



Europa



# Business Support Programme

Phare Business Support Programme - SMECA

**Internal Market : Free movement of persons and services / mutual  
recognition of diplomas**



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# I. GENERAL BACKGROUND

## I.1. An internal market based on four freedoms: a historical overview

To provide background and perspective to the issues of free movement of persons and services, and the connected issue of recognition of diplomas in the Union, it is necessary to give a short history of the birth story of the European Union and introduce the notions of the internal market and the four freedoms.

1.

In the **Treaty of Rome (1957)** six European leaders (of Belgium, the Bundesrepublik Germany, France, Italy, Luxembourg and the Netherlands) first laid down the plan to create a large market that would cover the whole European Community and would be based on the principles of a free circulation of goods, persons, services and capital. "**An internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital**" (EC Treaty, Article 3c).

The freedoms include, as is explicitly expressed in the Treaty, the **right of persons to move freely within the Community in order to work** in the Member State of their preference without their being any discrimination based on nationality, the right to **establish themselves in any Member State as a self-employed, or to set up a company, a branch or a subsidiary**. The Treaty of Rome also prohibits any restrictions on the **freedom to provide services** to persons in other Member States.

The Treaty of Rome created the **European Communities**, consisting of the (pre-existing) European Community, the European Community for Coal and Steel, and Euratom, the European Community for Atomic Energy.

2.

Although a **Customs Union** for the Community Member States was created in 1968, a lot of restrictions to the four freedoms and obstacles to the good functioning of the internal market remained still in existence, with all the consequences in terms of costs and hindrance, as is the case in separated national markets.

Therefore, in 1985 the Commission brought out a **White Paper** entitled "**The completion of the Internal Market**"; which is also known as the Delors White Paper, and which was accepted by all Member States. It listed the almost 300 obstacles of a physical, technical, and fiscal nature that still hindered the smooth functioning of the internal market and contained the legal measures that were needed to abolish these obstacles and create a veritable internal market.

The White Paper set out from the principle of **mutual recognition** of the Member States' national laws and regulations. The Member States should, as much as possible, agree to accept each others' norms and regulations, so that it would not be necessary to create a totally new European framework of regulations.

The White Paper also set a **timeframe** for the realisation of these measures, thus introducing the "1992 Project": on 31/12/1992 the completion of the internal market was to be a fact.

The **European Act** of 1987 made some amendments to the Rome Treaty to create a reform of the institutional system and the competences, with as a most important innovation the introduction in the Council of Ministers of the **decision making process by majority of votes** instead of by the unanimity principle of before. Obviously this facilitated and accelerated the decision making process within the Community enormously. In fact, it was a vital condition without which the completion of the internal market within the set time frame could not have been accomplished.

3.

In 1993 a new Treaty was implemented: the **Treaty concerning the European Union**. It fit in with the endeavours to complete the internal market, and took these ambitions a step further by allowing the economic integration to be accompanied by **common policy measures and actions**, as it assigned **new competence** to the European level. Next to the European Communities (see higher), it created two new "**pillars**" on which the European Union would be based, namely a **common policy for foreign affairs and security and justice and internal affairs**. It also introduced the notion of a veritable **European citizenship**.

1997 saw the signing of a new Treaty, the **Treaty of Amsterdam**, which came into effect on May 1 1999, and is a revision of the Maastricht Treaty by which the European Union was created. The new Treaty addressed especially issues concerning the **Union and its citizens, the external identity of the Union, and the Union's institutions**.

4.

The newest project on the agenda, and perhaps the most ambitious so far, is of course the **enlargement of the Union**. It will again profoundly change the face of the internal market and the functioning of the four freedoms.

It was the Copenhagen European Council of June 1993 laid down the **basic criteria** for accession: the Candidate countries need to have set up stable **democratic institutions**, have a functioning **market economy** that is able to withstand competitive market pressures, **adopt the entire body of existing EU law**, and have the **administrative capacity** to implement this "body of law".

The European Council in Luxembourg in December 1997 decided to open accession negotiation with 6 countries: Hungary, Poland, Czech Republic, Estonia, Slovenia and Cyprus.

Two years later at the Helsinki Summit in December 1999 it was decided to put **all 12 candidate countries on an equal footing as negotiating candidates for a full Membership**. At the same time, Turkey was given the status of a formal candidate, which entitles it to participate in the enhanced pre-accession strategy, while it is for the time being not included in the negotiations. The Council hence formally opened accession negotiations with the other six candidate countries - Romania, Bulgaria, Lithuania, Latvia, Slovakia and Malta.

These negotiations are taking the form of a series of **bilateral intergovernmental conferences** between the EU-Member States and each of the candidate countries. The actual negotiations are based on detailed evaluations prepared by the Commission on the situation of

each country in relation to the accession criteria mentioned above and their factual legislative and administrative alignment as regards each specific sector of Community law. Two of the chapters of these screening exercises are "Freedom of movement for persons" and "Freedom of movement for services". Negotiations are thus carried out on an objective basis supported by solid, uniform criteria but rate of progress is different for each candidate country because each one is judged on its merits and a technical evaluation of its individual efforts. This means that **each candidate or group of candidates is joining the EU when it is able to show that it has met the four above-mentioned criteria for membership.**

## **I.2. Free movement of persons and services: further definition of the subject matter**

When discussing free movement of persons and services in EU context, we are touching on one of the most fundamental issues, and subsequently an enormous area of measures and legislation is covered. Therefore it is necessary to first clarify some of the terms used.

- As explained in I.1, **the four freedoms**, of which the free movement of persons and services are two, together with the concept of the internal market form the very basis of the creation of first an European Community, now widened to a European Union. The concept is first mentioned in Article 3.c of the Treaty of Rome. (EC Treaty)

- These two freedoms - of persons and services - are further explained in the EC Treaty: they include

**a. The right to a free movement of workers (article 39 - ex 48)**

**b. The right of establishment (article 43 - ex 52)**

**c. Freedom to provide services (article 49 - ex 59)**

- Obstacles to these freedoms can spring from national restrictions concerning the execution of certain occupations or professions, or from restrictions of a more general nature, e.g. norms, border formalities, etc., these last however, are mostly taken to belong to the area of free movement of goods.

- Concerning the issue of freedom to provide services, EU legislation is concentrated on some sectoral categories of occupations that (used to be) governed by national regulations:

- **Financial** services, including the banking sector, insurance and transactions in securities

- **Transport** services

- **New technologies** (including communication)

- An important measure to contribute to the realisation of a free movement of workers and services, and the freedom of establishment, is the **mutual recognition of diplomas and professional qualifications**. The discussion of the European efforts in this field will be an integral part of this study.

