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Council Directive 77/92/EEC of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex ISIC Group 630) and, in particular, transitional measures in respect of those activities

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COUNCIL DIRECTIVE of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex ISIC Group 630) and, in particular, transitional measures in respect of those activities (77/92/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 49, 57, 66 and 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas, pursuant to the Treaty, all discriminatory treatment based on nationality with regard to establishment and to the provision of services is prohibited from the end of the transitional period ; whereas the principle of such national treatment applies in particular to the right to join professional organizations where the professional activities of the person concerned necessarily involve the exercise of this right;

Whereas not all Member States impose conditions for the taking up and pursuit of activities of insurance agent and broker ; whereas in some cases there is freedom to take up and pursue such activities but in other cases there are strict provisions making access to the profession conditional upon possession of formal evidence of qualifications;

Whereas, in view of the differences between Member States as regards the scope of activities of insurance agent and broker, it is desirable to define as clearly as possible the activities to which this Directive is to apply;

Whereas, moreover, Article 57 of the Treaty provides that, in order to make it easier for persons to take up and pursue activities as self-employed persons, Directives are to be issued for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States;

Whereas, in the absence of mutual recognition of diplomas or of immediate coordination, it nevertheless appears desirable to facilitate the effective exercise of freedom of establishment and freedom to provide services for the activities in question, in particular by the adoption of transitional measures of the kind envisaged in the General Programmes (3) in order to avoid undue constraint on the 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 object of the transitional measures should be to allow, as sufficient qualification for taking up the activities in question in host Member States which have rules governing the taking up of such activities, the fact that the activity has been pursued in the Member State whence the foreign national comes for a

reasonable and sufficiently recent period of time, in cases where previous training is not required, to ensure that the person concerned possesses professional knowledge equivalent to that required of the host Member State's own nationals;

Whereas, in view of the situation in the Netherlands, where insurance brokers are, depending on their professional knowledge, divided up into several categories, an equivalent system should be provided for in respect of nationals of other Member States who wish to take up an activity in one or other of the categories concerned ; whereas the most appropriate and objective criterion for this purpose is the number of employees whom the person concerned has or has had working under him;

Whereas, where the activity of agent includes the exercise of a permanent authority from one or more insurance undertakings empowering the beneficiary, in respect of certain or all transactions falling within the normal scope of the business of the undertaking (1)OJ No C 78, 2.8.1971, p. 13. (2)OJ No C 113, 9.11.1971, p. 6. (3)OJ No 2, 15.1.1962, pp. 32/62 and 36/62.

or undertakings concerned, to enter in the name of such undertaking or undertakings into commitments binding upon it or them, the person concerned must be able to take up the activity of broker in the host Member State;

Whereas the purpose of this Directive will disappear once the coordination of conditions for the taking up and pursuit of the activities in question and the mutual recognition of diplomas, certificates and other formal qualifications have been achieved;

Whereas, in so far as in Member States the taking up or pursuit of the activities referred to in this Directive is also dependent in the case of paid employees on the possession of professional knowledge and ability, this Directive should also apply to this category of persons in order to remove an obstacle to the free movement of workers and thereby to supplement the measures adopted in Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (1), as amended by Regulation (EEC) No 312/76 (2);

Whereas, for the same reason, the provisions laid down in respect of proof of good repute and proof of no previous bankruptcy should also be applicable to paid employees,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall adopt the measures defined in this Directive in respect of establishment or provision of services in their territories by natural persons and companies or firms covered by Title I of the General Programmes (hereinafter referred to as "beneficiaries") wishing to pursue in a self-employed capacity the activities referred to in Article 2.

2. This Directive shall also apply to nationals of Member States who, as provided in Regulation (EEC) No 1612/68, wish to pursue as paid employees the activities referred to in Article 2.

Article 2

1. This Directive shall apply to the following activities falling within ex ISIC Group 630 in Annex III to the General Programme for the abolition of restrictions on freedom of establishment: (a) professional activities of persons who, acting with complete freedom as to their choice of undertaking, bring together, with a view to the insurance or reinsurance of risks, persons seeking insurance or reinsurance and insurance or reinsurance undertakings, carry out work preparatory to the conclusion of contracts of insurance or reinsurance and, where appropriate, assist in the administration and performance of such contracts, in particular in the event of a claim;

(b) professional activities of persons instructed under one or more contracts or empowered to act in the name and on behalf of, or solely on behalf of, one or more insurance undertakings in introducing, proposing and carrying out work preparatory to the conclusion of, or in concluding, contracts of insurance, or in assisting in the administration and performance of such contracts, in particular in the event of a claim;

(c) activities of persons other than those referred to in (a) and (b) who, acting on behalf of such persons, among other things carry out introductory work, introduce insurance contracts or collect premiums, provided that no insurance commitments towards or on the part of the public are given as part of these operations.

