

II

(Acts whose publication is not obligatory)

COUNCIL**COUNCIL DIRECTIVE**

of 27 June 1977

concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of nurses responsible for general care, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services

(77/452/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 provision of services is prohibited as from the end of the transitional period; whereas the principle of such treatment based on nationality applies in particular to the grant of any authorization required to practise as a nurse responsible for general care and also to the registration with or membership of professional organizations or bodies;

Whereas it nevertheless seems desirable that certain provisions be introduced to facilitate the effective exercise of the right of establishment and freedom to provide services in respect of the activities of nurses responsible for general care;

Whereas, pursuant to the Treaty, the Member States are required not to grant any form of aid likely to distort the conditions of establishment;

Whereas Article 57 (1) of the Treaty provides that Directives be issued for mutual recognition of diplomas, certificates and other evidence of formal qualifications;

Whereas it would appear advisable that, contemporaneously with the mutual recognition of diplomas, provision should be made for coordinating the conditions governing the training of nurses responsible for general care; whereas such coordination is the subject of Directive 77/453/EEC ⁽³⁾;

Whereas in several Member States the law makes the right to take up and pursue the activities of a

⁽¹⁾ OJ No C 65, 5. 6. 1970, p. 12.

⁽²⁾ OJ No C 108, 26. 8. 1970, p. 23.

⁽³⁾ See page 8 of this Official Journal.

nurse responsible for general care dependent upon the possession of a nursing diploma; whereas in certain other Member States where this requirement does not exist, the right to use the title of nurse responsible for general care is nevertheless governed by law;

Whereas, with regard to the possession of a formal certificate of training, since a Directive on the mutual recognition of diplomas does not necessarily imply equivalence in the training covered by such diplomas; the use of such qualifications should be authorized only in the language of the Member State of origin or of the Member State from which the foreign national comes;

Whereas, to facilitate the application of this Directive by the national authorities, Member States may prescribe that, in addition to formal certificates of training, the person who satisfies the conditions of training required by this Directive must provide a certificate from the competent authorities of his country of origin or of the country from which he comes stating that these certificates of training are those covered by the Directive;

Whereas, with regard to the requirements relating to good character and good repute, a distinction should be drawn between the requirements to be satisfied on first taking up the profession and those to be satisfied to practise it;

Whereas, in the case of the provision of services, the requirement of registration with or membership of professional organizations or bodies, since it is related to the fixed and permanent nature of the activity pursued in the host country, would undoubtedly constitute an obstacle to the person wishing to provide the service, by reason of the temporary nature of his activity; whereas this requirement should therefore be abolished; whereas, however, in this event, control over professional discipline, which is the responsibility of these professional organizations or bodies, should be guaranteed; whereas, to this end, it should be provided, subject to the application of Article 62 of the Treaty, that the person concerned may be required to submit to the competent authority of the host Member State particulars relating to the provision of services;

Whereas, as far as the activities of employed nurses responsible for general care are concerned, Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community ⁽¹⁾ lays down no specific provisions relating

to good character or good repute, professional discipline or use of title for the professions covered; whereas, depending on the individual Member State, such rules are or may be applicable both to employed and self-employed persons; whereas the activities of a nurse responsible for general care are subject in several Member States to possession of a diploma, certificate or other evidence of formal qualification in nursing; whereas such activities are pursued by both employed and self-employed persons, or by the same persons in both capacities in the course of their professional career; whereas, in order to encourage as far as possible the free movement of those professional persons within the Community, it therefore appears necessary to extend this Directive to employed nurses,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE

Article 1

1. This Directive shall apply to the activities of nurses responsible for general care.

2. For the purposes of this Directive 'activities of nurses responsible for general care' shall mean activities pursued by persons holding the following titles:

in Germany:

'Krankenschwester', 'Krankenpfleger';

in Belgium:

'hospitalier(ère)/verpleegassistent(e)', 'infirmier(ère) hospitalier(ère)/ziekenhuisverpleger (-verpleegster)';

in Denmark:

'sygeplejerske';

in France:

'infirmier(ère)';

in Ireland:

Registered General Nurse;

⁽¹⁾ OJ No L 257, 19. 10. 1968, p. 2.

in Italy:

'infermiere professionale';

in Luxembourg:

'infirmier';

in the Netherlands:

'verpleegkundige';

in the United Kingdom:

England, Wales and Northern Ireland:

State Registered Nurse;

Scotland:

Registered General Nurse.