- These rights and freedoms discussed above are **mutually interconnected**: many of the issues discussed under the chapter of free movement of workers also pertain to the free movement of self-employed persons and the freedom to provide services, while the issue of the recognition of diplomas and qualifications, discussed in this training tool under the heading of freedom of establishment, is also important to the free movement of workers.

- Also, these rights and freedoms and their implementation has obviously had an impact on, and is influenced by, a wide range of other issues and areas.

- e.g.:
- the physical border controls of persons travelling within the Union - The Schengen model
  - right of residence
  - the social dimension, including social security
  - training and education
  - labour market policy
  - fiscal matters

Given the limited scope of this training tool, it will not be possible to treat all these matters in equal depth. Therefore we will attempt to give a broad overview of the area, including the most important issues at stake and the basic legislation that shapes it. But our attention will go first and foremost to these issues that concern SMEs, and these will mostly lay in the field of the right to establish a business, exercise a profession, offer a service or execute a commission in the Member State of choice.

## II. GENERAL OVERVIEW AND STATE OF AFFAIRS PER AREA

### II.1. Free movement of workers

As we have seen, the free movement of workers was provided for in the Treaty of Rome of 1957. But in fact it would take more than 10 years more before this freedom was actually implemented in the European Community. Before 1968, a worker looking for a job in another Member State faced a lot of difficulties. The movement of European workers within the Commission was a **national responsibility** of the Member States. European workers – like any other foreign workers – were subject to national laws on immigration. If they wished to live and work in another Member State, they had to apply for **work and residence permits**. And it was up to the national administrative authorities to decide whether foreign nationals, and these included other Community citizens, would be allowed to enter the country and whether they would have the right to work. If such a European worker received authorisation to emigrate to another Member State, his status still depended on him keeping his work and residence permits;

But in 1968, the necessary **secondary legislation**<sup>1</sup> (**Regulation 1612/68 - Directive 68/360**) was adopted which set the conditions for an effective exercise of free movement for workers. This meant that the European countries that formed the European Community at that moment agreed to **grant each other's citizens the right to travel freely between Member States in order to work**, and to no longer apply national laws on immigration to workers from the other Member States. Within the European Community, visas, work permits and residence permits had become things of the past for European workers. Their rights were henceforth governed by European law.

Moreover, it became soon clear<sup>2</sup> that the right to free movement and non-discrimination was to be interpreted as going much further than an exclusively economic right aimed at the integration of national labour markets. Nor was it to be exclusively an instrument to promote a common market for economic and commercial activities. Free movement also had a **social dimension** and, because of this, Member States had a duty to ensure that migrant workers and any family members were fully integrated. They and their families were to have full access to all benefits and social advantages, whether or not linked to a contract of employment. The goal is for full integration in the host country. Work is part of this, but it also involves taking part in society as a whole, including social, economic and cultural matters, education and training.

Although important progress has been made in this area in the last decades, the internal changes within the Union, and the new challenges that it has to face has raised the need to reinforce free movement for workers. Free movement is now evolving within a Union shaped by an Economic and Monetary Union, a Union with a broader concept of European citizenship, having established a European employment strategy and facing changes in its labour market (notably the ageing of the workforce).

In 1996 a **High Level Panel on free movement for persons**, chaired by Ms. Simone Veil, was set up by the Commission, and its report revealed that improvements were still needed. `

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<sup>1</sup> See chapter III.

<sup>2</sup> These interpretations of the legislation were mostly expressed through case law judged by the European Court of Justice – see next chapter for a discussion of the European legal system

In 1997 the Commission adopted an **Action Plan for Free Movement of Workers**<sup>3</sup>. Its two main goals were: a clearer, more up-to-date **legal framework** on free movement for European workers (incorporating case law), and a more **transparent and efficient labour market** in Europe, which will allow free movement under optimal conditions.

**EURES, a European network of employment services**, plays an important role in facilitating labour mobility and enhancing the transparency of the European Union's labour market by offering jobseekers and employers from all Member States information and advice. Operating also via the Internet, it gives all European citizens direct access to information on job placements and recruitment in every Member State.

## **II.2. Freedom of establishment - recognition of diplomas**

In a market economy, the general rule is that **everybody is free to take up any profession**. In the general interest of society however it will be necessary to submit the exercise of some professional activities to the possession of certain **qualifications, certificates or diplomas**. It is then up to the state in question to decide whether a profession or activity must be regulated, or whether it can be left to free competition to take care of the sorting out of unsatisfactory providers. The qualifications necessary to practice a regulated profession are generally based on the **national education system**, and thus they pose an obstacle to a migrant who obtained his qualifications in another state.

However, it was stated by the Rome Treaty that every EU-citizen should be able to establish a business, take up a profession or provide a service in any Member State of his choice<sup>4</sup>. This means concretely that every EU citizen who wants to take up a regulated profession in another Member State will have to **submit to the regulations concerning this activity applicable in the Member State where he wants to exercise his profession**.

In practice, this poses **obstacles** to the functioning of the freedoms. An appropriate qualification is needed in order to practise a regulated profession, and these requirements apply to the own citizens as well as to those from another Member State. It will be clear that it is more difficult for the latter to satisfy the requirements.

Though there is a clear prohibition on discrimination on the basis of nationality in the Union, this prohibition **does not in any way influence national legislation which regulates access to a profession**, so the problem remains. Instead, community law has sought to provide **framework for the mutual recognition of professional qualifications**.

The measures discussed here are generally applicable to both employed and self-employed persons. They can be broadly divided in two groups:

- The "sector-related" or transitional directives (recognition of professional experience)
- The "new rules", based on mutual recognition, including:
  - the three general system directives
  - some other sectoral directives, dealing with some individual professions, especially in the health sector and for architects.

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<sup>3</sup> Commission Communication COM(97) 586 final

<sup>4</sup> It was confirmed by two judgements of the European Court of Justice "Costa" (1964) and "Reyners" (1974) that article 43 and 44 of the Treaty are directly applicable.

## 1. The sector-related directives

These directives, which were the first to be adopted (from 1964 onwards) , are generally referred to as "**transitional directives**", since the original intention was to replace them with legislation concerning education and training harmonisation. This approach was later abandoned because it proved to be too cumbersome and inflexible.

The system for these directives is based on the **recognition of professional experience**. The assumption is that in the course of practising a profession for a number of years a certain expertise will have been acquired in the technical skills specific to that activity. Normally three tot six years experience is stipulated, as well as requirements concerning good character, financial standing and physical and mental health.

