the difference, in the exporting Member State, between the threshold price during the month of import and that in the preceding month.

4. If in the course of the month of import the difference between the threshold price (per 100 kgs. of basic product) in the importing Member State and the cif price or free-at-frontier price exceeds the amount calculated in accordance with the preceding paragraph:

i) By more than 0.50 u.a., but not more than 1 u.a., the variable component shall be increased by 0.50 u.a. per 100 kgs of the basic product used in calculating this variable component;

ii) By more than 1 u.a., or other multiple of 0.50 u.a., the variable component shall be increased by 1 u.a. or by the corresponding multiple of 0.50 u.a. per 100 kgs of the basic product used in calculating this variable component;

These increases shall be applicable even if the factors entering into the calculation of the amount referred to in paragraph 3 do not allow of establishing a variable component; in this case, the average levy shall be considered as nil.

This increase shall be applicable on the day following that on which it has been ascertained that the limits referred to above have been exceeded, and for as long in the course of the month as this situation continues.

The Commission shall determine the average of the cif prices and note, as the case may be, that the aforesaid limits are exceeded or are no longer exceeded.

5. Where a Member State applies the provisions of Article 23(4) of Regulation No. 19 to a basic product:

i) The variable component applicable in that Member State to 100 kgs of processed product shall be reduced by an amount equal to the incidence of the subsidy on the price of the quantity of basic product defined in paragraph 2;

ii) That Member State shall take the necessary steps to ensure that the benefit of this reduction in the variable component is confined to domestic consumption.

6. The variable component applicable to 100 kgs of processed product manufactured from raw materials other than the basic product shall be equal to the variable component applicable, at the date on which the processed product is imported, to the same quantity of the processed product which most resembles it and is manufactured from basic products.

The levy on a processed product manufactured from rice, other than the products specified in Article 1 (1 c) of Regulation No. 16/64/CEE, shall be equal to that applicable to the corresponding product manufactured from maize.

The variable component applicable to a processed product manufactured from durum wheat shall be equal to that applicable to the corresponding product manufactured from wheat other than durum.

Article 3

1. The fixed component in the levy shall be the same for all the Member States. It shall be determined for 100 kgs of each product or group of products referred to in Articles 4 to 12.

2. In intra-Community trade the fixed component applicable on 1 July 1964 shall be 9/15 of the amount thus determined; it shall be reduced each year by 2/15 of this amount in accordance with the provisions of Article 14(1 B) of Regulation No. 19 and Article 2(6) of Regulation No. 16/64/CEE.

Article 4

1. For certain products under Common Customs Tariff heading 11.01, namely:

Cereal flours

ex C: of barley and oats

D: of rice

E: other,

the variable component shall be equal to the average levy applicable to the following quantities of basic product entering into the manufacture of the processed product:

a) 175 kgs for barley or oat flour having undergone a bolting process and whose ash content, calculated on the dry weight, is less than 2%;

b) 175 kgs for maize flour having a fat content of less than 1.5%;

c) 114 kgs for maize flour having a fat content of between 1.5% and 4%;

d) 102 kgs in other cases.

2. The fixed component shall be 0.25 u.a.

Article 5

1. For certain products under Common Customs Tariff heading 11.02, namely:

Cereal groats and cereal meal; other worked cereal grains (for example, rolled, flaked, polished, pearled or kibbled, but not further prepared), except husked, glazed, polished or broken rice; germ of cereals, whole, rolled, flaked or ground:

ex A. Cereal groats and cereal meal; other worked cereal grains (for example, rolled, flaked, polished, pearled or kibbled, but not further prepared):

ex. I. Of wheat (except groats and meal)

II. Of rye

III. Of other cereals

a) Rolled or flaked barley and oats

b) Other,

the variable component shall be equal to the average levy charged on the following quantities of basic product entering into the manufacture of the processed product:

A. For groats and meal:

a) Of oats or rye:

i) 182 kgs if their ash content, calculated on the dry weight, is not more than 2%;

ii) 102 kgs in all other cases;

- b) Of barley;
 - i) 175 kgs if their ash content, calculated on the dry weight, does not exceed 2%;
 - ii) 102 kgs in other cases;
- c) Of maize:
 - i) 175 kgs if their fat content does not exceed 1.5%;
 - ii) 114 kgs if their fat content exceeds 1.5% but does not exceed 4%;
 - iii) 102 kgs in other cases;
- d) Of rice: 112 kgs;
- e) Of other cereals: 133 kgs.

