

constituting not less than three-quarters of the membership of the Community vote in favour of such decisions.

CHAPTER THREE: ESTABLISHMENT, SERVICES, CAPITAL AND MOVEMENT OF COMMUNITY NATIONALS

Article 30

Scope Of Application

1. Save as otherwise provided in this Article and Article 31, the provisions of this Chapter shall apply to the right of establishment, the right to provide services and the right to move capital in the Community.
2. Activities in a Member State involving the exercise of governmental authority shall, in so far as that Member State is concerned, be excluded from the operation of this Chapter.
3. For the purposes of this Chapter, "activities involving the exercise of governmental authority" means activities conducted neither on a commercial basis nor in competition with one or more economic enterprises, and includes:
 - (a) activities conducted by a central bank or monetary authority or any other public entity, in pursuit of monetary or exchange rate policies;
 - (b) activities forming part of a statutory system of social security or public retirement plans;
 - (c) activities forming part of a system of national security or for the establishment or maintenance of public order; and
 - (d) other activities conducted by a public entity for the account of or with the guarantee or using financial resources of the government.

Article 31

Treatment Of Monopolies

1. The Member States may determine that the public interest requires the exclusion or restriction of the right of establishment in any industry or in a particular sector of an industry.
2. Where such a determination has been made:
 - (a) if the determination results in the continuation or establishment of a government monopoly, the Member State shall adopt appropriate measures to ensure that the monopoly does not discriminate between nationals of Member States, save as otherwise provided In this Treaty, and is subject to the agreed rules of competition established for Community economic enterprises;
 - (b) if the determination results in the continuation or establishment of a private sector monopoly, the Member State shall, subject to the provisions of this Treaty, adopt appropriate measures to ensure that national treatment is accorded to nationals of other Member States in terms of participating in its operations.

Article 32

Prohibition Of New Restrictions On The Right Of Establishment

1. The Member States shall not introduce in their territories any new restrictions relating to the right of establishment of nationals of other Member States save as otherwise provided in this Treaty.
2. The Member States shall notify COTED of existing restrictions on the right of establishment in respect of nationals of other Member States.
3.
 - (1) The right of establishment within the meaning of this Chapter shall include the right to:
 - (a) engage in any non-wage-earning activities of a commercial, industrial, agricultural, professional or artisanal nature;
 - (b) create and manage economic enterprises referred to in paragraph 5(b) of this Article.
 - (2) For the purposes of this Chapter "non-wage earning activities" means activities undertaken by self-employed persons.
4. The Community Council may, with the approval of the Conference and upon the recommendation of COTED or COFAP, as the case may be, enlarge the body of rights provided in paragraph 3 of this Article. The competent Organ shall establish basic criteria for Member States in order to safeguard against manipulation or abuse of such rights so as to gain an unfair advantage against other Member States, for example, in the areas of nationality criteria and in the operation of companies.
5. For the purposes of this Chapter:
 - (a) a person shall be regarded as a national of a Member State if such person:
 - (i) is a citizen of that State;
 - (ii) has a connection with that State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of the State for the purposes of the laws thereof relating to immigration; or
 - (iii) is a company or other legal entity constituted in the Member State in conformity with the laws thereof and which that State regards as belonging to it, provided that such company or other legal entity has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity, within the Community and which is substantially owned and effectively controlled by persons mentioned in sub-paragraphs (i) and (ii) of this paragraph;
 - (b) "economic enterprises" includes any type of organisation for the production of or trade in goods or the provision of services (other than a non-profit organisation) owned or controlled by any person or entity mentioned in sub-paragraph (a) of this paragraph;
 - (c) a company or other legal entity is:

- (i) substantially owned if more than 50 per cent of the equity Interest therein is beneficially owned by nationals mentioned in sub-paragraph (a) (i) or (ii) of this paragraph;
- (ii) effectively controlled if nationals mentioned in sub-paragraph (a) of this paragraph have the power to name a majority of its directors or otherwise legally to direct its actions.