2. This Directive shall apply in particular to activities customarily described in the Member States as follows: (a) activities referred to in paragraph 1 (a): - in Belgium: - Courtier

d'assurance

Verzekeringsmakelaar,

- Courtier de réassurance Herverzekeringsmakelaar;
- in Denmark: - Juridiske og fysiske personer, som driver selvstændig virksomhed som formidler ved afsætning af forsikringskontrakter;
- in Germany: - Versicherungsmakler,
- Rückversicherungsmakler;
- in France: - Courtier d'assurance,
- Courtier d'assurance maritime,
- Courtier de réassurance; (1)OJ No L 257, 19.10.1968, p. 2. (2)OJ No L 39, 14.2.1976, p. 2.
- in Ireland: - Insurance broker,
- Reinsurance broker;
- in Italy: - Mediatore di assicurazioni,
- Mediatore di riassicurazioni;
- in the Netherlands: - Makelaar,
- Assurantiebezorger,
- Erkend assurantieagent,
- Verzekeringsagent;
- in the United Kingdom: - Insurance broker;

(b) activities referred to in paragraph 1 (b): - in Belgium: - Agent d'assurance

Verzekeringsagent;

- in Denmark: - Forsikringsagent;
- in Germany: - Versicherungsvertreter;
- in France: - Agent général d'assurance;
- in Ireland: - Agent;
- in Italy: - Agente di assicurazioni;
- in Luxembourg: - Agent principal d'assurance,
- Agent d'assurance;
- in the Netherlands: - Gevolmachtigd agent,
- Verzekeringsagent;
- in the United Kingdom: - Agent;

(c) activities referred to in paragraph 1 (c): - in Belgium: - Sous-agent

Sub-agent;

- in Denmark: - Underagent;
- in Germany: - Gelegenheitsvermittler,
- Inkassant;
- in France: - Mandataire,
- Intermédiaire,
- Sous-agent;
- in Ireland: - Sub-agent;
- in Italy: - Subagente;
- in Luxembourg: - Sous-agent;
- in the Netherlands: - Sub-agent;
- in the United Kingdom: - Sub-agent.

Article 3

Member States in which the taking up or pursuit of any activity referred to in Article 2 is subject to the fulfilment of certain qualifying conditions 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 profession which he proposes to pursue.

Article 4

Where in a Member State the taking up or pursuit of any activity referred to in Article 2 (1) (a) and (b) is subject to 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 one of the activities in question has been pursued in another Member State for any of the following periods: (a) four consecutive years in an independent capacity or in a managerial capacity ; or

(b) two consecutive years in an independent capacity or in a managerial capacity, where the beneficiary proves that he has worked for at least three years with one or more insurance agents or brokers or with one or more insurance undertakings ; or

(c) one year in an independent capacity or in a managerial capacity, where the beneficiary proves that for the activity in question he has received previous training attested by a certificate recognized by the State or regarded by a competent professional body as fully satisfying its requirements.

Article 5

1. If a Member State makes the taking up or pursuit of any activity referred to in Article 2 (1) (a) dependent on more stringent requirements than those which it lays down in respect of the activities referred to in Article 2 (1) (b), it may in the case of the taking up or pursuit of the first-mentioned activity require this to have been pursued in another Member State in the branch of the profession referred to in Article 2 (1) (a) for: (a) four consecutive years in an independent capacity or in a managerial capacity ; or

(b) two consecutive years in an independent capacity or in a managerial capacity, where the beneficiary proves that he has worked for at least three years with one or more insurance agents or brokers or with one or more insurance undertakings ; or

(c) one year in an independent capacity or in a managerial capacity, where the beneficiary proves that for the activity in question he has received previous training attested by a certificate recognized by the State or regarded by a competent professional body as fully satisfying its requirements.

An activity pursued by the beneficiary in accordance with Article 2 (1) (b), where it includes the exercise of a permanent authority from one or more insurance undertakings empowering the person concerned, in respect of certain or all transactions falling within the normal scope of the business of the undertaking or undertakings concerned, to enter in the name of such undertaking or undertakings into commitments binding upon it or them, shall be regarded as equivalent to the activity referred to in Article 2 (1) (a).