The advantage is that the system is quite simple: it makes it possible to pursue an activity anywhere in the Union, even if this activity is not regulated in some Member States and is subject to other forms of regulation in other states. A harmonisation of the national systems is not needed. The drawback is of course that the freedom can only be **ensured after a number of years activity in the home Member State**. Also, adopting these specific directives is a highly complicated and time-consuming way to tackle the problem, as each directive relates to only one activity or profession. Therefore, this approach was gradually abandoned after 1980. Most of the directives which were adopted relate to **skilled trades**, but some are very broad in scope and also cover the provision of professional services (eg. concerning patent agents)

## 2. The "new rule" directives (mutual recognition of professional qualifications)

### a. The sectoral Directives

This system, which covers some fifteen Directives, is based on **automatic recognition of professional qualifications** and applies to fully-qualified professionals who wish to practise in a Member State other than that in which they obtained their qualifications. There are two variants.

The first, which applies to some professions in the medical sector (including doctors, nurses, dentists etc.) bases automatic recognition on minimal co-ordination of education and training. Member States' provision of education and training for the professions in question is governed by common rules that also require them to recognise such education and training undergone elsewhere in the Union.

The second variant applies only to architects. Here the purpose of the rules is not to harmonise education and training, but to establish criteria for recognition. The qualifications in question are likewise recognised automatically, once they have been approved by the Commission and the other Member States.

As this system too involves some heavy legislative procedures and only applies to one sector of activity per directive, it was generally abandoned after 1985.

## b. The "general system" Directives

### Directives 89/48 and 92/51

A second approach is based on Directives 89/48/EEC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, and, supplementary, Directive 92/51/EEC on a second general system for the recognition of professional education and training.

In principle, these arrangements apply to all regulated activities **not already covered by a specific directive**. The recognition under this system might be described as **semi-automatic**. The education and training in the home state is recognised if the regulated professional activities one wishes to pursue in another Member State are the same as those one is entitled to pursue in the home state, and if the education and training required in the host state does not differ substantially from that in the home state. If this is not the case, the migratory worker may be asked to complete an adaptation period or take an aptitude test.

### Directive 99/42

Directive 99/42/EEC on a mechanism for the recognition of diplomas in craft trades, commerce and certain services

This directive supplements the other general system directives by **extending the system** to the professional activities that are not covered by them. It regulates the recognition of formal qualifications awarded by another Member State and the recognition of professional qualifications on the basis of professional experience and other professional qualifications acquired in another Member State. It also establishes a **reporting duty** by the Member States to the Commission, to inform it of the decisions taken in the framework of the directive and the main problems arising from its application. The deadline for implementation of the legislation in the Member States is 30/07/2001.

## **II.3. Freedom to provide services**

The services sector is, and has been for some decades, the **largest employer in Europe**. In terms of gross national product (GNP) it contributes more to economic prosperity than the industrial sector. Still, when it came to **liberalisation of the services market**, for a long time this sector lagged behind. The realisation of the free movement of goods happened much faster and easier than the opening up of the borders to the providers of services. The national markets for services remained splintered for a long time after this was the case for the goods or capital sectors.

This meant that national governments could bar their citizens from effecting an insurance in another Member State, could prohibit foreign lorries from operating on their territory, could fix prices for, for instance, aeroplane flights, etc. This lack of harmonisation was not only costly and harmful to European consumers, but also to businesses and the Community's economy as a whole.

It was the Commission's **White Paper on the Internal Market (1985)** that was the big breakthrough for the liberalisation of the European services sector. A large part of the White Paper was devoted to this sector, and the ambitious aim was to close the backlog in one go.

This was to be realised through a **harmonisation of the basic principles**, and the application of the principle of **mutual recognition of national regulations**.

A working programme was set up to adapt the rules concerning **financial services, information technology, capital movement, transport,....**; all sectors where the introduction of cross-border services would truly aid the interests of the Member States and their enterprises, as their competitiveness is also dependent on the costs of these services.

It must be clear that the aim of the harmonisation and liberation of this sector was not only the further development of the sector itself (important employer though it is); the service sector forms an essential aspect of the economic and industrial development of the Union, and its **liberation gives all companies in the Union access to services that are more efficient, less costly and better adapted to their needs**.

By 1993, the programme was largely executed, so that a veritable liberation of the services sector in the Union had become reality.

### III. LEGISLATION: APPLICABLE RULES AND REGULATIONS

#### III. 1. The legal system in the Union

Before embarking on the overview of the applicable legislation in the field of the free movement of persons and services, it will be necessary to give a short introduction in the **legal sources** of community law and its **legal instruments**.

The community law is the **basis of the institutional system** in the Union. It regulates the procedures for the **decision making** of the Community institutions, and it makes available the **instruments by which binding regulations can be issued** for the Member States and their citizens. Community law is influencing more and more the daily life of the European citizens. It grants rights and imposes duties; in practice the European citizen is subjected to legal systems of different levels - the European and that of his home state.

##### 1. Legal sources of community law

The first of the legal sources of community law are of course the **Treaties** founding the European Communities, with all their supplements, attached protocols, additions, changes etc., (apart from the **Foundation Treaties**, these are the different **accession Treaties**, the **European Act**, the **Treaty concerning the European Union**, the **Amsterdam Treaty**... ). They contain the **fundamental norms concerning the objectives, the organisation and the working methods of the Union**, as well as certain aspects of **economic law**. This part of community law is often referred to as **primary community law**.

The second important source of community law is the so-called **derived or secondary legislation**. This is the legislation which is created by the community institutions in the exertion of their competence. These are the **regulations, directives, decisions, recommendations, etc.** issued by the community organs, as well as internal decisions and regulations, action programmes, etc. This body of secondary legislation is gradually evolving and developing; it realises and completes community law through the years.

A third source of community law are the **agreements under international law**. These are connected with the role of the Union on the international level, and pertain to agreements of the Union with so-called **third countries** or **international organisations**. These can be agreements in the field of commercial policy, industrial-technical or social-political policy. Important types of agreements are **association agreements**, that are aimed at close economical co-operation with intensive financial support of the partners by the Union. Examples are the agreements with the transmarine territories and former colonies, but also the agreements that are concluded in preparation of an accession to the Union, for the realisation of a **customs union** or the agreement concerning the **European Free Trade Area (EFTA)**.

Other sources of community law or the **unwritten, general legal principles** such as the guaranteeing of the basic rights, the principle of access to the judge, the principle of the accountability of the Member States, the principle of the priority of community law... The realisation of these general principles is through **jurisprudence of the Court of Justice** of the European Communities, which is responsible for the observance of the law in the explanation and application of the treaty. A last legal source are the **agreements between individual Member States**.