B. For flakes:

- a) Of barley or oats: 182 kgs;
- b) Of other cereals: 175 kgs;
- c) 130 kgs if they have undergone a denaturing process, whatever their composition.

C. For hulled cereals:

- a) Rye or wheat other than durum: 133 kgs;
- b) Other cereals: 160 kgs.

D. For pearled cereals, whether or not kibbled or rolled:

- a) Barley: 200 kgs;
- b) Rye and wheat other than durum: 150 kgs;
- c) Other cereals: 160 kgs.

E. For cereals kibbled or rolled only and for "trimmed" oats: 102 kgs.

2. The fixed component shall be equal to 0.50 u.a.

Article 6

1. For the products under Common Customs Tariff heading 11.02 B, namely: germ of cereals, whole, rolled, flaked or ground, by way of exception to Article 2(2) the variable component shall be equal to the average levy applicable to 50 kgs of the basic products entering into the manufacture of the processed product.

2. The fixed component shall be equal to 1.00 u.a.

Article 7

1. For the products under Common Customs Tariff heading 11.06, namely: flour and meal of sago, manioc and arrowroot, salep and other roots and tubers falling within heading 07.06:

A: manioc

B: other,

the variable component shall be equal to that applicable to 100 kgs of maize starch. In order to obviate any disturbances on the market in home-produced starch products, this component may be adjusted in accordance with the procedure laid down in Article 26 of Council Regulation No. 19.

2. Where the product has undergone a denaturing process, the variable component shall, by way of exception to Article 2(2), be equal to the average levy applicable to 15 kgs of barley.

In order to obviate any disturbances on the market in cereal products for cattle feed, this component may be adjusted in accordance with the procedure laid down in Article 26 of Council Regulation No. 19.

3. The fixed component shall be equal to 1.70 u.a. Provided that, for the processed products referred to in paragraph 2, it shall be equal to 0.35 u.a.

Article 8

1. For malt, roasted or not (Common Customs Tariff heading 11.07), the variable component shall be equal to the average levy applicable to the following quantities of basic product entering into the manufacture of the processed product:

a) 178 kgs for an unroasted product presented in the form of flour;

b) 133 kgs for an unroasted product presented in another form;

c) 155 kgs for a roasted product.

2. The fixed component shall be equal to 0.90 u.a.

Article 9

1. For the products under Common Customs Tariff heading 11.08 A, namely:

Starches:

I. Maize starch

II. Potato starch:

a) Intended for the manufacture of dextrins, glues, dressings or glazings

b) Other

III. Rice starch

IV. Other,

the variable component shall be equal to the average levy applicable to the following quantities of basic product entering into the manufacture of the processed product:

a) For wheat starch: 220 kgs

b) For rice starch: 152 kgs

c) For maize starch: 161 kgs

d) Notwithstanding the provisions of Article 2(2), for other starches manufactured from basic products: 161 kgs of maize.

2. For starches manufactured from raw materials other than the basic products, the variable component shall be equal to that applicable to 100 kgs of maize starch.

3. For rice starch, the fixed component shall be equal to 2.55 u.a.

4. For the other starches, notwithstanding the provisions of Article 3(1), the fixed component shall be equal to an amount corresponding to that which would arise from the application to a basic value of 11.25 u.a. of the customs duty in force on 21 April 1962 in each Member State on imports of this product from the other Member States or from non-member countries, as the case may be.

With respect to imports from non-member countries, this amount shall be reduced in such a way that at the end of the transitional period it will be the same for all Member States and equal to 1.7 u.a. For this purpose, the difference between the initial amount referred to in the first sentence of this paragraph and the final amount of 1.7 u.a. shall be reduced by 2/15 each year from the first year of application of the levy system.

However, should the amount which would result from the application of the rules laid down in the first sentence of the present

paragraph fall below 1.7 u.a., the fixed component shall be raised as from the date of application of the present regulation to 1.7 u.a.