2. However, in the Netherlands, the taking up or pursuit of the activities referred to in Article 2 (1) (a) shall in addition be subject to the following conditions: - where the beneficiary wishes to work as a "makelaar", he must have carried on the activities concerned in a business where he was in charge of at least 10 employees,

- where the beneficiary wishes to work as an "assurantiebezorger", he must have carried on the activities concerned in a business where he was in charge of at least five employees,

- where the beneficiary wishes to work as an "erkend assurantieagent", he must have carried on the activities concerned in a business where he was in charge of at least two employees.

Article 6

1. Where in a Member State the taking up or pursuit of an activity referred to in Article 2 (1) (c) 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 either of the following periods: (a) two consecutive years either in an independent capacity or working with one or more insurance agents or brokers or with one or more insurance undertakings ; or

(b) one year under the conditions specified under paragraph (a), where the beneficiary proves that for the activity in question he has received previous training attested by a certificate recognized by the State or regarded by a competent professional body as fully satisfying its requirements.

2. The pursuit for at least one year of one of the activities referred to in Article 2 (1) (a) or (b)

and receipt of the relevant training shall be regarded as satisfying the requirements laid down in paragraph 1.

Article 7

In the cases referred to in Articles 4, 5 and 6, pursuit of the activity in question shall not have ceased more than 10 years before the date when the application provided for in Article 9 (1) is made. However, where a shorter period is laid down in a Member State for its own nationals, that period must also be applied in respect of beneficiaries.

Article 8

1. A person shall be regarded as having pursued an activity in a managerial capacity within the meaning of Articles 4 and 5 (1) where he has pursued the corresponding activity: (a) as manager of an undertaking or manager of a branch of an undertaking ; or

(b) as deputy to the manager of an undertaking or as its authorized representative, where such post involved responsibility equivalent to that of the manager represented.

2. A person shall also be regarded as having pursued an activity in a managerial capacity within the meaning of Article 4 where his duties in an insurance undertaking have involved the management of agents or the supervision of their work.

3. The work referred to in Articles 4 (b) and 5 (1) (b) must have entailed responsibility in respect of the acquisition, administration and performance of contracts of insurance.

Article 9

1. Proof that the conditions laid down in Articles 4, 5, 6 and 7 are satisfied shall be established by a certificate, issued by the competent authority or body in the Member State of origin or Member State whence the person concerned comes, which the latter shall submit in support of his application to pursue one of the activities in question in the host Member State.

2. Member States shall, within the time limit laid down in Article 13, designate the authorities and bodies competent to issue the certificate referred to in paragraph 1 and shall forthwith inform the other Member States and the Commission thereof.

3. Within the time limit laid down in Article 13 every Member State shall also inform the other Member States and the Commission of the authorities and bodies to which an application to pursue in the host Member State an activity referred to in Article 2 and the documents in support thereof are to be submitted.

Article 10

1. Where a host Member State requires of its own nationals wishing to take up or pursue any activity referred to in Article 2 proof of good repute and proof that they have not previously been declared bankrupt, or proof of either one of these, it shall accept as sufficient evidence in respect of nationals of other Member States the production of an extract from the "judicial record" or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the Member State of origin or the Member State whence the foreign national comes showing that these requirements have been met.

2. Where the Member State of origin or the Member State whence the foreign national concerned comes does not issue the document referred to in paragraph 1 it may be replaced by a declaration on oath, - or, in States where there is no provision for declaration on oath, by a solemn declaration - made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary in the Member State of origin or the Member State whence that person comes ; such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration. The declaration in respect of no previous bankruptcy may also be made before a competent professional body in the said country.

3. Documents issued in accordance with paragraphs 1 and 2 must not be produced more than three months after their date of issue.

4. Member States shall, within the time limit laid down in Article 13, designate the authorities and bodies competent to issue the documents referred to in paragraphs 1 and 2 of this Article and shall forthwith inform the other Member States and the Commission thereof.

Within the time limit laid down in Article 13, each Member State shall also inform the other Member States and the Commission of the authorities or bodies to which the documents referred to in this Article are to be submitted in support of an application to carry on in the host Member State an activity referred to in Article 2.

5. Where in the host Member State proof of financial standing is required, that State shall regard certificates issued by banks in the Member State of origin or the Member State whence the foreign national concerned comes as equivalent to certificates issued in its own territory.

Article 11

A host Member State, where it requires its own nationals wishing to take up or pursue one of the activities referred to in Article 2 to take an oath or make a solemn declaration, and where the form of such oath or declaration cannot be used by nationals of other Member States, shall ensure that an appropriate and equivalent form of oath or declaration is offered to the persons concerned.

Article 12

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 13

Member States shall bring into force the measures necessary to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof.

Article 14

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

Article 15

This Directive is addressed to the Member States.

Done at Brussels, 13 December 1976.

For the Council

The President

M. van der STOEL