## 2. Legal instruments of the European Community

One of the characteristics of the legislative system in the Union is the principle that national regulations must be substituted by community decisions if a detailed common regulation is necessary. If there is no such a necessity, the existing legislation of the Member States must be respected. It is against this background that the instruments were developed with which the community institutions can influence national legislation in the Member States to a more or less strong degree. There are five types of decrees<sup>5</sup>: **regulations, directives, decisions, advises and recommendations.**

### A. Regulations

Regulations are real European laws. They are the rules that influence legislation in the Member States most deeply and directly. They have a **community-wide application**: they have the ability to establish the same law in all Member States of the Community, uniformly and unimpaired. They are also **directly applicable**, which means that they have the power to impose duties or grant right directly to the citizens in the Union.

### B. Directives

Directives are a second important instrument of community law. They are meant to consolidate the pursuit of a necessary unity of the Community on the one hand, and the preservation of national characteristics on the other hand. Their first objective is not, like is the case for regulations, to unify the legal systems, but only **to bring them closer together.**

A directive is only binding to the Member States as to the **result** that is aimed for, but they are free to choose to form and the means to realise these objectives. Thus the directive makes it possible for community law to take into account the national particularities of its Member States. The rules that are contained in a directive do not automatically take the place of national rules, but the Member States are expected to **adapt their national legislation to the community rules.**

### C. Decisions

Individual decisions are the administrative decrees with which the community institutions regulate **individual** issues **bindingly**. Via decisions a Member State or an individual in the Union can be obliged to act or to refrain from doing something, they can be given rights or imposed duties. Decisions are **individually applicable, binding, and immediately active.**

### D. Recommendations and advises: non-binding pronouncements of the community institutions.

The community institutions can express themselves through recommendations and advises if they want to address Member States or sometimes individuals in a non-binding way.

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<sup>5</sup> The ECCS (European Community for Coal and Steel) knows only three types of decrees: decisions, recommendations and advice

**Recommendations** are used to incite those addressed to a certain behaviour, **without imposing it legally**. It can for instance be used to urge Member States to make an end to certain practises that can be considered to distort free competition.

**Advices** can be used to give an **opinion** about a certain situation or event in the Union or in a Member State. The importance of recommendations and advises lies mostly on a **political and moral** level.

Next to these five, the institutions have some more instruments at their disposal to outline community legislation. The most important are the **resolutions** (that express the common opinions and intentions concerning the general integration process as well as certain concrete tasks), the **statements** and the **positive action programmes**. These last are meant to concretise the legislative programmes and general objectives as expressed in the community treaties.

### **III.2. Most important community legislation in the field of free movement of persons and services, including recognition of diplomas**

To give in this training tool a complete overview of all legislation pertaining to the areas mentioned above is simply not possible due to the extensiveness of the material. The European Communities regularly publish a "Repertory of current community law" in which all references are listed; very useful tools are also the EUR-LEX database, <http://europa.eu.int/eur-lex> and the CELEX database <http://europa.eu.int/celex> that can be consulted via the Internet.

We have limited ourselves to a short discussion of the most important documents.

#### **1. Free movement of workers**

**\* Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.** (Official Journal L 257, 19.10.1968)

**Objective:** To adopt measures for the removal of restrictions still existing on movement and residence within the Community which conform with the rights and privileges accorded by Community law to nationals of any Member State who move in order to pursue activities as employed persons and to their families.

**Proposals for amendment:**

\* Proposal for a Parliament and Council Directive - 12/7/1995 (COM(95) 348 final COD950202 - Official Journal C 307, 18.11.1995).

\* Proposal for a European Parliament and Council Directive - 14/10/1998 (COM(98) 394 final - Official Journal C 344, 12.11.1998)

**\* Council Regulation (EEC) No 1612/68 of 15 October 1968 on the free movement of workers within the Community** (Official Journal L 257, 19.10.1968)

**\* Council Regulation (EEC) No 312/76 of 9 February 1976 amending the provisions relating to the trade union rights of workers contained in Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community** (Official Journal L 39, 14.02.1976)

**Objective:** To ensure the mobility of the labour force in the Community, which means the elimination of any discrimination based on nationality as regards employment, remuneration

and other working conditions, access to accommodation and the worker's right to be joined by his family.

**Proposals for amendments:**

\* Proposal for a European Parliament and Council Regulation - 14/10/1998 (COM(98) 394 final COD98229 - Official Journal C 344, 12.11.1998)

**\* Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State** (Official Journal L 142, 30.06.1970)

**Objective:** To lay down the conditions governing the right of workers and their families to remain residing in the territory of a Member State when they cease to be employed in that State, and the conditions for the exercise of such right.

**\* Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity.** (Official Journal L 14, 20.01.1975)

**Objective:** To determine the conditions under which the right to remain arises and under which such a right may be exercised in the territory of a Member State after having pursued therein an activity in a self-employed capacity.

**\* Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services** (Official Journal L 172, 28.06.1973)

**Objective:** To abolish existing restrictions on the movement and residence within the Community of self-employed and salaried persons and their families.

**Proposals for amendment:**

\* Proposal for a Parliament and Council Directive - 12/7/1995 (COM(95) 348 final COD950202 - Official Journal C 307, 18.11.1995).

\* Proposal for a Council Directive on the elimination of controls on persons crossing internal frontiers - 12/7/1995 (COM(95) 347 final - Official Journal C 289, 31.10.1995)

**\* European Parliament and Council Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services** (Official Journal L 18, 21.01.1997)

**Objective:** To remove uncertainties and obstacles which may impede the freedom to provide services, by increasing legal certainty and allowing identification of the terms and conditions of employment applicable to workers who carry out temporary work in a Member State other than that whose law governs their employment relationship; to avoid the risks of abuse and exploitation of posted workers.

**\* Communication from the Commission on the living and working conditions of Community citizens resident in frontier regions, with special reference to frontier workers.** (COM(90) 561 final)

**objective:** To put forward ideas with a view to encouraging a debate and preparing the way for new Community measures.