Article 10

1. For products under Common Customs Tariff heading 11.09, namely:

Gluten and gluten flour, roasted or not,

the variable component, notwithstanding the provisions of Article 2(2), shall be the average levy applicable:

a) For gluten of wheat other than durum: to 200 kgs of wheat other than durum;

b) For gluten manufactured from other basic products: to 200 kgs of maize.

2. The fixed component shall be equal to 15 u.a.

Article 11

1. For products under Common Customs Tariff heading 17.02 B, namely:

Glucose and glucose syrup,

the variable component shall be equal to the average levy applicable to the following quantities of basic product entering into the manufacture of the processed product:

a) For glucose (dextrose) presented as a white crystalline powder, whether or not agglomerated: 210 kgs;

b) For all other glucose, including glucose syrup: 161 kgs.

2. For glucose and glucose syrup manufactured from raw materials other than the basic product, the variable component shall be equal to that applicable to 100 kgs of glucose or glucose syrup manufactured from maize.

3. Notwithstanding the provisions of Article 3(1), the fixed component shall be equal to an amount corresponding to that which would result from the application of the customs duty in force in each Member State, as at 1 August 1962, for imports of this product from other Member States or from non-member countries, as the case may be, to a basic value of:

a) 18 u.a. for glucose (dextrose) presented as a white crystalline powder, whether or not agglomerated;

b) 12.5 u.a. for glucose presented in any other form, including glucose syrup.

4. For imports from non-member countries, this amount shall be reduced in such a way that at the end of the transitional period it will be the same for all the Member States and equal to 8 u.a. for glucose (dextrose) presented as a white crystalline powder, whether or not agglomerated, and 5.5 u.a. for glucose presented in any other form, including glucose syrup. For this purpose, the difference between the initial amounts defined in paragraph 3 and the final amounts of 8 u.a. and 5.5 u.a. shall be reduced by 6/15 on 1 July 1964 and by 2/15 each year thereafter.

However, should the amount resulting from the application of the above provision fall below 8 u.a. or 5.5 u.a., according to the product in question, the fixed component shall be increased from the date of application of the present regulation to 8 u.a. or 5.5 u.a. as appropriate.

Article 12

1. For products under Common Customs Tariff heading 23.02, namely:

Bran, sharps and other residues derived from the sifting, milling or working of cereals,

the variable component shall, notwithstanding the provisions of Article 2(2), be fixed as follows:

a) For a product derived from the treatment of basic products other than maize or rice, the starch content of which is not more than 28%, the variable component shall be the arithmetical mean of the average levies applicable to 25 kgs of wheat (other than durum), barley and maize.

However, if the proportion of a product passing through a bolter of 0.2 millimetre mesh is more than 10% and if in this case the sieved product has an ash content, calculated on the dry weight, of less than 1.5%, the variable component applicable shall be that provided for in sub-paragraph d) below;

b) For a product derived from the treatment of maize or rice, the starch content of which is not more than 35%, the variable component shall be 125% of the amount resulting from the application of sub-paragraph a) above;

c) For a product resulting from the treatment of maize or of rice the starch content of which is above 35% but not more than 50%, and which has undergone a denaturing process, the variable component shall be 200% of the amount resulting from the application of sub-paragraph a) above;

d) Notwithstanding the provisions of Article 2(1), for products other than those referred to in sub-paragraphs a), b) and c), the variable component shall be equal to the average levy applicable in the first 25 days of the month preceding that of import to 100 kgs of flour of the basic product entering into the manufacture of the processed product.

2. If disturbances arise on the market for the products referred to in sub-paragraphs a), b) and c) of paragraph 1 or for products competing with them, the rates laid down in sub-paragraphs a), b) and c) of paragraph 1 as regards starch content and the rate laid down in sub-paragraphs b) and c) of the same paragraph concerning the amount of the variable component may be adjusted in accordance with the procedure laid down in Article 26 of Regulation No. 19.

3. The fixed component for the processed products covered by the present article shall be nil.

Article 13

Where one or more Member States apply the provisions of Article 17 of the present regulation or of Article 14 of Regulation No. 16/64/CEE, account shall be taken, in calculating the amount of the variable component applicable to each of the products referred to in Articles 9, 10 and 11 of refunds to producers on the quantity of the basic product used in the calculation of such variable component.