Article 33

Removal Of Restrictions On The Right Of Establishment

1. Subject to the provisions of Article 221 and Article 222, the Member States shall remove restrictions on the right of establishment of nationals of a Member State in the territory of another Member State.
2. The removal of restrictions on the right of establishment mentioned in paragraph 1 of this Article shall also apply to restrictions on the setting up of agencies, branches or subsidiaries by nationals of a Member State in the territory of another Member State.
3. Subject to the approval of the Conference, COTED, in consultation with COHSOD and COFAP, shall, within one year from the entry into force of this Treaty, establish a programme providing for the removal of restrictions on the right of establishment of nationals of a Member State in the territory of another Member State. The programme shall, *inter alia*:
 - (a) identify the activities in respect of which the right of establishment shall not apply;
 - (b) establish the conditions under which the right of establishment is to be achieved; and
 - (c) set out the conditions, stages and time-frames for the removal of restrictions on the right of establishment.
4. The Community Council may authorise a Member State whose nationals have been aggrieved by the violation of obligations set out in this Article, Article 32, Article 36 and Article 37 to take such measures as may be provided for in this Treaty.

Article 34

Management Of Removal Of Restrictions On The Right Of Establishment

In performing its tasks set out in Article 33, COTED shall, *inter alia*:

- (a) accord priority to the removal of restrictions on activities in respect of which the right of establishment encourages the development of:
 - (i) the production of trade in goods;
 - (ii) the provision of services,
 which generate foreign exchange earnings;
- (b) require the Member States to remove administrative practices and procedures, the maintenance of which impede the exercise of the right of establishment;

- (c) require the Member States to remove all restrictions on the movement of managerial, technical and supervisory staff of economic enterprises and on establishing agencies, branches and subsidiaries of companies and other entities established in the Community;
- (d) establish measures to ensure the removal of restrictions on the right of establishment in respect of activities accorded priority treatment pursuant to paragraph (a) of this Article as they relate to:
 - (i) the establishment, in the territories of the Member States, of agencies, branches or subsidiaries belonging to an economic enterprise; and
 - (ii) the conditions governing the entry of managerial, technical or supervisory personnel employed in such agencies, branches and subsidiaries, including the spouses and immediate dependent family members of such personnel;
- (e) take appropriate measures to ensure close collaboration among competent national authorities in order to improve their knowledge of the particular situation regarding the relevant activities within the Community;
- (f) require the Member States to ensure that nationals of one Member State may have access to land, buildings and other property situated in the territory of another Member State, other than for speculative purposes or for a purpose potentially destabilising to the economy, on a non-discriminatory basis, bearing in mind the importance of agriculture for many national economies;
- (g) ensure concordance in the Member States regarding the protection afforded the interests of partners, members and other persons with financial interests in companies and other entities.

Article 35

Acceptance Of Diplomas, Certificates, And Other Evidence Of Qualifications

1. COHSOD, in consultation with the competent Organ, shall establish common standards and measures for accreditation or when necessary for the mutual recognition of diplomas, certificates and other evidence of qualifications of the nationals of the Member States in order to facilitate access to, and engagement in, employment and non-wage-earning activities in the Community.
2. The Member States shall establish or employ, as the case may be, appropriate mechanisms to establish common standards to determine equivalency or accord accreditation to diplomas, certificates and other evidence of qualifications secured by nationals of other Member States.
3. COHSOD shall also establish measures for the co-ordination of legislative and administrative requirements of the Member States for the participation of Community nationals in employment and for the conduct of non-wage-earning activities in the Community.

Article 36

Prohibition Of New Restrictions On The Provision Of Services

1. The Member States shall not introduce any new restrictions on the provision of services in the Community by nationals of other Member States except as otherwise provided in this Treaty.

2. Without prejudice to the provisions relating to the right of establishment, persons providing services may, in order to provide such services, temporarily engage in approved activities in the Member State where the services are to be provided under the same conditions enjoyed by nationals of that Member State.

3. The Member States shall notify COTED of existing restrictions on the provision of services in respect of nationals of other Member States.

4. For the purposes of this Chapter, "services" means services provided against remuneration other than wages in any approved sector and "the provision of services" means the supply of services:

- (a) from the territory of one Member State into the territory of another Member State;
- (b) in the territory of one Member State to the service consumer of another Member State;
- (c) by a service supplier of one Member State through commercial presence in the territory of another Member State; and
- (d) by a service supplier of one Member State through the presence of natural persons of a Member State in the territory of another Member State.

Article 37

Removal Of Restrictions On Provision Of Services

1. Subject to the provisions of this Treaty, Member States shall abolish discriminatory restrictions on the provision of services within the Community in respect of Community nationals.

2. Subject to the approval of the Conference, COTED, in consultation with other competent Organs, shall, within one year from the entry into force of this Treaty, establish a programme for the removal of restrictions on the provision of such services in the Community by Community nationals.