**\* Action plan for free movement of workers.** (COM(97) 586 final)

**Objective:** To improve the conditions for free movement of workers within a European labour market

## 2. Recognition of diplomas and comparability of vocational qualifications

### A. The transitional directives<sup>6</sup>:

#### **Manufacturing and processing industries:**

Council Directive 64/429/EEC of 7 July 1964 *OJ L 117*, 23/07/1964 p. 1880 - 1892

Council Directive 64/427/EEC of 7 July 1964 *OJ L 117*, 23/07/1964 p. 1863 - 1870

#### **Food manufacturing and beverage industry:**

Council Directive 68/365/EEC of 15 October 1968 *OJ L 260*, 22/10/1968 p. 0009 - 0012

Council Directive 68/366/EEC of 15 October 1968 *OJ L 260*, 22/10/1968 p. 0012 - 0016

#### **Wholesale trade**

Council Directive 64/223/EEC of 25 February 1964 *OJ 056*, 04/04/1964 p. 0863 - 0865

#### **Intermediaries in commerce, industry and small craft industries**

Council Directive 64/224/EEC of 25 February 1964 *OJ 056*, 04/04/1964 p. 0869 - 0873

Council Directive 64/222/EEC of 25 February 1964 *OJ 056*, 04/04/1964 p. 0857 - 0859

#### **Retail trade**

Council Directive 68/363/EEC of 15 October 1968 *OJ L 260*, 22/10/1968 p. 0001 - 0005

Council Directive 68/364/EEC of 15 October 1968 *OJ L 260*, 22/10/1968 p. 0006 - 0009

#### **Coal trade**

Council Directive 70/522/EEC of 30 November 1970 *OJ L 267*, 10/12/1970 p. 0014 - 0017

Council Directive 70/523/EEC of 30 November 1970 *OJ L 267*, 10/12/1970 p. 0018 - 0019

#### **trade and distribution of toxic products**

Council Directive 74/557/EEC of 4 June 1974 *OJ L 307*, 18/11/1974 p. 0005 - 0009

Council Directive 74/556/EEC of 4 June 1974 *OJ L 307*, 18/11/1974 p. 0001 - 0004

#### **Personal services sector (Restaurants, cafes, taverns and other drinking and eating places, Hotels, rooming houses, camps and other lodging places**

Council Directive 68/367/EEC of 15 October 1968 *OJ L 260*, 22/10/1968 p. 0016 - 0019

Council Directive 68/368/EEC of 15 October 1968 *OJ L 260*, 22/10/1968 p. 0019 - 0022

#### **Insurance agents and brokers**

Council Directive 77/92/EEC of 13 December 1976 *OJ L 026*, 31/01/1977 p. 0014 - 0019

#### **Transport and travel agencies**

Council Directive 82/470/EEC of 29 June 1982 *OJ L 213*, 21/07/1982 p. 0001 - 0007

#### **Hairdressing**

Council Directive 82/489/EEC of 19 July 1982 *OJ L 218*, 27/07/1982 p. 0024 - 0026

#### **Various activities**

Council Directive 75/368/EEC of 16 June 1975 *OJ L 167*, 30/06/1975 p. 0022 - 0028

#### **Itinerant activities**

Council Directive 75/369/EEC of 16 June 1975 *OJ L 167*, 30/06/1975 p. 0029 - 0032

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<sup>6</sup> The transitional directives refer largely to activities in the craft and small business sector; therefore we want to list them all. Only the references will be given. Example of a full title:

"Council Directive 64/429/EEC of 7 July 1964 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23-40 (Industry and small craft industries)"

*Official Journal 117*, 23/07/1964 p. 1880 - 1892

## B. The general Directives

**\* Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration. (Official Journal L 19, 24.01.1989)**

**Objective:** To enable higher-education professional diplomas gained in a Member State to be recognised - without prior harmonisation of training - in the host Member State which regulates the profession.

**\* Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (Official Journal L 209, 24.7.1992)**

**Objective:** To extend the system of mutual recognition introduced by Council Directive 89/48/EEC to those professions for which the required level of training is not as high.

Implemented by

**Directive 94/38/EC - Official Journal L 217, 23.8.1994**

**Directive 95/43/EC - Official Journal L 184, 3.8.1995**

**Directive 2000/5/EC - Official Journal L 54, 26.2.2000**

### **Proposed amendments to 89/48/EEC and 92/51/EEC**

Proposal, presented by the Commission, for a directive amending Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and supplementing Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor [COM(97) 638 final COD97345 - Official Journal C 28, 26.01.1998]

**\* Directive 1999/42/EC of the European Parliament and of the Council of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications (Official Journal L 201, 31.07.1999)**

**Objective:** Put in place a new mechanism for the recognition of diplomas for professional activities not yet covered by the general system. In particular the new mechanism aims to:

- reinforce legal certainty vis-à-vis the general system by allowing migrants to seek recognition of their diplomas;
- revise certain provisions of the Directives on "transitional measures" and "liberalisation", notably in regard to commerce, industry and craft trades;
- facilitate updating of the categories of professional experience thanks to a new comitology procedure vesting executive powers in the Commission.

Simplify Community law by revamping 35 transitional and liberalisation directives.

## 3. Freedom to provide services

### A. Banking sector:

**\* Council Directive 73/183/EEC of 28 June 1973 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of self-employed activities of banks and other financial institutions. (Official Journal L 194, 16.07.1973)**

**Objective:** To take an initial step towards introducing freedom of establishment and freedom to provide services in the financial sector. The Directive is the first in a series aimed at introducing the right of establishment and freedom to provide services for all financial professions.

**\* First Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions. (Official Journal L 322, 17.12.1977)**

**Objective:** To establish the conditions for a genuine common market in banking. This directive is known as the "first banking directive"

Amended by the following measures:

Council Directive 85/345/EEC of 8 July 1985; **Official Journal L 183, 16.07.1985**

Council Directive 86/137/EEC of 17 April 1986; **Official Journal L 106, 23.04.1986**

Council Directive 86/524/EEC of 27 October 1986; **Official Journal L 309, 04.11.1986**

Council Directive 89/646/EEC of 15 December 1989; **Official Journal L 386, 30.12.1989**

European Parliament and Council Directive 95/26/EC of 29 June 1995; **Official Journal L 168, 18.07.1995**

Council Directive 96/13/EC of 11 March 1996; **Official Journal L 66, 16.03.1996**

European Parliament and Council Directive 98/33/EC of 22 June 1998. **Official Journal L 204, 21.07.1998 - Corrigendum: Official Journal L 270, 07.10.1998**

**Second Council Directive 89/646/EEC of 15 December 1989 on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions and amending Directive 77/780/EEC. Official Journal L 386, 30.12.1989**

**Amended opinions**

**Official Journal L 15, 19.01.1990**

**Official Journal L 83, 30.03.1990**

**Official Journal L 158, 23.06.1990**

**Official Journal L 258, 22.09.1990**

**Official Journal L 296, 27.10.1990**

**Official Journal L 311, 14.11.1997**

**Objective:** To achieve the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisations and of prudential supervision systems, making possible the granting of a single licence recognised throughout the Community and the application of the principle of home-country control. This directive is known as the Second Banking Directive.