The details for implementing the present article shall be determined in accordance with the procedure laid down in Article 26 of Regulation No. 19 and of Article 23 of Regulation No. 16/64/CEE.

TITLE II

Refunds

Article 14

The amounts of the refunds shall be those applicable on the day on which the product is exported. Provided that, at the request of the party concerned, the amount of the refund may be fixed in advance under arrangements made in accordance with the procedure laid down in Article 26 of Regulation No. 19 and in Article 23 of Regulation No. 16/64/CEE.

Article 15

1. In intra-Community trade, a refund may be granted on the exportation of a processed product from a Member State whose threshold price for the basic product used in calculating the variable component applicable to this processed product is higher than that in force for the same basic product in the importing Member State.

This refund may not exceed, per 100 kgs of processed product exported, an amount equal to the difference between the threshold price of the exporting Member State and that of the importing Member State, this difference being calculated for the quantity of basic product used in calculating the variable component.

2. Where a Member State applies the provisions of Article 23(4) of Regulation No. 19 in respect of a basic product, the other Member States may grant a refund on exports of processed products to this Member State if the subsidy granted on the basic product has the effect of bringing the price of this product below the price of the product from the exporting Member State delivered free at frontier to the importing Member State.

This refund shall be calculated with reference to the quantity of basic products adopted in calculating the variable component and the difference between the average free-at-frontier price of the basic product for the first 25 days of the month preceding that in which the import takes place and the threshold price in the importing Member State less the subsidy.

3. The refunds may be limited to amounts less than those provided for in paragraphs 1 and 2 in so far as may be necessary to avoid price distortions either in trade between Member States or on the market of the importing Member State. The details for implementing the present paragraph shall be determined by the procedure laid down in Article 26 of Regulation No. 19 and Article 23 of Regulation No. 16/64/CEE.

Article 16

For the products manufactured from cereals referred to in Article 1 of Regulation No. 19, the refund granted by a Member State in trade with non-member countries shall be fixed mainly in the light of conditions on the world market and of the prices of basic products.

The details for implementing the present article shall be determined by the Commission in accordance with the procedure laid down in Article 26 of Regulation No. 19.

Article 17

1. A system of refunds to producers shall be established for maize and wheat other than durum used by the starch industry and for potato starch.

2. The refund to producers which may be granted by the Member States pursuant to the provisions of the foregoing paragraph and of Article 14 of Regulation No. 16/64/CEE shall be decided for the period up to 30 September 1964 by the Council voting unanimously on a proposal from the Commission. Details as to implementation shall be decided by the Commission in accordance with the procedure laid down in Article 26 of Regulation No. 19 and in Article 23 of Regulation No. 16/64/CEE.

3. For each subsequent period from 1 October to 30 September of the following year the Council, acting on a proposal of the Commission by unanimous vote during the second stage and by qualified majority thereafter, shall fix the upper and lower limits of the refund to producers referred to in paragraph 1 above and in Article 14 of Regulation No. 16/64/CEE in such a way that the refunds granted by Member States in respect of each product will at latest by the end of the transitional period be identical.

In taking these decisions, the Council shall be guided in particular by past experience and by certain criteria.

On a proposal of the Commission, the Council, acting by unanimous vote in the second stage and by qualified majority thereafter, shall lay down such criteria having due regard to the need to maintain a balanced relationship between the prices of starches and between the prices of starches and substitute products and taking into consideration the interests of cereal growers in the Community.

Article 18

Where one or more Member States apply the provisions of Article 17, account shall be taken, in calculating the amount of the export refunds which may be granted for each of the products referred to in Articles 9, 10 and 11, of the refunds granted to producers for the quantity of basic product used in calculating the export refund on the processed product.

The details for implementing the present article shall be decided in accordance with the procedure laid down in Article 26 of Regulation No. 19 and of Article 23 of Regulation No. 16/64/CEE.

TITLE III

General provisions

Article 19

The following shall be determined according to the procedure laid down in Article 26 of Regulation No. 19 and in Article 23 of Regulation No. 16/64/CEE:

- a) The ash content and fat content referred to in Articles 4 and 5;
- b) The denaturing processes referred to in Articles 5, 7 and 12;
- c) The starch content referred to in Article 12.