3. In establishing the programme mentioned in paragraph 2 of this Article, COTED shall:

- (a) accord priority to services which directly affect production costs or facilitate the trade in goods and services which generate foreign exchange earnings;
- (b) require the Member States to remove administrative practices and procedures, the maintenance of which impede the exercise of the right to provide services;
- (c) establish measures to ensure the abolition of restrictions on the right to provide services in respect of activities accorded priority treatment in accordance with subparagraph (a) of this paragraph, both in terms of conditions for the provision of services in the territories of Member States as well as the conditions governing the entry of personnel, including their spouses and immediate dependent family members, for the provision of services;
- (d) take appropriate measures to ensure close collaboration among competent national authorities in order to improve their knowledge of the conditions regarding relevant activities within the Community, and
- (e) require the Member States to ensure that nationals of one Member State have on a non-discriminatory basis, access to land, buildings and other property situated in the

territory of another Member State for purposes directly related to the provision of services, bearing in mind the importance of agriculture for many national economies.

Article 38

Removal Of Restrictions On Banking, Insurance And Other Financial Services

1. Subject to the provisions of this Chapter, the Member States shall remove discriminatory restrictions on banking, insurance and other financial services.
2. Subject to the approval of the Conference, COFAP, in consultation with other competent Organs of the Community, may exclude certain financial services from the operation of the provisions of this Article.

Article 39

Prohibition Of New Restrictions On Movement Of Capital And Current Transactions

The Member States shall not introduce any new restrictions on the movement of capital and payments connected with such movement and on current payments and transfers, nor render more restrictive existing regulations except as provided in Article 43 and Article 46.

Article 40

Removal Of Restrictions On Movement Of Capital And Current Transactions

1. The Member States shall, in order to ensure the proper functioning of the CSME, remove among themselves:
 - (a) restrictions on the movement of capital payments;
 - (b) restrictions on all current payments including payments for goods and services and other current transfers.
2. COFAP, subject to the approval of the Conference, shall establish in collaboration with the Committee of Central Bank Governors a programme for the removal of the restrictions mentioned in paragraph 1 of this Article.
3. For the purpose of this Article, capital and related payments and transfers include:
 - (a) equity and portfolio investments;
 - (b) short-term bank and credit transactions;
 - (c) payment of interest on loans and amortization;
 - (d) dividends and other income on investments after taxes;
 - (e) repatriation of proceeds from the sale of assets; and
 - (f) other transfers and payments relating to investment flows.

Article 41

Authorisation To Facilitate Movement Of Capital

1. The Member States shall, where necessary and subject to paragraph 2 of this Article, grant the authorisations required for the movement of capital mentioned in Article 40 on a non-discriminatory basis.

2. A loan intended for State purposes may require prior notification to the State in which it is being issued or placed.

Article 42

Co-Ordination Of Foreign Exchange Policies And Exchange Of Information

1. The Member States shall take such measures as are necessary to coordinate their foreign exchange policies in respect of the movement of capital between them and third States.

2. The Member States shall keep the competent authorities in other Member States informed of significant unusual movements of capital within their knowledge to and from third States.

Article 43

Restrictions To Safeguard Balance-Of-Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof a Member State may, consistently with its international obligations and subject to paragraph 5 of this Article, adopt or maintain restrictions to address such difficulties.

2. The restrictions which may be adopted or maintained pursuant to paragraph 1 of this Article may include quantitative restrictions on imports, restrictions on the right of establishment, restrictions on the right to provide services, restrictions on the right to move capital or on payments and transfers for transactions connected therewith. However, such restrictions:

- (a) shall, subject to the provisions of this Treaty, not discriminate among Member States or against Member States in favour of third States;
- (b) shall at all times seek to minimise damage to the commercial, economic or financial interests of any other Member State;
- (c) shall not exceed those necessary to deal with the circumstances described in paragraph 1 of this Article; and
- (d) shall be temporary but in any event not longer than a period of eighteen (18) months and be phased out progressively as the situation described in paragraph 1 improves.

3. In determining the incidence of such restrictions, the Member State concerned may accord priority to activities which are essential to its economic stability. Such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector in contravention of the relevant provisions of this Treaty, due regard being paid in either case to any special factors which may be affecting the reserves of such Member State or its need for reserves.

4. Restrictions adopted or maintained pursuant to paragraph 1 of this Article, or any changes therein, shall be promptly notified within three (3) working days to COFAP and to COTED, and, in any event, the Member State concerned shall immediately consult with the competent Organ if and when requested.

5. COFAP shall establish procedures for periodic consultations including, where possible and desirable, prior consultations with the objective of making recommendations to the Member State concerned for the removal of the restrictions.

