Council Directive of 4 June 1974 on the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons and of intermediaries engaging in the trade and distribution of toxic products (74/557/EEC)

COUNCIL DIRECTIVE

of 4 June 1974

on the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons and of intermediaries engaging in the trade and distribution of toxic products

(74/557/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community and in particular Article 54 (2) and (3) and Article 63 (2) and (3) thereof;

Having regard to the General Programme for the abolition of restrictions on freedom of establishment[(1)] and in particular Titles IV A and C thereof;

Having regard to the General Programme for the abolition of restrictions on freedom to provide services[(2)] and in particular Title V C thereof;

Having regard to Council Directive No 64/233/EEC[(3)] of 25 February 1964 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities related to wholesale trade;

Having regard to Council Directive No 64/224/EEC[(4)] of 25 February 1964 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of intermediaries in commerce, industry and small craft industries;

Having regard to Council Directive No 68/363/EEC[(5)] of 15 October 1968 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons engaged in the retail trade;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament[(6)];

Having regard to the Opinion of the Economic and Social Committee[(7)];

Whereas the General Programmes provide for the abolition of all discriminatory treatment based on nationality with regard to establishment and provisions of services

— in the area of activities of wholesale trade of intermediaries in commerce, industry and small craft industries, before the end of the second year of the second stage,

— in the area of activities of retail trade, after the end of the second year of the second stage of the transitional period and before the end of the second stage;

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Whereas Directives No 64/223/EEC, No 64/224/EEC and No 68/363/EEC do not apply to the field of toxic products, the latter, on account of the particular problems posed by protection of public health, are governed by the provisions laid down by law, regulation or administrative action in the Member States;

Whereas Directives No 64/223/EEC and No 68/363/EEC mentioned above also do not apply to activities in respect of wholesale trade, intermediaries and retail trade of pathogens; whereas, however, besides pathogens classified as medicinal preparations for human or animal use in the sense of Council Directive No 65/65/EEC[8] of 26 January 1965, on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products, amended by Directive No 66/454/EEC[9] only pathogens called 'biological pesticides for use in agriculture' form the subject of the activities mentioned; whereas therefore, with regard to pathogens, the abolition of restrictions on freedom to provide services and freedom of establishment can be limited to trade and the distribution of such pesticides;

Whereas it has become evident that it is desirable and timely to take measures to regulate on a Community level the measures referred to in the two preceding recitals, taking into account the dangerous action which toxic products may have on the health of man, animals, and plants, either directly or indirectly through the environment;

Whereas the activities of intermediaries in commerce, industry and small craft industries are the subject of Directives No 64/224/EEC and No 68/363/EEC; whereas the activities of intermediaries in respect of toxic products and pathogens are excluded from the scope of these Directives; whereas this Directive is also designed to liberalize the activities of intermediaries; whereas accordingly the terms 'trade and distribution' in this Directive include also the activities of intermediaries in these fields;

Whereas the General Programme for the abolition of restrictions on freedom of establishment provides that restrictions on the power to exercise the right to join professional or trade organizations must be abolished where the professional activities of the person concerned involve the exercise of this power;

Whereas this position of paid employees accompanying a person providing services or acting on his behalf will be governed by the provisions laid down in pursuance of Articles 48 and 49 of the Treaty;

Whereas separate Directives, applicable to all activities of self-employed persons, concerning the movement and residence of beneficiaries, and where necessary Directives on the coordination of the safeguards required by Member States of companies or firms for the protection of members and of others, have been or will be adopted;

Whereas in some Member States trade, distribution and professional use of toxic products are governed by rules relating to the taking up of that profession, while other States will, where necessary, implement such rules; whereas, therefore, certain special transitional measures, the purpose of which is to make it easier for nationals of other Member States to take up and pursue activities in the trade of toxic products, are the subject of a separate Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Member States shall abolish, in respect of natural persons and companies or firms covered by Title I of the General Programmes for the abolition of restrictions on freedom of establishment and freedom to provide services (hereinafter called 'beneficiaries'), the restrictions referred to in Title III of these General Programmes affecting the right to take up and pursue the activities mentioned in Article 2.