Amended by:

Council Directive 92/30 of 6 April 1992; **Official Journal L 110, 06.04.1992 Amended opinion**

**Official Journal L 280, 24.09.1992**

Council and European Parliament Directive 95/26 of 29 June 1995. **Official Journal L 168, 18.07.1995**

**Follow-up work:**

On 15 December 1997 the Commission presented a new proposal for a European Parliament and Council Directive relating to the taking up and pursuit of the business of credit institutions [COM(97) 706 final COD0357 - not yet published].

This proposal aims at codifying the whole of Directives covering this area. Next to Directive 92/30/EEC, the Directives 73/183/EEC, 77/780/EEC, 89/299/EEC, 89/646/EEC, 89/647/EEC, 92/30/EEC and 92/121/EEC are also aimed by this project of Directive. On 22 July 1999 the Commission presented an amended proposal in order to resume legislative modifications which have been brought to the Directives concerned, as well as the result of work within the Council [COM(1999) 109 final COD0357 - not yet published] The proposal is currently before Parliament for its opinion.

On 21 September 1998 the Commission presented a new proposal of directive the European Parliament and Council amending the Directive 77/780/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions [COM(98) 461 final - COD98/253 - Official Journal C 317, 15.10.1998]. The proposal has been submitted to Parliament for an opinion.

## B. Insurance sector:

**\* Second Council Directive 90/619/EEC of 8 November 1990 on the co-ordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (Official Journal L 330, 29.11.1990)**

Amended by the third Council Directive 92/96/EEC of 10 November 1992 (Official Journal L 360, 09.12.1992)

**Objective:** To lay down special rules relating to freedom to provide cross-frontier services in the life assurance field.

**\* Third Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, Regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (second Directive). (Official Journal L 360, 09.12.1992 Amended opinions: Official Journal L 54, 05.03.1993 - Official Journal L 311, 14.11.1997)**

Amended by European Parliament and Council Directive 95/26/EC of 29 June 1995. (Official Journal L 168, 18.07.1995)

**Objective:** To enable potential policy-holders to have access to any assurance undertaking whose head office is in the Community, while at the same time guaranteeing them adequate protection.

**Second Council Directive 88/357/EEC of 22 June 1988 on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC. (Official Journal L 172, 04.07.1988 Amended opinion Official Journal L 166, 16.06.1989)**

Amended by:

Council Directive 90/618/EEC of 8 November 1990;( Official Journal L 330, 29.11.1990)

Council Directive 92/49/EEC of 18 June 1992 (Official Journal L 228, 11.08.1992)

**Objective:** To lay down rules for the exercise of cross-frontier non-life insurance which balance the needs of freedom of services and consumer protection.

**\* Third Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive). (Official Journal L 228, 11.08.1992 Amended opinions Official Journal L 311, 14.11.1997)**

Amended by European Parliament and Council Directive 95/26/EC of 29 June 1995 (Official Journal L 168, 18.07.1995)

**Objective:** To introduce a single authorization system whereby any insurance undertaking whose head office is in one of the Member States of the Community can establish branches in other Member States and carry on business by way of provision of cross-border services under the supervision of the Member State in which its head office is situated. To enable persons seeking insurance to find the cover best suited to their needs.

### C. Transport

\* **Council Regulation (EEC) No 1841/88 of 21 June 1988 amending Regulation (EEC) No 3164/76 on the Community quota for the carriage of goods by road by Member States.**

\* **Council Regulation (EEC) No 1053/90 of 25 April 1990 amending Council Regulation (EEC) No 3164/76 concerning access to the market in the international carriage of goods by road.**

\* **Council Regulations (EEC) Nos 3914/90 and 3915/90 of 21 December 1990 amending Council Regulation (EEC) No 3164/76 concerning access to the market in the international carriage of goods by road.**

\* **Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States.**

**Official Journal L 163, 30.06.1988**

**Official Journal L 108, 28.04.1990**

**Official Journal L 375, 31.12.1990**

**Official Journal L 95, 09.04.1992**

**Amended opinions**

**Official Journal L 158, 11.06.1992**

**Official Journal L 213, 29.07.1992**

**Objective** To create the right conditions for instituting fair competition and ensuring minimum disturbance to the market of carriage of goods by road between Member States.

\* **Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State (Official Journal L 279, 12.11.1993)**

Amended by Council Regulation (EC) No 3315/94 of 22 December 1994 (Official Journal L 350, 31.12.1994)

**Objective:** To lay down a definitive system for inland cabotage. (non-resident carriers in the national market)

Commission implementing measures:

Regulation (EEC) No 792/94 - Official Journal L 92, 09.04.1994

### D. Communication and new technologies

\* **Commission Directive 88/301/EEC of 16 May 1988 on competition in the markets in telecommunications terminal equipment. (Official Journal L 131, 27.05.1988)**

**Objective:** To liberalise the markets in telecommunications terminal equipment

\* **Commission Directive 90/388/EEC of 28 June 1990 on open competition in the markets for telecommunications services. (Official Journal L 192, 24.07.1990)**

Amended by:

Commission Directive 94/46/EC of 13 October 1994; Official Journal L 268, 19.10.1994

Commission Directive 95/51/EC of 18 October 1995; Official Journal L 256, 26.10.1995

Commission Directive 96/2/EC of 16 January 1996; Official Journal L 20, 26.01.1996

Commission Directive 96/19/EC of 13 March 1996; Official Journal L 74, 22.03.1996

Commission Directive 1999/64/EC of 23 June 1999. Official Journal L 175, 10.07.1999

**Objective:** To strengthen Community telecommunications and gradually open up the telecommunications market to competition.

Follow up:

- The Commission has published guidelines on the application of EEC competition rules in the telecommunications sector [Official Journal C 233, 06.09.1991].

- On 21 October 1992 the Commission adopted the 1992 review of the situation in the

telecommunications services sector [SEC(92) 1048 final] in accordance with Article 10 of the Directive..

- On 22 July 1993 the Council adopted a resolution on the review of the situation in the telecommunications sector and the need for further development in that market (Official Journal C 213, 06.08.1993).

In this resolution the Council approved a timetable for the liberalization of telephony services. This should be achieved by 1 January 1998, although four countries (Spain, Ireland, Greece and Portugal) have been granted an additional transition period of up to five years. Countries with very small networks may also be granted an extension beyond 1 January 1998.

- On 2 December 1993 the Commission presented to the Council a draft Commission Directive amending Directives 88/301/EEC and 90/388/EEC with regard to satellite communications [SEC(93) 1891 final COS0123]. It announced its intention of finally adopting this Directive after receiving the Council's comments.

This draft Directive is intended to extend the liberalisation measures to satellites

- On 10 April 1997 the European Parliament and the Council adopted Directive 97/13/EC on a common framework for general authorizations and individual licences in the field of telecommunications services (Official Journal L 117, 07.05.1997).