6. The consultations referred to in paragraph 5 of this Article shall:

- (a) be designed to assist the Member State concerned to overcome its balance-of-payments and external financial difficulties;
- (b) assess the balance-of-payments situation of the Member State concerned and the restrictions adopted or maintained under this Article, taking into account, *inter alia*:
 - (i) the nature and extent of the balance-of-payments and the external financial difficulties;
 - (ii) the external economic and trading environment of the Member State applying the restrictions; and
 - (iii) alternative corrective measures which may be available.

7. The consultations shall address the compliance of any restrictions with paragraph 2 of this Article and, in particular, the progressive phase-out of restrictions in accordance with paragraph 2(d).

8. In such consultations, all findings of statistical and other facts presented by the Committee of Central Bank Governors relating to foreign exchange, monetary reserves and balance-of-payments, shall be accepted and conclusions shall be based on the assessment by the Committee of the balance-of-payments and the external financial situation of the Member State concerned.

Article 44

Measures To Facilitate Establishment, Provision Of Services And Movement Of Capital

1. In order to facilitate the exercise of the rights provided for in this Chapter, COTED and COFAP shall, subject to the approval of the Conference, adopt appropriate measures for:

- (a) the establishment of market intelligence and information systems in the Community;
- (b) harmonised legal and administrative requirements for the operation of partnerships, companies, or other entities;
- (c) abolition of exchange controls in the Community, and free convertibility of the currencies of the Member States;
- (d) the establishment of an integrated capital market in the Community;
- (e) convergence of macro-economic performance and policies through the co-ordination or harmonisation of monetary and fiscal policies, including, in particular, policies relating to interest rates, exchange rates, tax structures and national budgetary deficits;
- (f) the establishment of economical and efficient land, sea and air transport services throughout the Community, and
- (g) the establishment of efficient communication services.

2. COFAP and COTED shall establish a comprehensive set of rules in respect of the areas listed in paragraph 1 of this Article for approval by the Conference.

Article 45

Movement Of Community Nationals

Member States commit themselves to the goal of free movement of their nationals within the Community.

Article 46

Movement Of Skilled Community Nationals

1. Without prejudice to the rights recognised and agreed to be accorded by Member States in Articles 32, 33, 37, 38 and 40 among themselves and to Community nationals, Member States have agreed, and undertake as a first step towards achieving the goal set out in Article 45, to accord to the following categories of Community nationals the right to seek employment in their jurisdictions:

- (a) University graduates;
- (b) media workers;
- (c) sportspersons;
- (d) artistes; and
- (e) musicians,

recognised as such by the competent authorities of the receiving Member States.

2. Member States shall establish appropriate legislative, administrative and procedural arrangements to:

- (a) facilitate the movement of skills within the contemplation of this Article;
- (b) provide for movement of Community nationals into and within their jurisdictions without harassment or the imposition of impediments,

including:

- (i) the elimination of the requirement for passports for Community nationals travelling to their jurisdictions;
- (ii) the elimination of the requirement for work permits for Community nationals seeking approved employment in their jurisdictions;
- (iii) establishment of mechanisms for certifying and establishing equivalency of degrees and for accrediting institutions;
- (iv) harmonisation and transferability of social security benefits.

3. Nothing in this Treaty shall be construed as inhibiting Member States from according Community nationals unrestricted access to, and movement within, their jurisdictions subject to such conditions as the public interest may require.

4. The Conference shall keep the provisions of this Article under review in order to:
 - (a) enlarge, as appropriate, the classes of persons entitled to move and work freely in the Community; and
 - (b) monitor and secure compliance therewith.

Article 47

Restrictions To Resolve Difficulties Or Hardships Arising From The Exercise Of Rights

1. Where the exercise of rights granted under this Chapter creates serious difficulties in any sector of the economy of a Member State or occasions economic hardships in a region of the Community, a Member State adversely affected thereby may, subject to the provisions of this Article, apply such restrictions on the exercise of the rights as it considers appropriate in order to resolve the difficulties or alleviate the hardships.
2. Where a Member State:
 - (a) intends to apply restrictions in accordance with paragraph 1 of this Article, it shall, prior to applying those restrictions, notify the competent Organ of that intention and the nature of the restrictions;
 - (b) is unable to comply with sub-paragraph (a) of this paragraph, it shall, upon applying the restrictions in accordance with paragraph 1, immediately notify the competent Organ of the application and nature of the restrictions.
3. The Member State shall, at the time of application of the restrictions mentioned in paragraph 1, submit to COTED or COFAP, as the case may require, a programme setting out the measures to be taken by that Member State to resolve the difficulties or to alleviate the hardships.
4. The competent Organ shall give its earliest consideration to the programme, and:
 - (a) make a determination in respect of the appropriateness of the restrictions and whether they shall be continued; and
 - (b) where it decides that the restrictions shall be continued, determine:
 - (i) the adequacy of the programme; and
 - (ii) the period for which the restrictions should continue.