Article 2

1 This Directive shall apply to activities of self-employed persons in the trade and distribution of toxic products (substances and preparations) and of biological pesticides for use in agriculture which have been excluded from the scope of Directive No 64/223/EEC under Article 2 (1) thereof, Directive No 64/224/EEC under Article 4 (1) fifth indent thereof, and Directive No 68/363/EEC Article 2 (1) thereof.

2 The products referred to in paragraph 1, because of the dangerous action which they may have on the health of man, animals and plants, are, according to the laws in the Member States, subject to separate provisions, (the products concerned are set out in the Annex). Amendments to these lists by a Member State shall be communicated to the Commission which will bring them to the attention of the Member States.

3 This Directive shall not apply to the trade and distribution of medicinal products as defined by Directive No 65/65/EEC, or to the commercial activities of itinerant traders, hawkers or pedlars.

Article 3

1 Restrictions in respect of the activities set out in Article 2 shall be abolished regardless of the description applied to the persons pursuing one of those activities.

2 The customary descriptions currently used in the Member States to define persons pursuing activities of intermediaries in commerce are those of Article 3 of Council Directive No 64/224/EEC.

Article 4

1 Member States shall in particular abolish the following restrictions:

a those which prevent beneficiaries from establishing themselves or providing services in the host Member States under the same conditions and with the same rights as their nationals;

b those existing by reason of administrative practices which result in treatment being applied to beneficiaries that is discriminatory by comparison with that applied to nationals.

2 The restrictions to be abolished shall include in particular those arising out of provisions which prevent or limit establishment of beneficiaries or provision of services by the latter by the following means:

a *in Belgium:*

the obligation to hold a carte professionnelle (Article 1, Law of 19 February 1965);

b *in France:*

— the obligation to hold a carte d'identité d'étranger commerçant (Décret-loi of 12 November 1938, Décret of 2 February 1939, Law of 8 October 1940, Law of 10 April 1954, Décret No 59—852 of 9 July 1959);

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— exclusion from the right to renew commercial leases (Article 38 of Décret of 30 September 1953);

c *in Luxembourg:*

the limited period of validity of authorizations granted to foreign nationals (Article 21 of the Law of 2 June 1962).

Article 5

1 Member States shall ensure that beneficiaries have the right to join professional or trade organizations under the same conditions and with the same rights and obligations as their own nationals.

2 In the case of establishment, the right to join professional or trade organizations shall entail eligibility for election or appointment to high office in such organizations. However, such posts may be reserved for nationals where, in pursuance of any provision laid down by law or regulation, the organization concerned is connected with the exercise of official authority.

3 In the Grand Duchy of Luxembourg, membership of the Chambre de commerce and of the Chambre des métiers shall not give beneficiaries the right to take part in the election of the management organs of those Chambers.

Article 6

No Member States shall grant to any of its nationals who go to another Member State for the purpose of pursuing any activity referred to in Article 2, any aid liable to distort the conditions of establishment.

Article 7

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

2 Where a host Member State imposes on its own nationals wishing to take up one of the activities referred to in Article 2, certain requirements as to good repute, and proof that such requirements are satisfied cannot be obtained from the document referred to in paragraph 1, that State shall accept as sufficient evidence in respect of nationals of other Member States a certificate issued by a competent judicial or administrative authority in the country of origin or in the country whence the foreign national comes, indicating that the requirements in question have been met. Such certificate shall relate to the specific facts regarded as relevant by the host country.

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

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

5 Member States shall, within the time limit laid down in Article 8, designate the authorities and bodies competent to issue the documents referred to in paragraphs 1 and 2 and shall forthwith inform the other Member States and the Commission thereof.

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

Article 8

Member States shall adopt the measures necessary to comply with this Directive within six months of its notification and shall forthwith inform the Commission thereof.

Article 9

This Directive is addressed to the Member States.