(b) *in Belgium:*

— the certificate of 'hospitalier(ère)/verpleegassistent(e)' awarded by the State or by schools established or recognized by the State,

— the certificate of 'infirmier(ère) hospitalier(ère)/ziekenhuisverpleger (-verpleegster)' awarded by the State or by schools established or recognized by the State,

— the diploma of 'infirmier(ère) gradué(e) hospitalier(ère)/gegraduateerd ziekenhuisverpleger (-verpleegster)' awarded by the State or by higher paramedical colleges established or recognized by the State;

(c) *in Denmark:*

— the diploma of 'sygeplejerske' awarded by nursing schools recognized by the 'Sundhedsstyrelsen' (State board of health);

(d) *in France:*

— the State diploma of 'infirmier(ère)' awarded by the Ministry of Health;

(e) *in Ireland:*

— the certificate of 'Registered General Nurse' awarded by 'An Bord Altranais' (the Nursing Board);

(f) *in Italy:*

— the 'diploma di abilitazione professionale per infermiere professionale' awarded by State-recognized schools;

(g) *in Luxembourg:*

— the State diploma of 'infirmier'

— the State diploma of 'infirmier hospitalier gradué'

awarded by the Ministry of Public Health on the strength of an examining board decision;

(h) *in the Netherlands:*

— the diplomas of 'verpleger A', 'verpleegster A' or 'verpleegkundige A',

— the diploma of 'verpleegkundige MBOV (Middelbare Beroepsopleiding Verpleegkundige)' (intermediate nursing training),

— the diploma of 'verpleegkundige HBOV (Hogere Beroepsopleiding Verpleegkundige)' (higher nursing training),

awarded by one of the examining boards appointed by the public authorities;

(i) *in the United Kingdom:*

— the certificate of admission to the general part of the Register, awarded in England and Wales

CHAPTER II

DIPLOMAS, CERTIFICATES AND OTHER EVIDENCE OF FORMAL QUALIFICATIONS OF NURSES RESPONSIBLE FOR GENERAL CARE

Article 2

Each Member State shall recognize the diplomas, certificates and other evidence of formal qualifications awarded to nationals of Member States by other Member States in accordance with Article 1 of Directive 77/453/EEC and which are listed in Article 3, by giving such qualifications, as far as the right to take up and pursue the activities of a nurse responsible for general care in a self-employed capacity is concerned, the same effect in its territory as those which the Member State itself awards.

Article 3

The diplomas, certificates and other evidence of formal qualifications referred to in Article 2 are the following:

(a) *in Germany:*

— the certificates awarded by the competent authorities as a result of the 'staatliche Prüfung in der Krankenpflege' (State nursing examination),

— the certificates from the competent authorities of the Federal Republic of Germany stating that the diplomas awarded after 8 May 1945 by the competent authorities of the German Democratic Republic are recognized as equivalent to those listed in the first indent;

by the General Nursing Council for England and Wales, in Scotland by the General Nursing Council for Scotland and in Northern Ireland by the Northern Ireland Council for Nurses and Midwives.

CHAPTER III

EXISTING CIRCUMSTANCES

Article 4

In the case of nationals of Member States whose diplomas, certificates and other evidence of formal qualifications do not satisfy all the minimum training requirements laid down in Article 1 of Directive 77/453/EEC, each Member State shall recognize, as being sufficient proof, the diplomas, certificates and other evidence of the formal qualifications of nurses responsible for general care awarded by those Member States before the implementation of Directive 77/453/EEC, accompanied by a certificate stating that those nationals have effectively and lawfully been engaged in the activities of nurses responsible for general care for at least three years during the five years prior to the date of issue of the certificate.

These activities must have included taking full responsibility for the planning, organization and carrying out of the nursing care of the patient.

CHAPTER IV

USE OF ACADEMIC TITLE

Article 5

1. Without prejudice to Article 13, host Member States shall ensure that nationals of Member States who fulfil the conditions laid down in Articles 2 and 4 have the right to use the lawful academic title, inasmuch as it is not identical to the professional title, or, where appropriate, the abbreviation thereof of their Member State of origin or of the Member State from which they come, in the language or languages of that State. Host Member States may require this title to be followed by the name and location of the establishment or examining board which awarded it.

2. If the academic title used in the Member State of origin, or in the Member State from which a foreign national comes, can be confused in the host Member State with a title requiring, in that State, additional

training which the person concerned has not undergone, the host Member State may require such a person to use the title employed in the Member State of origin or the Member State from which he comes, in suitable wording to be indicated by the host Member State.