- On 7 March 1998 the Commission presented a communication concerning a draft Directive amending Directive 90/388/EEC in order to ensure that telecommunications networks and cable TV networks owned by a single operator are separate legal entities [Official Journal C 71, 07.03.1998].

**\* Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity. (Official Journal L 128, 23.05.1991) Council Directive 93/68/EEC of 22 July 1993 amending Directive 91/263/EEC, as well as Directives 87/404/EEC, 88/378/EEC, 89/106/EEC, 89/336/EEC, 89/686/EEC, 89/392/EEC, 90/384/EEC, 90/385/EEC, 90/396/EEC, 92/42/EEC, and 73/23/EEC.**

**Council Directive 93/97/EEC of 29 October 1993 supplementing Directive 91/263/EEC in respect of satellite earth station equipment. (Official Journal L 290, 24.11.1993)**  
The Directives above are codified by the following Directive:

**\* Directive 98/13/EC of the European Parliament and of the Council of 12 February 1998 relating to telecommunications terminal equipment and satellite earth station equipment, including the mutual recognition of their conformity (Official Journal L 74, 12.03.1998)**

**Objective:** To establish harmonised procedures for the certification, testing, marking, quality assurance and inspection of products.

Follow up:

On 9 March 1999 the European Parliament and the Council adopted Directive 1999/5/EC on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity [Official Journal 91, 07.04.1999].

This Directive establishes a European Community regulatory framework for the placing on the market, free circulation and putting into service of Connected Telecommunications Equipment (CTE) which complies with the essential requirements.

**Directive 98/13/EC of the European Parliament and of the Council of 12 February 1998 relating to telecommunications terminal equipment and satellite earth station equipment, including the mutual recognition of their conformity. Official Journal L 74, 12.03.1998**

**Objective:** To establish harmonised procedures for certification, testing, marking, quality assurance and product surveillance for telecommunications terminal equipment and satellite earth station equipment.

follow up:

On 20 July 1998 the Council adopted Council Decision 98/482/EC on a common technical Regulation for the attachment requirements for connection to the analogue public switched telephone networks (PSTNs) of terminal equipment (excluding terminal equipment supporting the voice telephony justified case service) in which network addressing, if provided, is by means of dual tone multi-frequency (DTMF) signalling [Official Journal L 216, 04.08.1998].

**Council Decision 88/524/EEC of 26 July 1988 concerning the establishment of a plan of action for setting up an information services market. (Official Journal L 288, 21.10.1988)**

**Council Decision 91/691/EEC of 12 December 1991 adopting a programme for the establishment of an internal information services market. (Official Journal L 377, 31.12.1991)**

**Content:** To eliminate the technical, administrative and legal obstacles to the establishment of a common market in information services.

## IV. INFLUENCE ON SMES

### IV.1. The legal framework

Summarising what was explained above, we can conclude that since their inclusion amongst the basic freedoms in the Rome Treaty, **the European Community has steadily developed the necessary legal framework to ensure that a veritable free movement of workers, freedom of establishment and freedom to provide services is guaranteed to all individuals and companies within the Union.**

For an SME operating within the Union this means:

- Since 1968, **free movement of workers** is guaranteed within the Union: there is no longer any use of working or residence permits or visas for European citizens wanting to work in another Member State. Also, their and their families' **basic rights** are ensured.
- Regarding the **freedom to provide services**, since the realisation of the White Paper and the installation of the internal market (Project 1992) the liberation of the services market has largely been realised. This also means that an SME is free to choose the service provider that is most economical for his needs, in whichever Member State he is situated.
- Concerning the **freedom of establishment**, with the adoption of the "general system" Directives 89/48, 92/51 and 99/42, together with the earlier legislation on this subject, **an all-encompassing system for the mutual recognition of qualifications and diplomas** within the Union is in place, albeit via different systems (recognition of professional experience, automatic recognition of professional qualifications and semi-automatic recognition of qualifications).

However, the **conditions governing the access to professional activities** still remains largely assigned to the **Member States**. As a consequence, there are large differences between the Member States as to which professions are regulated, and also concerning registrations, licenses, notifications..., which in practise can pose serious obstacles.

### IV.2. Other issues connected with free movement

In reality, an SME or self-employed person wanting to establish a business in another Member State, wanting to offer his services cross-border, or wanting to take up a temporary commission in another Member State, will encounter **a number of practical problems**. Of course, lack of knowledge of the **language**, insufficient familiarity with the host country and its **customs** and **particularities**, its **market** and **business environment** are for many SMEs detrimental to their efforts in other Member States. All of these can only be solved through thorough **preparation** and study on the part of the entrepreneur.

There are also a number of other CE-issues that, though they cannot be classified under the heading free movement, are sufficiently important to SMEs wanting to exercise their rights to free movement or freedom of establishment to be mentioned here:

SMEs wanting to establish a business or offering a service in another Member State will certainly have to look into: fiscal & VAT issues (how and according to which system will I have to comply with my fiscal duties?) taxation issues (these are not regulated according to community legislation but through bilateral agreements), technical regulations (does my

product satisfy European and, possibly, national standards in the field of safety, health and technical requirements?).

### IV.3. Social security

Another matter, touching on the issues of free movement and establishment, and very important to SMEs and self-employed wanting to exercise their rights to freedom of movement and establishment is that of **social security**: European citizens can only exercise their rights to free movement when they have **sufficient guarantees** in connection with their social security rights.

If an individual is a citizen of one of the Member States of the European Union, or of the European Free Trade Area, he will be protected by community regulation if he is:

- an **employee** or **self-employed**, and has been insured according to the legislation in his state,
- a **civil servant**,
- a **student**,
- a **pensioner**,
- a **family member or relative** of one of the previously named categories.

The community regulations on social security concern **pensions, health insurance, maternity-, unemployment-, invalidity benefits**,.... but not, for instance, social and medical assistance, as these are mostly dependent on income, allowances dependant on early retirement schemes.... Sometimes it is difficult to determine whether a specific benefit falls under the community regulations.

The community regulations concerning social security are not meant as a replacement for the national systems; their aim is rather to **co-ordinate** them and ensure that the common rules and principles are adhered to, so that an individual who has exercised his right to free movement does not find himself in a disadvantaged position in comparison with an individual who has never left his home state.

The basic principles are as follows:

- one is only covered by the legislation of **one Member State at a time**
- one is insured in the Member State **where one is working**
- **exception** to the principle above: when a **temporary** assignment to another Member State (i.e. less than 12 months) is the case one remains insured in the original Member State.
- for some **categories of persons** (eg. seafarers, civil servants, persons employed in diplomacy, persons in military service...) specific rules apply
- **special cases** are also persons who usually work in more than one Member State and persons who work as an employee in one Member State while having an occupation in another Member State as a self-employed.

