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COUNCIL DIRECTIVE

of 30 November 1970

concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in the wholesale coal trade and activities of intermediaries in the coal trade (ISIC ex Group 6112)

(70/522/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 Title IV D 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 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];

Whereas the Treaty establishing the European Coal and Steel Community contains no provisions regarding freedom of establishment and freedom to provide services; whereas, therefore, liberalisation of the activities covered by this Directive comes entirely under the provisions of the Treaty establishing the European Economic Community;

Whereas activities in wholesale trade and the activities of intermediaries in commerce, industry and small craft industries are already governed by two Council Directives of 25 February 1964[5]; whereas the coal trade is excluded from the scope of these Directives; whereas the purpose of this Directive is to liberalise trade activities in that sector;

Whereas, moreover, the present Directive affects the selling activities of producers, since Article 2 (3) of the Council Directive of 7 July 1964[6] concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in mining and quarrying (ISIC Major Groups 11–19) restricts the rights of a producer who establishes himself as such in another Member State and sells his own products in that State to selling in a single establishment in the country of production, until such time as trade in the products in question has been liberalised by other Directives;

Whereas the present Directive liberalises the wholesale coal trade; whereas retail trade has already been liberalised by the Council Directive of 15 October 1968[7]; whereas therefore the restriction to selling in a single establishment in the country of production no longer applies to such products; whereas the producer who, on the basis of the Council Directive of 7 July 1964 referred to above, establishes himself as such in another Member State is, in pursuance of that Directive, henceforth authorised to sell his own products in one or more undertakings in that Member State;

Whereas the present Directive must also enable a producer to establish himself in another Member State not as a producer but in order to sell his own products in that State, on a wholesale basis, in one or more undertakings;

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[1] OJ No 2, 15.1.1962, p. 36/62.
[2] OJ No 2, 15.1.1962, p. 32/62.
[3] OJ No C 51, 29.4.1970, p. 4.
[4] OJ No C 108, 26.8.1970, p. 20.
[5] OJ No 56, 4.4.1964, p. 863/64 and 869/64.
[6] OJ No 117, 23.7.1964, p. 1871/64.
[7] OJ No L 260, 22.10.1968, p. 1.

Whereas the restrictions on freedom to provide services in respect of intermediaries in the employment of one or more industrial or commercial undertakings should be abolished under this Directive; whereas it is sometimes difficult to distinguish between activities of employed intermediaries and those of self-employed agents because the legal distinction between the two is not the same in all six countries; whereas the activities of employed intermediaries fall within the same economic category as those of self-employed agents and it would be neither convenient nor useful to split up the liberalisation of this very special form of provision of services into a series of measures of partial liberalisation, effected as and when the activities of the employers are liberalised;

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

Whereas the position of paid employees accompanying the 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 provisions relating to the movement and residence of beneficiaries, and where necessary Directives on the co-ordination of the safeguards required by Member States of companies or firms for the protection of the interests of members and of others, have been or will be adopted;

Whereas, moreover, in some Member States the wholesale coal trade is governed by rules relating to the taking up of that trade; whereas, therefore, certain transitional measures, the purpose of which is to make it easier for nationals of other Member States to take up and pursue activities in wholesale trade, are the subject of a separate 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 Articles 2 and 3 of this Directive.

Article 2

1. The provisions of this Directive shall apply to activities of self-employed persons in the wholesale coal trade (ISIC ex Group 6112)[1];

2. For the purposes of this Directive, 'activities in the wholesale coal trade' means activities pursued by any natural person or company or firm who habitually and by way of trade buys coal in his own name and on his own account and resells such coal to other wholesale or retail traders, or to processors, or to professional, trade or large-scale users.

The coal may be resold either in the unaltered state or after such processing, treatment or preparation for sale as is customary in wholesale trade.

Activities in wholesale coal trade may be carried on by way of domestic, export, import or transit trade.

3. The provisions of this Directive shall apply also to wholesale selling by coal-producing undertakings.

Article 3

The provisions of this Directive shall also apply to the following activities in the coal trade:

1. the following activities of self-employed persons:

   (a) professional activities of an intermediary who is empowered and instructed by one or more persons to negotiate or enter into commercial transactions in the name of and on behalf of those persons;

   (b) professional activities of an intermediary who, while not being permanently so instructed, brings together persons wishing to contract directly with one another, or arranges their commercial transactions or assists in the completion thereof;

   (c) professional activities of an intermediary who enters into commercial transactions in his own name on behalf of others;

2. provisions of services, by way of professional activities, by an intermediary in the employment of one or more commercial, industrial or small craft undertakings. Both such intermediary and the

[1] International Standard Industrial Classification of All Economic Activities (Statistical Office of the United Nations, Statistical Papers, Series M No 4, Rev. 1, New York 1958).