II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

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

(73/183/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), Article 61 (2) 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 Title IV A thereof;

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

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament [3];

Having regard to the Opinion of the Economic and Social Committee [4];

Having regard to the Opinion of the Monetary Committee;

Whereas, as regards banks and other financial institutions, the General Programmes provide for the abolition, before the end of the second year of the second stage, of restrictions on freedom of establishment and freedom to provide services not linked with capital movements and the abolition, at the same rate as the liberalization of capital movements, of restrictions on banking services linked with such capital movements;

Whereas, as regards services linked with capital movements, a series of closely specified activities should be liberalized in an initial stage, having regard to the Opinion of the Monetary Committee; whereas the list of such activities will be supplemented, particularly on the basis of progress in liberalizing capital movements;

Whereas the provider of a service may, in order to provide his service, temporarily pursue his activity in the country in which the service is supplied under the same conditions as those applied by that country to its own nationals;

Whereas the activities of brokers pose particular problems because of the rules governing the taking-up and pursuit of such activity in the various countries; whereas the liberalization of this activity should be the subject of a future Directive;

---

(1) OJ No 2, 15. 1. 1962, p. 36/62.
(2) OJ No 2, 15. 1. 1962, p. 32/62.
(3) OJ No 201, 5. 11. 1966, p. 3472/66.
(4) OJ No 224, 5. 12. 1966, p. 3799/66.

Whereas the activities of self-employed intermediaries in the sector of banks and other financial institutions is not covered by the Council Directive of 25 February 1964 relating to the achievement of freedom of establishment and the freedom to provide services in respect of the activities of intermediaries in commerce, industry and small craft industries (1); whereas such activities should therefore be included in this Directive;

Whereas, however, in the present state of the various bodies of legislation, the activities of intermediaries moving to another Member State in order to provide services there would pose problems difficult to resolve; whereas there should therefore be a further Directive on the liberalization of the provision of services by such intermediaries;

Whereas, pending coordination, this Directive does not alter the provisions of the Member States laid down by law, regulation or administrative action which, applicable without condition as to nationality, forbid natural persons and companies or firms constituted in certain forms to pursue any one of the activities covered by this Directive;

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

Whereas, although the provisions laid down by law, regulation or administrative action relating to the taking-up and pursuit of the activities covered by this Directive should be coordinated as soon as possible, restrictions can be abolished without prior or simultaneous reference to this coordination;

Whereas it should be guaranteed that there is joint examination of the problems which will face the authorities responsible in the Community and the Member States for implementing banking regulations, concerning supervision of the activities covered by this Directive and to this end close cooperation should be established between the Commission and the Member States and among the latter;

Whereas measures that a Member State might take in order to implement joint decisions taken in the framework of monetary cooperation between the Member States do not constitute restrictions within the meaning of this Directive;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall abolish, in respect of the 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 those General Programmes affecting the right to take up and pursue the activities specified in Article 2 of this Directive.

As regards the provision of services linked with capital movements, this Directive shall only apply to the services listed in Annex I excluding those provided by the managers and trustees of unit trusts.

The following services connected with securities and involving the transfer of the provider of the service to the country of the beneficiary shall not be liberalized:

— receipt of orders to buy or to sell,

— participation as intermediary in transfers outside the market and the recording of such transfers,

— information or advice given following a public offer,

— payment of coupons.

Article 2

This Directive shall apply to activities of self-employed persons falling within Group 620 of Annex I of the General Programme for the abolition of restrictions on freedom of establishment, as set out in Annex II to this Directive, except for the activity of brokers (Category 4 of Annex II).

This Directive shall not apply to the provision of services, in connection with banks and other financial institutions, by self-employed intermediaries who move to a Member State other than that in which they are established.

Article 3

1. Member States shall in particular abolish the following restrictions:

(1) OJ No 56, 4. 4. 1964, p. 869/64.