The competent Organ, in making a determination under sub-paragraph (b) of this paragraph, may impose such conditions as it considers necessary.

5. Restrictions applied by a Member State pursuant to paragraph 1 of this Article shall be confined to those necessary:

- (a) to resolve the difficulties in the affected sectors;
 - (b) to alleviate economic hardships in a particular region.
6. In applying restrictions mentioned in paragraph 5, Member States shall:
 - (a) minimise damage to the commercial or economic interests of any other Member State; or

- (b) prevent the unreasonable exercise of rights granted under this Chapter, the exclusion of which could impair the development of the CSME.
7. The Member States, in applying restrictions pursuant to paragraph 1 of this Article, shall not discriminate and:
- (a) shall progressively relax them as relevant conditions improve;
 - (b) may maintain them only to the extent that conditions mentioned in paragraph 1 of this Article continue to justify their application.
8. If COTED or COFAP, as the case may require, is not satisfied that Member States applying restrictions are acting in accordance with the provisions of paragraph 6 of this Article, it may recommend to the Member States adversely affected thereby alternative arrangements to the same end.

Article 48

Waiver Of Obligations To Grant Rights

1. Notwithstanding any provision in this Chapter, a Member State may apply to the Community Council for a waiver of the requirement to grant any of the rights mentioned in paragraph 1 of Article 30 in respect of any industry, sector or enterprise.
2. An application for a waiver within the meaning of paragraph 1 of this Article shall:
 - (a) be made prior to the establishment of the relevant programme for the removal of restrictions on the rights mentioned in paragraph 1;
 - (b) identify the rights in respect of which the waiver is required;
 - (c) set out the circumstances justifying the grant of the waiver; and
 - (d) indicate the period for which the waiver is required.
3. The Community Council may require the applicant to furnish such additional information as the Council may specify.
4. Where the Community Council is satisfied that the waiver should be granted, it shall grant a waiver for a period not exceeding five years, subject to such terms and conditions as the Community Council may determine.
5. A Member State which has been granted a waiver within the meaning of paragraph 1 of this Article:
 - (a) shall not, while the waiver is in force, be entitled to espouse a claim on behalf of its nationals against another Member State in respect of the rights for which the waiver was granted;
 - (b) shall:
 - (i) at the termination of the period of the waiver, remove the restrictions and notify the Community Council; or

- (ii) where the Member State removes the restrictions before the end of the period of the waiver; notify the Community Council accordingly.

Article 49

Special Provisions For Less Developed Countries

Where in this Chapter; the Member States or competent Organs are required to remove restrictions on the exercise of the rights mentioned in paragraph 1 of Article 30 the special needs and circumstances of the Less Developed Countries shall be taken into account.

Article 50

Accelerated Implementation

Nothing in this Chapter shall be construed as precluding the Member States from adopting measures to remove restrictions on the right of establishment, the right to provide services or the right to move capital within the Community earlier than is required by these provisions.

CHAPTER FOUR: POLICIES FOR SECTORAL DEVELOPMENT

PART ONE: INDUSTRIAL POLICY

Article 51

Objectives Of The Community Industrial Policy

1. The goal of the Community Industrial Policy shall be market-led, internationally competitive and sustainable production of goods and services for the promotion of the Region's economic and social development.
2. In fulfilment of the goal set out in paragraph 1 of this Article, the Community shall pursue the following objectives:
 - (a) cross-border employment of natural resources, human resources, capital, technology and management capabilities for the production of goods and services on a sustainable basis;
 - (b) linkages among economic sectors and enterprises within and among the Member States of the CSME;
 - (c) promotion of regional economic enterprises capable of achieving scales of production to facilitate successful competition in domestic and extra-regional markets;
 - (d) establishment of a viable micro and small economic enterprise sector;
 - (e) enhanced and diversified production of goods and services for both export and domestic markets;
 - (f) sustained public and private sector collaboration in order to secure market-led production of goods and services;
 - (g) enhanced industrial production on an environmentally sustainable basis;