Article 20

Should any change take place in the exchange parity of one or more Member States, the Council, acting by qualified majority on a proposal of the Commission, shall decide on any necessary changes in the amounts of the fixed components expressed in units of account in the present regulation.

Article 21

The present regulation shall enter into force on the day following its publication in the official gazette of the European Communities. It shall be applicable as from 1 July 1964.

Regulation No. 55 and amending regulations thereto shall be rescinded as from that date.

The present regulation shall be binding in all its parts and directly enforceable in all Member States.

Proposal for a Council directive on procedure for introducing freedom of establishment and freedom to supply services in activities connected with the press

(submitted by the Commission to the Council on 6 July 1964)

EXPLANATORY MEMORANDUM

General

1. *Subject of the directive*

The General Programmes for the removal of restrictions on freedom of establishment and freedom to supply services, adopted by the Council on 18 December 1961, lay down that restrictions on activities belonging to Group 839 of Schedule I of the General Programme for freedom of establishment must be removed before the expiry of the second year of the second stage. These activities embrace all business services not elsewhere classified in the schedules of the General Programme. On account of their special structure and character, activities connected with the press have been separated out from this group of activities and are the subject of the present directive.

2. *Aim of the directive*

In accordance with Articles 54(2) and 63(2) of the Treaty, the present directive is concerned with implementing the two

General Programmes in respect of these activities and also, in accordance with Article 57(1) of the Treaty, with arranging for reciprocal recognition of certificates issued by professional bodies. Under these articles of the Treaty, the Council adopts the directive by qualified majority vote, after the Economic and Social Committee and the European Parliament have been consulted.

Commentary on the articles

3. *Article 2*

a) During the preparatory work, the question was raised of whether the activities of press photographer belong to Group 839 of Schedule I of the General Programme on freedom of establishment or Group 856 of Schedule III of the same programme. Such activities are nowhere expressly mentioned in the UN International Standard Industrial Classification (ISIC) on which the schedules in the General Programme are based. Although doubts regarding interpretation are not thereby removed, the fact that Major Group 85 (Group 856) refers to "Personal Services" and that Major Group 83 (Group 839) concerns "Business Services" seems to indicate however that the

activities of press photographer belong to Group 839 under the heading "News picture collecting services". Furthermore, as there appears to be no reason why the activities of the free-lance press photographer should be liberalized after those of the free-lance journalist, they have been included in Article 2.

b) The preambular paragraph relating to news gathering and reporting agencies was drafted to avoid giving the impression that correspondents' bureaux are not covered by the directive.

4. Article 3

The restrictions referred to in Article 3(2 a, ii and iii) have been listed pending the entry into force of a press law at present being prepared in the Federal Republic of Germany; this law will no longer contain these restrictions.

5. Article 4

a) Article 4(1) implements Article 57(1) of the Treaty, which provides for the reciprocal recognition of diplomas, certificates and other qualifications. As long as certification of professional capacity is not required by law in all Member States and, consequently, it is not possible to introduce general recognition of the relevant certificates, it will suffice if, in respect of the activities covered by this article, a measure of reciprocal recognition is adopted in advance of general recognition.

b) The second paragraph was inserted in Article 4 in order to give paragraph 1 less of an abstract and somewhat theoretical character.

6. Article 6

The system laid down in Articles 1 and 2 derives from the right to membership of the professional associations referred to in Title III (List 2, i) of the General Programme on freedom of establishment. The second paragraph refers to the application of Article 55 of the Treaty should this right to membership be used.

Because of the temporary character of services it appears unnecessary to oblige the supplier to enrol in a professional association, particularly as such enrolment might in certain cases involve financial obligations which would be out of proportion to the importance of the service supplied. However, to render it possible to maintain a check on professional qualifications, paragraph 3 lays down that prior notice must be given to the professional association by the person supplying the service.

7. Article 7

This article is based on Article 54(3, h) of the Treaty and derives directly from Title VII of the General Programme on the freedom of establishment.

