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INFORMATION MEMOThree directives on freedom of establishment
in manufacturing industries and crafts

The Council has issued three directives proposed by the Commission. Two of these cover most manufacturing activities, and the other relates to mining and quarrying. The Member States must take steps to comply with the directives within six months of being notified of them and must immediately inform the Commission of the measures they have adopted.

The first directive requires each Member State to abolish restrictions which (a) prevent nationals of the other Member States engaged in these activities from setting up in business or supplying services on the same terms and with the same rights as its own nationals, or (b) result from any administrative practice whose effect is to discriminate between the beneficiaries of this directive and its own nationals. These measures will affect the following manufacturing industries (classified as in the Nomenclature of Industries in the European Communities): textiles; footwear, other wearing apparel and bedding; wood and cork; paper and paper products; printing, publishing and allied industries; leather; rubber, plastics, man-made fibres and starch products; chemicals; petroleum products; non-metallic mineral products; ferrous and non-ferrous metals (manufacture and initial processing); metal products (except machinery and transport equipment), non-electrical machinery, electrical machinery, apparatus, appliances and supplies, transport equipment; miscellaneous manufacturing industries, and construction.

The Member States are to see that all beneficiaries of this directive are entitled to join professional organizations on the same terms and with the same rights and duties as their own nationals. The right of membership is to carry with it the right to be elected or appointed to executive positions in these organizations. However, these positions may be reserved to nationals where the organization concerned takes part, by virtue of some legislative or administrative provision, in the exercise of public authority.

In Luxembourg, membership of the Chamber of Commerce or of the Chamber of Handicrafts does not imply the right to participate in the election of their administrative bodies.

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Where the host Member State requires from its own nationals seeking permission to engage in any of these activities proof of good character and/or a certificate that they have never been declared bankrupt, that State must accept as sufficient proof from nationals of the other Member States the submission of a certificate based on police records or of a similar document issued by the legal or administrative authorities in the country of origin to the effect that these requirements are satisfied.

Where the country of origin does not issue certificates that the person concerned has never been bankrupt, he may make a statement on oath before some legal or administrative authority, a notary or the appropriate professional body in the country of origin.

Where the host member country requires proof of financial standing, it must accept statements issued by the banks in the country of origin as equivalent to those issued on its own territory.

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The second directive lays down transitional measures for the realization of freedom of establishment and freedom to supply services in craft industries.

Where a Member State makes the exercise of a craft in the industries listed above subject to the possession of general, commercial or professional knowledge or skills, it must accept as sufficient proof of qualification the fact that the person concerned has actually been engaged in such work in another Member State:

- (a) on his own account or in a managerial capacity for six consecutive years;
- (b) on his own account or in a managerial capacity for three consecutive years, provided he can prove that he has been trained for at least three years in the profession or occupation in question and can produce a certificate recognized by the State or by a competent professional organization;
- (c) on his own account for three consecutive years, provided he can prove that he has been in paid employment in the activity in question for five years at least;
- (d) in a managerial capacity for five consecutive years - at least three of them in a technical capacity with responsibility for at least one department in the business - provided he can prove that he has been trained for at least

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three years in the profession in question and can produce a certificate recognized by the State or a competent professional organization.

For the implementation of these provisions, Member States which restrict pursuit of these crafts to persons possessing general, commercial or professional knowledge or skill must, with the aid of the Commission, inform the other Member States of the main features of the work concerned (job description).

The authority designated for this purpose by the country of origin states what professional activity has actually been pursued by the person concerned, and for how long. This statement is to be based on the job description sent on by the Member State in which the beneficiary wishes to carry on this activity either permanently or temporarily.

At the request of the person concerned, the receiving Member State gives permission to carry on the activity in question where it corresponds in all essential points to the job description mentioned above and where any other conditions laid down in the regulations are fulfilled.

The directive lays down that, if any serious difficulties result from the application of the Council directive in Luxembourg, the government may be authorized by the Commission - for a period and on conditions to be determined by the Commission - to suspend the application of the directive to one or more given activities.

Furthermore, where in a Member State engagement in any of these activities is not subject to the possession of general, commercial or professional knowledge or skill, this State may, where the application of the Council directive has given rise to serious difficulties, ask the Commission for authorization - for a limited period and for one or more specified occupations - to require nationals of other Member States wishing to engage in these occupations on its territory to produce evidence that they are qualified to pursue them in their country of origin.

This directive will remain in force until provisions have been enacted for the co-ordination of national regulations governing admission to and pursuit of these activities.

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The third directive relates to the extraction of minerals, solid, liquid or gaseous. This includes the exploitation of underground and opencast mines, quarries and oil wells, and all other operations necessary for dressing and beneficiating ores and other crude minerals, such as breaking, milling, washing, cleaning

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and grading, provided these are carried out by an enterprise whose main activity is mining or quarrying. These activities also include prospecting for minerals and preparing sites for mining, quarrying or drilling operations.

The directive also covers the sales activities of manufacturers who market their own products, either wholesale or retail. However, where self-employment in this field is not liberalized under other directives, these activities are restricted to sales in a single establishment in the producing country.

In accordance with the General Programmes, the directive does not apply to prospecting or drilling for oil and natural gas unless this is done by the holder of the concession.

Each Member State is required to remove restrictions which (a) prevent beneficiaries from setting up in business or supplying services on its territory on the same terms and with the same rights as its own nationals; (b) have the effect, as a result of an administrative practice, of discriminating between foreign beneficiaries and nationals; (c) exclude beneficiaries, by reason of regulations or practices, from the acquisition of concessions or licences and thereby subject them to limitation or to conditions applying to them alone; (d) exclude beneficiaries from holding office in professional organizations.

Where the host Member State requires from its own nationals wishing to engage in any of these activities proof of good character and/or a certificate that they have never been declared bankrupt, that State must accept as sufficient proof - from nationals of the other Member States - the submission of a certificate based on police records or of a similar document issued by the legal or administrative authorities in the country of origin to the effect that these requirements are satisfied.

Where the country of origin does not issue certificates on the bankruptcy question, the person concerned may make a statement on oath before some legal or administrative authority, a notary or the appropriate professional body in the country of origin.
