

employed person, where the restrictions on this activity have been abolished by the Treaty. They are issued with a residence permit which must be valid for at least five years and which is automatically renewable;

- a right to reside for a period corresponding to the period during which services are supplied or obtained.

The provisions on the movement and the residence of nationals of member States within the Community, in the case of establishment and the supply of services, are at present contained in the Council Directive of February 25, 1964 (64/220/EEC).²² In order to bring them into line with those for workers in the Directive of October 15, 1968 (68/360),²³ a Commission proposal has been submitted to the Council and is now about to be adopted by the Council. This proposal introduces two basic amendments to the previous text:

- the right of residence for those who established themselves will be confirmed by the issue of a document to be known as a "residence permit for a national of an EEC member State";
- the residence documents must be issued and renewed free of charge or on the payment of a sum not exceeding the charge for the issue of identity cards to nationals.²⁴

(b) Equal treatment with nationals for persons pursuing activities as self-employed persons.

The beneficiary of these provisions must be treated on an equal footing with nationals. To get an idea of the scope of the principle in question, it is useful to look at the list of restrictions which the member States must abolish and the rights and facilities which they must grant, which were listed by way of examples under head III of the General Programmes so that there could be no misunderstanding.

Section II. Application "ratione territorii"

Without going into the problems which arise in connexion with titles such as OD (Overseas Departments), OCT (Overseas Countries and Territories) and AASM (Associated African States and Madagascar), it is necessary to give a brief survey of how the rules of the Treaty apply to the continental shelf.

The sphere of application of the Treaty is not limited by the concept of territory, and Article 227 states that the Treaty applies to the various States. Consequently the Treaty must apply to the powers of public and administrative law exercised by the States to the extent in which these powers are either transferred to the Community, or subject to the limita-

²² J.O., p. 845/1964.

²³ J.O., No. L 257/13 of October 19, 1968.

²⁴ J.O., No. C 91/19 of September 14, 1971.

tions contained in the rules of the Treaty. The sense of Article 227 is therefore that State authorities must conform to the provisions of the Treaty when exercising a power regulating activities which are included in its field of application.

It is an established fact that the States exercise sovereign rights outside their territory and their territorial waters, either in pursuance of international conventions, or by autonomous decisions. While the Treaty of Rome provides neither the foundation nor the justification in international law for the exercise of sovereign powers by the member States outside their territorial waters, and the Community has no power to extend or limit the areas in which the member States exercise their power of regulation and order, the member States are nevertheless obliged to respect the provisions of Community Law when they effectively exercise powers in fields covered by the Treaty. In other words, to the extent to which the powers of the States are subject to the Treaty, the States must respect the Treaty wherever they exercise these powers, whether within their territory or outside it.

The view of the Commission is the same with respect to the application of State regulations on the pursuit of economic activities which are subject to the provisions of the Treaty and the right of establishment and the supply of services.²⁵

Section III. Application "ratione personae"

1. The natural persons who are the beneficiaries of the rules in question are the nationals of the nine member States (an oversimplification, since the directives are, in principle, not directly applicable and natural persons become beneficiaries only when the member State to which a directive is addressed has adopted and implemented the necessary measures to comply with the directive). For the determination of nationality reference should be made in accordance with international law, to the criteria laid down by each State.

2. The position of companies is more complex. Article 58 of the Treaty has not accepted the theory of control based on the nationality of the directors and managers or even of the majority of members. Two conditions alone are imposed by the Article in question for a company to be the beneficiary of the right of establishment and the right to supply services in the terms of the Treaty. The company must:

- (i) be formed in accordance with the law of a member State;
- (ii) have its registered office, central administration or principal place of business within the Community.

²⁵ Although the Council did not wish to prejudge the question of principle, it nevertheless adopted provisions which take into account the pursuit of activities outside territorial waters (see Council Regulation 802/68 of June 28, 1968, on the common definition of the concept of the origin of goods: Art. 4 h, J.O., No. L 148 of June 28, 1968).