8. Article 8

This provision is to allow beneficiaries of the directive to produce evidence of good character on arrival in the host country. The article deals, firstly, with the case where a certificate is required by law both in the host country and in the country of origin (paragraph 1) and, secondly, where such regulation exists only in the host country (paragraph 2).

Proposal for a directive on procedure for introducing freedom of establishment and freedom to supply services in activities connected with the press

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 54(2), 57(1) and 63 thereof;

Having regard to the General Programme for removal of restrictions on freedom of establishment⁽¹⁾ and in particular Title IV-A thereof;

Having regard to the General Programme for removal of restrictions on freedom of supply services⁽²⁾ 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;

(1) See official gazette of the European Communities, No 2, 15 January 1962, p. 36/62.

(2) See official gazette of the European Communities, No 2, 15 January 1962, p. 32/62.

Whereas the General Programmes provide for the removal, before the expiry of the second year of the second stage, of all discrimination based on nationality affecting establishment and supply of services in respect of business services not elsewhere classified;

Whereas the Group "Business services not elsewhere classified" covers certain press activities which, being governed by a specific set of rules on account of their interdependence and particular structure, are treated in the legislation of several Member States as a special class; and whereas the other activities in this group have a rather commercial and artisan character and it is therefore fitting that press activities should be the subject of a special directive;

Whereas in the sphere of press activities self-employment as a press photographer is covered by this directive, this activity belonging to the group of business services not elsewhere classified;

Whereas self-employment in a news gathering and reporting agency, being also covered by this directive, must be interpreted broadly, so that all news agencies, including correspondents' bureaux, are covered;

Whereas, the legal status of the proprietor of a newspaper being distinct, in certain Member States, from that of the publisher, it must be specified that self-employment in the activity of publishing a newspaper or periodical includes the activity of the proprietor thereof;

Whereas, besides the removal of restrictions, the General Programmes also provide for an enquiry to decide whether the lifting of restrictions should be preceded, accompanied or followed by the reciprocal recognition of diplomas, certificates and other qualifications and by the co-ordination of legislative and administrative provisions concerning access to and pursuit of the activities in question;

Whereas not all Member States impose conditions of access to and pursuit of press activities, and where such conditions do exist they generally take the form of requiring possession of certification of professional capacity or an equivalent diploma, issued in accordance with legislative provisions;

Whereas, in view of the importance of such conditions in certain Member States and the absence thereof in others, it did not appear necessary to start co-ordinating at the same time as removing discrimination; and whereas such co-ordination must be undertaken later wherever progress in the introduction of freedom of establishment and freedom to supply services makes this necessary; and whereas the same applies to the reciprocal

recognition of diplomas, certificates and other qualifications on which access to the said activities in certain Member States depends;

Whereas, nevertheless, it is desirable to facilitate introduction of the right of establishment and freedom to supply services in the activities concerned by adopting in advance a measure concerned with recognition, mainly to prevent undue hardship to nationals of Member States where access to these activities is not subject to conditions;

Whereas the purpose of the measure introduced in advance must therefore be principally to ensure that in the States where certification of professional capacity or an equivalent diploma is a condition of access to the activities in question, proof of effective pursuit of the profession in the country of origin for a reasonable and not too distant period shall be recognized as sufficient evidence that the beneficiary possesses professional qualifications equivalent to those demanded of nationals;

Whereas the advance measure to which this directive refers will have ceased to be necessary once reciprocal recognition of diplomas, certificates and other compulsory qualifications is fully implemented;

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 professional association must be removed wherever the professional activities of the individual concerned necessitate the exercise of this right;

Whereas the system applicable to employed workers accompanying the supplier of services or acting on his account is governed by the provisions implementing Articles 48 and 49 of the Treaty;

Whereas, for the application of provisions relating to right of establishment and freedom to supply services, treatment of companies on the same footing as persons who are nationals of Member States is subject only to the conditions laid down in Article 58 and, where applicable, to that of a continuous and effective link with the economy of a Member State and consequently no additional condition, such as a special licence which is not required of national companies in order to pursue an economic activity, can be required of them before they benefit from such provisions; whereas however such treatment does not deprive Member States of the right to require that in their country legal persons established under the law of another Member State shall operate under the designation used in the legislation of that Member State;

Whereas, moreover, special directives ⁽¹⁾ concerning provisions relating to the entry and residence of beneficiaries and payment for services, applicable in general to all self-employment, have been or will be issued as well as any directives needed to co-ordinate the guarantees which Member States require of companies in order to protect the interests of the members of the company and of third parties,

Has adopted the present directive:

Article 1

The Member States shall remove, in respect of the persons and companies referred to in Title 1 of the General Programmes for the removal of restrictions on freedom of establishment and freedom to supply services, hereinafter called beneficiaries, the restrictions listed in Title III of the said programmes in respect of access to and pursuit of the activities listed in Article 2.

