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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 food manufacturing and beverage industries (ISIC Major Groups 20 and 21)

(68/365/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 of establishment,[1] and in particular Title VI 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 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, before the end of the second stage, of all discriminatory treatment based on nationality with regard to establishment and provision of services in the food manufacturing and beverage industries; whereas in this respect the Programmes make no distinction between industrial undertakings and small craft undertakings as regards the date of liberalisation; whereas it is in fact impossible to prescribe a later date for the liberalisation of small craft undertakings, as the legal definitions of small craft industries vary widely from one country to another and distortions could occur if liberalisation of undertakings with like economic structures were to take place at different times; whereas, moreover, the co-ordination of legislation in respect of small craft industries requires extensive preparatory work, which would only delay the application of liberalisation measures; whereas, however, the abolition of restrictions in respect of foreign nationals must be accompanied by transitional measures designed to alleviate the effects of disparities between provisions of national laws, such measures being dealt with in a separate Directive;

Whereas the present 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), that is commercial activities of hawkers or pedlars, and activities of persons who sell in open-air markets and of those who sell in covered markets but not from permanently fixed installations;

Whereas it does not apply to the primary production of foodstuffs and beverages by agriculture, including viticulture, or by forestry, hunting or fishing, nor to the processing of fish carried out on board fishing vessels or factory ships; whereas those activities will be liberalised under other Directives;

Whereas, since the adoption of the General Programmes, the European Communities have drawn up their own nomenclature of industrial activities, entitled 'Nomenclature of Industries in the European Communities' (NICE); whereas this nomenclature, which contains references to national nomenclatures, is, while following the same decimal classification, better adapted to the needs of the Member States of the Community than the ISIC nomenclature (International Standard Industrial Classification of all Economic Activities); whereas the NICE nomenclature should therefore be used for the classification of the activities to be liberalised in cases where a Directive covers a large number of activities and it is necessary, in order to facilitate implementation of

[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. 345/66.
[4] OJ No 14, 25.1.1966, p. 211/66.

[5] OJ No L 260, 22.10.1968, p. 1.

the Directive in question, to list such activities in detail, provided that this will not have the effect of altering the timetable laid down in the General Programmes, which was drawn up on the basis of the ISIC nomenclature; whereas in the present case adoption of the NICE nomenclature cannot have such effect;

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 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 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 the retail sales activities of manufacturers who, without being established as producers in the host country, themselves sell their products in that country to the final consumer are governed by the provisions of the 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 retail trade (ISIC ex Group 612); whereas therefore this Directive does not apply to such activities;

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 in the food manufacturing and beverage industries, as listed within Major Groups 20 and 21 in Annex II to the General Programme for the abolition of restrictions on freedom of establishment, with the exception of the manufacture of medicinal and pharmaceutical products.

Such activities correspond to those listed within Major Groups 20 A, 20 B and 21, and as Group 304, of the Nomenclature of Industries in the European Communities (NICE), which takes into account the particular structure of European manufacturing industries; the activities in question are set out in the Annex to this Directive.

2. The provisions of this Directive shall apply also to the sale of their own products, whether wholesale or retail, by manufacturers established as such in the host country.

3. The provisions of this Directive shall not apply to itinerant trading activities.

Article 3

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

(a) those which prevent beneficiaries from establishing themselves or 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 in 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 provision of services by beneficiaries by the following means:

(a) *in Belgium:*

— the obligation to hold a *carte professionelle* (Article 1 of the 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; Law of 8 October 1940);

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

(c) *in Luxembourg:*

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