CHAPTER V

PROVISIONS TO FACILITATE THE EFFECTIVE EXERCISE OF THE RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES IN RESPECT OF THE ACTIVITIES OF NURSES RESPONSIBLE FOR GENERAL CARE

A. Provisions specifically relating to the right of establishment

Article 6

1. A host Member State which requires of its nationals proof of good character or good repute when they take up for the first time any activity referred to in Article 1 shall accept as sufficient evidence, in respect of nationals of other Member States, a certificate issued by a competent authority in the Member State of origin or in the Member State from which the foreign national comes attesting that the requirements of the Member State as to good character or good repute for taking up the activity in question have been met.

2. Where the Member State of origin or the Member State from which the foreign national comes does not require proof of good character or good repute of persons wishing to take up the activity in question for the first time, the host Member State may require of nationals of the Member State of origin or of the Member State from which the foreign national comes an extract from the 'judicial record' or, failing this, an equivalent document issued by a competent authority in the Member State of origin or the Member State from which the foreign national comes.

3. If the host Member State has detailed knowledge of a serious matter which has occurred outside its territory and which is likely to affect the taking up within its territory of the activity concerned, it may inform the Member State of origin or the Member State from which the foreign national comes.

The Member State of origin or the Member State from which the foreign national comes shall verify the accuracy of the facts if they are likely to affect in that Member State the taking up of the activity in question. The authorities in that State shall decide on the nature and extent of the investigation to be made

and shall inform the host Member State of any consequential action which they take with regard to the certificates or documents they have issued.

Member States shall ensure the confidentiality of the information which is forwarded.

Article 7

1. Where, in a host Member State, provisions laid down by law, regulation or administrative action are in force laying down requirements as to good character or good repute, including provisions for disciplinary action in respect of serious professional misconduct or conviction for criminal offences and relating to the pursuit of any of the activities referred to in Article 1, the Member State of origin or the Member State from which the foreign national comes shall forward to the host Member State all necessary information regarding measures or disciplinary action of a professional or administrative nature taken in respect of the person concerned, or criminal penalties imposed on him when pursuing his profession in the Member State of origin or in the Member State from which he came.

2. If the host Member State has detailed knowledge of a serious matter which has occurred outside its territory and which is likely to affect the pursuit within its territory of the activity concerned, it may inform the Member State of origin or the Member State from which the foreign national comes.

The Member State of origin or the Member State from which the foreign national comes shall verify the accuracy of the facts if they are likely to affect in that Member State the pursuit of the activity in question. The authorities in that State shall decide on the nature and extent of the investigation to be made and shall inform the host Member State of any consequential action which they take with regard to the information they have forwarded in accordance with paragraph 1.

3. Member States shall ensure the confidentiality of the information which is forwarded.

Article 8

Where a host Member State requires of its own nationals wishing to take up or pursue any of the activities referred to in Article 1 a certificate of physical or mental health, that State shall accept as sufficient evidence thereof the presentation of the document required in the Member State of origin or in the Member State from which the foreign national comes.

Where the Member State of origin or the Member State from which the foreign national comes does not impose any requirements of this nature on those wishing to take up or pursue the activity in question, the host Member State shall accept from such national a certificate issued by a competent authority in that State corresponding to the certificates issued in the host Member State.

Article 9

Documents issued in accordance with Articles 6, 7 and 8 may not be presented more than three months after their date of issue.

Article 10

1. The procedure for authorizing the person concerned to take up any activity referred to in Article 1, pursuant to Articles 6, 7 and 8, must be completed as soon as possible and not later than three months after presentation of all the documents relating to such person, without prejudice to delays resulting from any appeal that may be made upon the termination of this procedure.

2. In the cases referred to in Articles 6 (3) and 7 (2), a request for re-examination shall suspend the period stipulated in paragraph 1.

The Member State consulted shall give its reply within three months.

On receipt of the reply or at the end of the period the host Member State shall continue with the procedure referred to in paragraph 1.

B. Special provisions relating to the provision of services

Article 11

1. Where a Member State requires of its own nationals wishing to take up or pursue any of the activities referred to in Article 1 an authorization, or membership of or registration with a professional organization or body, that Member State shall in the case of the provision of services exempt the nationals of Member States from that requirement.