Article 2

The provisions of the present directive shall apply to self-employment:

- a) As free-lance journalist;
- b) As free-lance press photographer;
- c) In a news gathering and reporting agency;
- d) As publisher of a newspaper or other periodical;
- e) A newspaper distributor.

Article 3

1. The Member States shall remove restrictions which:

- a) Prevent beneficiaries from setting up in business or supplying services under the same conditions and with the same rights as its own nationals;
- b) Result from an administrative practice the effect of which is to discriminate between such persons and its own nationals;
- c) Hamper the activities of companies because of the nationality of their members, the members of their managements or boards of directors, or their shareholders.

2. Particularly important among the restrictions to be removed are those contained in provisions forbidding or limiting establishment or supply of services by beneficiaries in the following manner:

a) *In the Federal Republic of Germany:*

i) By requiring that legal persons established under the legislation of a foreign state who wish to pursue a professional activity on Federal territory shall hold a licence (§ 12 of the Trading and Industrial Code [*Gewerbeordnung*] and § 292 of the Law on Limited Companies [*Aktiengesetz*]);

ii) By laying down that those concerned shall possess the right to vote, as in § 3 (d) of the Law of 17 November 1949 of North Rhine-Westphalia (*Gesetz- und Verordnungsblatt* 1949, page 293);

iii) By imposing the condition of eligibility laid down in § 2 (1) of the Law of 27 September 1949 of Schleswig-Holstein (*Gesetz- und Verordnungsblatt* 1949, page 199).

b) *In Belgium:*

By laying down that those concerned shall hold a "carte professionnelle" (*Arrêté royal* No. 62 of 16 November 1939, *Arrêté ministériel* of 17 December 1945 and *Arrêté ministériel* of 11 March 1954).

c) *In France:*

i) By laying down that those concerned shall hold a "carte spéciale d'étranger" (*Décret-loi* of 12 November 1938, Law of 8 October 1940, Law of 10 April 1954, Decree No. 59-852 of 9 July 1959);

ii) By requiring that the opinion of the Ministry of Information shall first have been obtained (Article 5 of Decree of 17 January 1936, *Journal officiel* of 20 and 21 January 1936, amended by Decree of 2 June 1954 *Journal officiel* of 9 June 1954);

iii) By the prohibition of the Ministry of Internal Affairs (Article 14 of the Law of 29 July 1881, *Journal officiel* of 30 July 1881, amended by *Décret-loi* of 6 May 1939, *Journal officiel* of 17 May 1939), except on grounds of public policy, public security or public health;

iv) By the condition of French nationality (Article 3 of the Ordinance of 26 August 1944, *Journal officiel* of 30 August 1944, and Article 4 of the Law of 16 July 1949, *Journal officiel* of 19 July 1949, amended by the Law of 29 November 1954, *Journal officiel* of 1 December 1954, Ordinance of 23 December 1958, *Journal officiel* of 24 December 1958, and Decree of 15 July 1960, *Journal officiel* of 16 July 1960).

d) *In Italy:*

i) By imposing the condition of Italian nationality for the responsible editor (*diret-*

(1) See official gazette of the European Communities, No. 56, 4 April 1964, p. 845/64 and p. 850/64.

sore responsabile) and for the publisher and proprietor (Articles 3 and 4 of Law No. 47 of 8 February 1948, *Gazzetta Ufficiale* No. 43 of 20 February 1948);

ii) By imposing the condition of nationality (Articles 31, 33 and 35 of Law No. 69 of 3 February 1963, *Gazzetta Ufficiale* No. 49 of 20 February 1963).

e) *In Luxembourg:*

By limiting the time during which licences granted to foreigners are valid (Article 21 of the Luxembourg Law of 2 June 1962, *Mémorial A* No. 31 of 19 June 1962).