(a) those which prevent beneficiaries from establishing themselves or from providing services in the host country under the same conditions and with the same rights as nationals of that country;

(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 measures which prohibit or limit establishment or the provision of services by beneficiaries by the following means:

(a) *in Belgium:*

— the obligation imposed by Article 10 of arrêté royale No 185 of 9 July 1935 for foreign banks belonging to private individuals or constituted in the form of a partnership to operate in Belgium with a capital of at least 10 million francs required for Belgian banks of the same type is only 2 million francs,

— the reciprocity requirement referred to in Article 8 of the provisions for the control of private savings banks, coordinated by the Law of 23 June 1967, and in Article 8 of arrêté royale No 43 of 15 December 1934, as regards private savings banks and financing companies respectively, and in Articles 38 and 44 of arrêté royale No 225 of 7 January 1936 as regards mortgage undertakings;

(b) *in Denmark:*

— necessity for a special authorization for foreign banks stipulated by Law No 122 of 15 April 1930, amended by Laws No 163 of 13 April 1938 and No 134 of 29 May 1956,

— the nationality requirement demanded of members of the board of directors and managers of banks and branches located in Denmark, by Article 8 (2) of the abovementioned Law,

— the nationality requirement demanded of members of the supervisory board, by Article 8 (3) of the abovementioned Law,

— the nationality requirement demanded of the supervisory board and managers of savings banks and branch savings banks by Article 7 (6) of Law No 159 of 18 May 1937, in conjunction with Law No 327 of 3 July 1950, which were amended by Article 18 of Law No 286 of 18 June 1951, and by Law No 343 of 23 December 1959;

(c) *in France:*

— the obligation to hold a carte d'identité de commerçant pour les étrangers, imposed by the décret-loi of 12 November 1938 and the décret of 2 February 1939, as amended by the Law of 8 October 1940,

— the nationality requirement for persons who carry out banking operations, direct, administer or manage a company or firm or an agency for a company or firm which carries out these operations, who sign, on behalf of a bank, with power of attorney, the papers relating to the said operations, laid down by Article 7 of the Law of 13 June 1941, as amended by Article 49 of Law No 51-592 of 24 May 1951, and by Article 2 of the décret of 28 May 1946,

— the nationality requirement laid down for the undertakings referred to in Articles 1 and 2 of the Law of 14 June 1941 by Articles 7 and 11 of the same Law which refer to the requirements laid down in banking matters,

— the nationality requirement laid down for auxiliaries of the banking professions, referred to in Article 13 of the Law of 14 June 1941, as amended by the ordonnance of 16 October 1958,

— the nationality requirement laid down for démarcheurs en valeurs mobilières by Article 8 of the Law No 72-6, 3 January 1972,

— the nationality requirement laid down for auxiliaries of the stock market professions referred to in Article 5 of Law No 72-1128 of 21 December 1972,

— the nationality requirement laid down by Article 11 of ordonnance No 45-2710 of 2 November 1945 for the Chairman of the Board of Directors, the Managing Director and at least two-thirds of the board of any investment company,

— the registration of foreign banks on a special list, referred to in Article 15 of the Law of 13 June 1941;

(d) *in Ireland:*

— the requirement to be constituted in Ireland for any company which requests approval for access to banking activity and stipulated by the instructions of the Central Bank in the setting of the powers conferred upon it by Article 9 of Law No 24 of 28 July 1971, and published in the autumn 1972 number of the 'Quarterly Bulletin' of the said Bank,

— the nationality requirement laid down for the majority of the members to the board of directors, stipulated by the same instructions as above,

— the nationality requirement and, for companies, the requirement that they be constituted in Ireland, imposed on those who intend to exercise a professional activity as a loan enterprise, by Article 6 (3) of Law No 36 of 2 October 1933,

— the obligation to be constituted in Ireland required of any company which intends to exercise the activity of manager and trustee of a unit trust, stipulated by Article 3 (1) (b) and (c) of Law No 23 of 18 July 1972;

(e) *in Italy:*

— the reciprocity requirement, referred to in Article 2 of regio decreto No 1620 of 4 September 1919 concerning banks, and the discriminatory requirements regarding foreigners, which are imposed individually by ministerial decree when the said Article is implemented;

(f) *in the Grand Duchy of Luxembourg:*

— the limited duration of authorizations granted to foreigners, laid down in Article 21 of the Law of 2 June 1962;

