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COUNCIL DIRECTIVE

of 15 October 1968

concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in the personal services sector (ISIC ex Major Group 85);
1. Restaurants, cafes, taverns and other drinking and eating places (ISIC Group 852)
2. Hotels, rooming houses, camps and other lodging places (ISIC Group 853)

(68/367/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the General Programme for the abolition of restrictions on freedom to provide establishment,[1] and in particular Title IV C thereof;

Having regard to the General Programme for the abolition of restrictions on freedom to provide services,[2] and in particular Title IV 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 General Programmes provide for the abolition, after the end of the second year of the second stage of the transitional period and before the end of the second stage, of all discriminatory treatment based on nationality as regards establishment and the provision of services in respect of activities of self-employed persons in the sector comprising restaurants, cafes, taverns and other drinking and eating places, and hotels, rooming houses, camps and other lodging places;

Whereas the activities covered by this Directive may be carried on permanently or on a temporary or seasonal basis;

Whereas only those economic activities which are carried on habitually and by way of trade come within the scope of this Directive, irrespective of whether their pursuit is open to the public as a whole or to a specific category or categories of persons;

Whereas this Directive does not cover the letting of premises, whether furnished or unfurnished, unless such letting involves the provision of services;

Whereas this Directive does not apply to itinerant trading as defined in the second subparagraph of Article 2 (1) of the Council Directive of 15 October 1968[5] concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in retail trade (ISIC ex Group 612);

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 this right;

Whereas the proof of good repute which the person concerned may be required to furnish is of particular importance in relation to the activities covered by this Directive; whereas some Member States accordingly require such proof not only from the person actually concerned but also from any members of his family who live with him or work in his establishment; whereas this Directive must make it easier for proof to be furnished in respect of all the persons from whom it could be required; whereas the importance of the concept of good repute in the trade or profession concerned has led some Member States to require of their own nationals evidence as to good character and good repute other than that contained in an extract from the 'judicial record'; whereas those Member States may impose similar requirements on nationals of other Member States;

[1] OJ No 2, 15.1.1962, p. 36/62.
[2] OJ No 2, 15.1.1962, p. 32/62.
[3] OJ No 23, 5.2.1966, p. 354/66.
[4] OJ No 205, 7.12.1965, p. 3069/65.
[5] OJ No L 260, 22.10.1968, p. 1.

Whereas the 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 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 pursuit of the activities covered by this Directive is for the most part governed by rules relating to the taking up of such activities, while other Member States will, where necessary, adopt such rules; 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 the activities in question, 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 Article 2 of this Directive.

Article 2

1. The provisions of this Directive shall apply to activities of self-employed persons coming within the scope of the personal services specified in Annex II to the General Programme for the abolition of restrictions on freedom of establishment (ISIC Groups 852 and 853).[1]

2. For the purposes of this Directive 'activities falling within Group 852 (Restaurants, cafes, taverns and other drinking and eating places)' means activities pursued by a natural person, or company or firm, who habitually and by way of trade and in his own name and on his own account serves prepared food or beverages for consumption on the premises in the establishment or establishments run by him.

The provisions of this Directive shall apply also to the serving of meals for consumption elsewhere than on the premises where they are prepared.

3. The provisions of this Directive shall not apply to the serving of prepared food or beverages intended for immediate consumption if such serving is carried on by way of itinerant trade.

4. For the purposes of this Directive, 'activities falling within Group 853 (Hotels, rooming houses, camps and other lodging places)' means activities pursued by a natural person, or company or firm, who habitually and by way of trade supplies in his own name and on his own account:

— furnished lodgings or furnished rooms in an establishment or establishments run by him; or

— camping facilities on specially equipped sites, designed for short-term stays;

and who in each case also supplies the services normally associated therewith.

Article 3

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

(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 prevent or limit establishment or the provision of services by beneficiaries by the following means:

(a) *in Belgium*

— the obligation to hold a *carte professionelle* (Article 1 of the Law 19 February 1965);

(b) *in Germany*

— the requirement that the issue to any foreign national of an authorisation to open a restaurant or hotel be subject to proof of economic necessity (*Nachweis eines Bedürfnisses) (Gaststättengesetz* of 28 April 1930, paragraph 1 (2));

[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).