The general rule says that one has **the same rights and duties** with regard to the social security legislation in the Member State where one is insured as the citizens of that Member State.

The community regulations concerning social security belongs to the **most generally accepted rules** of the Union. They are expressed through **regulations** (see higher) and as such have general power of law and are directly applicable in all Member States.

However, for an SME or self-employed it is often not easy to find the specific regulation that is applicable to one's own situation. There are also cases where national institutions in some Member States were known not to apply the community regulations correctly; and if this is the case it might even be necessary to exact one's rights through legal means.

#### **IV.4. Strategies**

Accession country SMEs or self-employed persons who start operating in the enlarged Union will find a market of approximately half a billion customers in which free movement and the freedom of establishment are more or less achieved, along the lines explained above.

Their most important challenge will be **how to best make use of these freedoms** offered by the internal market. Opportunities will present themselves in the following fields:

- to exercise a profession in a self-employed capacity in any Member State
- to establish a business or a branch in another Member State
- to offer services based in one Member State to clients in other Member States
- to execute temporary works in another Member State
- to choose service suppliers, for instance in the financial, insurance or transport sector, in another Member State.
- to engage workers or employees in another Member State

In order to maximally exploit his possibilities, the SME will have to make thorough research to evaluate his chances in the Member State(s) of his choice, in commercial terms as well as regarding to regulations and rules. These last will include:

- The access conditions to the profession/occupation/activity/service/temporary commission he wants to exercise in the Member State(s) of his choice and how to fulfil them
- The conditions to establish a branch or company in the Member State(s) of his choice, including legal matters (company form...), conditions to establish a business (also: norms, environmental stipulations...), fiscal matters....
- Social protection matters, especially if the SME or self-employed worker is migrating, or if posting of workers or recruiting of foreign workers is involved
- Evaluation of the sales conditions for certain services (financial, transport, communication) to see whether they can be better purchased from providers in other Member States -
- Evaluation of the possibilities for recruiting workers/employees cross-border; conditions.

(a complete checklist is included in annex)

## V. OUTLOOK

The internal market project, driven by the 1993 deadline, has in its strictly economic sense largely been accomplished.

However, **the new visions of the future of the Union**, as expressed in the Maastricht and Amsterdam treaties - a Union in which a real sense of **citizenship** exists and which offers its citizens and "**area of freedom, security and justice**" has given new meaning to the freedom principles. In this context, an "area of freedom" should not only be taken to mean ensuring the free movement of persons, but also **protecting fundamental rights and combating all forms of discrimination**.

The "**Action Plan for the single market**" of 1997<sup>7</sup>, which defined the priority measures to be taken to improve the functioning of the internal market, also stresses this **social dimension**. It stresses **protection of social rights and the promotion of labour mobility**, (a.o. by improving and extending the use of the EURES employment database, adapting the right to reside and remain in another Member State, regulate supplementary pensions...).

The **Action Plan on an area of freedom, justice and security**<sup>8</sup>, which sets the terms for the realisation of the concept as provided for in the Treaty of Amsterdam, stresses next to protecting the **fundamental rights** of the European citizens and combating all **discrimination**, the need for Community instruments and the adoption of a genuine European policy concerning **free movement of third country residents** and **asylum** and **immigration**.

Another major development for the Union, which will in future years greatly influence the internal market and the interpretation of the freedoms, is of course the **enlargement project**.

The European Commission has stressed repeatedly that **alignment to the Single Market rules** is a condition sine qua non for enlargement, because accession by the CEECs cannot be allowed to weaken or put at risk the proper functioning of the Internal Market. Initially, the macro-economic impact of the future enlargement on the existing Union of the 15 may be relatively small, if one compares the GDP size of the candidate countries to that of the EU-15 (4,3% of EU-15 in 1999). However, this is likely to change in future. Already, the candidate countries have substantially increased their trade integration with the EU during the last few years. The **legislative adaptations, the establishment of appropriate administrative structures** and the **creation of adequate conditions for a level playing field** should follow over the coming years. So far, candidate countries have under the chapters opened for negotiations indicated that they will be able to take over the full body of internal market law by the time of accession.

On the subject of enlargement, for some within the Union a number of doubts and fears remain, and those exactly in the area under discussion here: the right to free movement of people. Their concerns are based on the assumption that large numbers of people in the candidate countries would make use of the extensive rights of EU citizens to travel, live and seek work in other Member States.

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<sup>7</sup> Commission communication of 4 June 1997 to the European Council, CSE(97)1 final

<sup>8</sup> Council and Commission Action Plan of 3 December 1998 on how best to implement the provisions of the Treaty of Amsterdam on the creation of an area of freedom, security and justice, Official Journal C19 of 23/1/1999.

The same concerns were voiced at the time when other countries, namely Spain and Portugal, joined the Union. They were not realised then. Indeed, the improved economic expectations, improved labour market conditions and growing integration must and did have a stabilising effect. And, in the words of Mr. Frits Bolkestein, European Commissioner for the Internal Market, only through accession and mutual acceptance of the same binding rules can a level playing field for all be established.

## **APPENDIX**

## **CHECKLIST:**

### **FREE MOVEMENT AND FREEDOM OF ESTABLISHMENT FOR SELF-EMPLOYED AND SMEs**

#### **\* Access to regulated activities in another Member State**

- regulated activity/profession or free access?
- EU system/regulation of recognition of diplomas or qualifications for this profession/activity?
- qualifications/diplomas/proofs of experience in this profession/activity needed?
- confirm recognition/acknowledgement of these qualifications?
- documents needed?
- sources of information/support?

#### **\* Establishing a company/branch in another Member State**

- type of business entity (independent company/subsidiary/branch)
- registration: conditions, qualifications, special registrations and conditions for certain activities
- registration: formalities (trade or craft register, VAT-number, opening of bank account, act of establishment, bank certificate, social security fund...)
- environmental regulations (building permits, soil sanitation, town and country planning)
- taxation (corporate taxation system, double tax treaties, tax deductions...)
- workforce issues (employment contracts, wages, vacations & leave systems, termination, social security...)
- business incentives (employment-, tax-related)
- competition law
- ...

#### **\* Social protection & social security**

- legislation of which Member State is applicable?
- do I resort under one of the exception/special cases rules?
- communication between social security institutions (in home Member State and new Member State) via E100 (posting and health insurance), E200 (pensions), E300 (unemployment) and E400 (family allowance) documents