The person concerned shall provide services with the same rights and obligations as the nationals of the host Member State; in particular he shall be subject to the rules of conduct of a professional or

administrative nature which apply in that Member State.

Where a host Member State adopts a measure pursuant to the second subparagraph or becomes aware of facts which run counter to these provisions, it shall forthwith inform the Member State where the person concerned is established.

2. The host Member State may require the person concerned to make a prior declaration to the competent authorities concerning the provision of his services where they involve a temporary stay in its territory.

In urgent cases this declaration may be made as soon as possible after the services have been provided.

3. Pursuant to paragraphs 1 and 2, the host Member State may require the person concerned to supply one or more documents containing the following particulars:

- the declaration referred to in paragraph 2,
- a certificate stating that the person concerned is lawfully pursuing the activities in question in the Member State where he is established,
- a certificate that the person concerned holds one or other of the diplomas, certificates or other evidence of formal qualification appropriate for the provision of the services in question and referred to in this Directive.

4. The document or documents specified in paragraph 3 may not be produced more than 12 months after their date of issue.

5. Where a Member State temporarily or permanently deprives, in whole or in part, one of its nationals or a national of another Member State established in its territory of the right to pursue one of the activities referred to in Article 1, it shall, as appropriate, ensure the temporary or permanent withdrawal of the certificate referred to in the second indent of paragraph 3.

Article 12

Where registration with a public social security body is required in a host Member State for the settlement with insurance bodies of accounts relating to services rendered to persons insured under social security schemes, that Member State shall exempt nationals of Member States established in another Member State from this requirement in cases of provision of services entailing travel on the part of the person concerned.

However, the persons concerned shall supply information to this body in advance or, in urgent cases, subsequently, concerning the services provided.

C. Provisions common to the right of establishment and freedom to provide services

Article 13

Where in a host Member State the use of the professional title relating to one of the activities referred to in Article 1 is subject to rules, nationals of other Member States who fulfil the conditions laid down in Articles 2 and 4 shall use the professional title of the host Member State which, in that State, corresponds to those conditions of qualification, and shall use the abbreviated title.

Article 14

Where a host Member State requires its own nationals wishing to take up or pursue one of the activities referred to in Article 1 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, that Member State shall ensure that an appropriate and equivalent form of oath or declaration is offered to the person concerned.

Article 15

1. Member States shall take the necessary measures to enable the persons concerned to obtain information on the health and social security laws and, where applicable, on the professional ethics of the host Member State.

For this purpose, Member States may set up information centres from which such persons may obtain the necessary information. In the case of establishment, the host Member States may require the persons concerned to contact these centres.

2. Member States may set up the centres referred to in paragraph 1 within the competent authorities and bodies which they must designate within the period laid down in Article 19 (1).

3. Member States shall see to it that, where appropriate, the persons concerned acquire, in their own interest and in that of their patients, the linguistic knowledge necessary for the exercise of their profession in the host Member State.

CHAPTER VI

Article 19

FINAL PROVISIONS

Article 16

In the event of justified doubts, the host Member State may require of the competent authorities of another Member State confirmation of the authenticity of the diplomas, certificates and other evidence of formal qualifications issued in that other Member State and referred to in Chapters II and III, and also confirmation of the fact that the person concerned has fulfilled all the training requirements laid down in Directive 77/453/EEC.

Article 17

Within the time limit laid down in Article 19 (1), Member States shall designate the authorities and bodies competent to issue or receive the diplomas, certificates and other evidence of formal qualifications as well as the documents and information referred to in this Directive, and shall forthwith inform the other Member States and the Commission thereof.

Article 18

This Directive shall also apply to nationals of Member States who, in accordance with Regulation (EEC) No 1612/68, are pursuing or will pursue as employed persons one of the activities referred to in Article 1.

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

2. 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 20

Where a Member State encounters major difficulties in certain fields when applying this Directive, the Commission shall examine these difficulties in conjunction with that State and shall request the opinion of the Committee of Senior Officials on Public Health set up under Decision 75/365/EEC ⁽¹⁾, as amended by Decision 77/455/EEC ⁽²⁾.

Where necessary, the Commission shall submit appropriate proposals to the Council.

Article 21

This Directive is addressed to the Member States.

Done at Luxembourg, 27 June 1977.

For the Council

The President

J. SILKIN

⁽¹⁾ OJ No L 167, 30. 6. 1975, p. 19.

⁽²⁾ See page 13 of this Official Journal.