(g) *in the Netherlands:*

— the nationality requirement for members of the 'Vereniging voor den Effectenhandel te Amsterdam', the 'Vereniging van Effectenhandelaren te Rotterdam' and the 'Bond voor de Geld- en Effectenhandel in de Provincie te 's-Gravenhage' laid down by their statutes, approved by the Ministerial authorities;

(h) *in the United Kingdom:*

— the obligation to be constituted in the United Kingdom imposed on any company which intends to exercise the activity of manager and trustee of a unit trust, stipulated by Article 17 (1) (a), of Title 45 of the Law of 23 July 1958, known as the 'Prevention of Fraud (Investments) Act', and by Article 15 (1) (a), of Title 9 of the Law of 28 May 1940, known as the 'Prevention of Fraud (Investments) Act (Northern Ireland)'.

Article 4

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. The right to join professional or trade organizations shall, in the case of establishment, 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 involved in the exercise of official authority.

3. In the Grand Duchy of Luxembourg, membership of the Chambre de Commerce shall not give beneficiaries the right to take part in the election of the administrative organs of that Chamber.

Article 5

1. Where a Member State requires of its own nationals, who wish to pursue one of the activities referred to in Article 2, either an extract from the 'judicial records' or the production of a specific document, it shall accept, in respect of nationals of other Member States, the production of the document required for the same purpose in the Member State of origin or the State from which the foreign national comes or, failing this, an equivalent document issued by a competent judicial or administrative authority in the State of origin or in the State from which the foreign national comes.

2. Where a Member State takes other information into account in respect of its own nationals, account may also be taken of facts other than those which may appear in the documents referred to in paragraph 1 if they can be substantiated and if they show that the person concerned does not fulfil all the requirements as to good repute necessary in order to pursue his activity.

Member States shall accord to certificates issued by the competent judicial or administrative authorities of the country of origin or country from which the foreign national comes and relating to the existence

or non-existence of certain facts the same recognition as they accord to certificates issued by their own authorities.

3. Where a Member State requires of its own nationals wishing to take up or pursue any activity referred to in Article 2 proof of no previous bankruptcy, that State shall accept, in respect of nationals of other Member States, the production of the certificate usually issued for this purpose by the authorities of the Member State of origin or country from which the foreign national comes.

4. Where the country of origin or the country from which the foreign national comes does not issue one of the documents referred to in paragraphs 1 and 3, 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 from which the person comes; such authority or notary will issue a certificate attesting the authority of the declaration on oath or solemn declaration. A declaration in respect of no previous bankruptcy may also be made before a competent professional or trade body in the said country.

5. Documents issued in accordance with paragraphs 1, 2 and 3 may not be produced more than three months after their date of issue.

6. Member States shall, within the time limit laid down in Article 8, designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

Article 6

Pending coordination of the provisions laid down by law, regulation or administrative action relating to legal protection of the title 'bank', 'banker', 'savings bank' or any other equivalent term, unestablished foreign undertakings may provide services under names including such words provided such names are their original ones and that such undertakings leave no doubt as to their status under the national law to which they are subject.

To this end, Member States may require prior registration on a special list of unestablished foreign providers of services. Such registration may be subject to production of a certificate issued by the authority of the country of origin specifying the status of the undertaking in question under the national legislation applicable.

For public information, the competent authority may publish the list and require foreign providers of services to inform their clients of their legal status and the chief characteristics of and facts about their activity and their financial position.

Article 7

The Commission and the representatives of the authorities responsible in the Member States for the supervision of banks and other financial institutions shall meet regularly so that they may facilitate, for the purpose of implementing the Directive, the solution of problems which the authorities might face regarding supervision of the activities covered by this Directive, and shall ensure all appropriate cooperation among themselves within the limits of their respective powers.

Article 8

Member States shall adopt the measures necessary to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof.

However, as regards the abolition of the restriction referred to in Article 3 (2) (g), the Netherlands shall be allowed a period of four years as from the date of the said notification.

Article 9

This Directive is addressed to the Member States.

Done at Luxembourg, 28 June 1973.

For the Council

The President

W. DE CLERCQ