Article 4

1. Where a Member State restricts access to or pursuit of any of the activities listed in Article 2 to persons with given general or professional qualifications, that Member State shall accept proof that beneficiaries have actually and lawfully pursued this activity, on their own account or in a managerial capacity, in another Member State for at least two years immediately preceding the date of the application referred to in Article 5 as sufficient evidence that they have these qualifications.

2. Paragraph 1 refers mainly to the qualifications required:

In Belgium:

Under Article 4 of the *Arrêté royal* of 24 October 1961 (*Moniteur belge* of 2, 3 and 4 November 1961, 8255) for access to and pursuit of activity as self-employed press photographer;

In Luxembourg:

Under Article 4(2) of the Law of 2 June 1962 (*Mémorial A* No. 31 of 19 June 1962) for access to and pursuit of self-employed activity of the nature of a news agency, as newspaper distributor, or as publisher of a newspaper or other periodical;

In Italy:

Under Article 32 of Law No. 69 of 3 February 1963 (*Gazzetta Ufficiale* No. 49 of 20 February 1963) for access to and pursuit of activity as self-employed journalist.

Article 5

1. Any person shall be considered to be acting in a managerial capacity within the meaning of Article 4 who, in an enterprise belonging to the sector concerned, has held the position of:

a) head of the enterprise or head of a branch;

b) assistant to the entrepreneur or head of the enterprise, if the position carries with it responsibility corresponding to that of the entrepreneur or head of the enterprise so represented.

2. Proof that the conditions laid down in Article 4 have been fulfilled shall be provided by a certificate issued by the authority or competent body of the country of origin and submitted by the person concerned in support of his application to pursue in the host country the activity or activities in question.

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

Article 6

1. Where a Member State requires its nationals to be members of a professional association before they can take up any of the activities listed in Article 2, it must ensure that the beneficiaries of this directive are entitled, should they wish to set up business in that State, to joint these professional associations with the same rights and duties as its own nationals.

2. The right of membership shall include the right to be elected or appointed to executive positions in the association. However, such positions may be reserved to nationals where the association concerned participates, by virtue of some legislative or administrative provision, in the exercise of public authority.

3. Where a Member State requires its nationals to be members of a professional association before they can take up any of the activities listed in Article 2, it must ensure that, if a service is being supplied, the beneficiaries of this directive may replace such requirement by a prior notice of the supply of the service, addressed to the professional association concerned.

4. In Luxembourg, membership of the Chamber of Commerce does not imply, for beneficiaries of this directive, the right to participate in the election of the executive bodies.

Article 7

The Member States shall not grant to any of their nationals who move to another

Member State in order to pursue one of the activities listed in Article 2 any aid which might distort the conditions of establishment.

Article 8

1. Where a Member State requires its nationals to produce evidence of good character or professional integrity or a statement of their financial position before they can take up one of the above professions, it must, in the case of the nationals of another Member State, accept the equivalent document required by that State.

2. Where the Member State of immediate or ultimate origin does not demand such a proof, the host Member State may require an extract from the person's police record or, failing this, an equivalent document issued by a competent judicial or administrative authority in the country of immediate origin which provides evidence that such requirements have been satisfied.

3. Where certificates of freedom from bankruptcy are not delivered by the country of origin, they can be replaced by a declaration by the person concerned, sworn before a judicial or administrative authority, a notary or an appropriate professional body in the country of origin.

4. The documents issued in accordance with paragraphs 1 and 2 must not, when submitted, be more than three months old.

5. The Member States shall designate within the time-limit laid down in Article 9 the authorities and bodies competent to issue the above documents and shall immediately inform the other Member States and the Commission.

Article 9

The Member States shall implement the necessary measures to bring their regulations into line with the present directive within six months of its notification and shall immediately inform the Commission thereof.

Article 10

The Member States shall inform the Commission of any further projects for legislative or administrative provisions which they intend to adopt in the field covered by the present directive. This information shall be so given that the Commission may submit its observations in good time.

Article 11

The present directive is addressed to the Member States.