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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 retail trade (ISIC ex Group 612)

(68/363/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 IV 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, 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 with regard to establishment and the provision of services in retail trade;

Whereas, by reason of the differences existing between Member States in respect of retail trade, it is desirable to specify as exactly as possible the activities to which this Directive applies;

Whereas the commercial activities of itinerant traders and hawkers or pedlars, including the activities of persons who sell in open-air markets and of those who sell in covered markets but not from permanently fixed installations, will be liberalised by a further Directive;

Whereas activities in respect of the letting out of goods for hire which are not covered by other Directives fall within the scope of this Directive;

Whereas goods may be resold or let out for hire not only to individuals or households for their private use, but also to small-scale users for the purposes of their trade or profession where this resale or letting out for hire constitutes a secondary activity in relation to the overall activity of the retail trader;

Whereas this Directive also covers the resale or letting out for hire of goods after processing, treatment or preparation for sale, where such operations are customary in the branch of trade in question;

Whereas Article 2 (3) of the Council Directive of 7 July 1964[5] 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) and Article 2 (2) 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 manufacturing and processing industries falling within ISIC Major Groups 23–40 (Industry and small craft industries) restrict the rights of a producer who establishes himself as such in another Member State and sells his own products in that State to selling from 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, as a result of the entry into force of this Directive, retail trade in a large number of products will be liberalised; whereas, in respect of such products, the restriction to selling in a single establishment in the country of production will accordingly no longer apply; whereas, therefore, a producer

[1] OJ No 2, 15.1.1962, p. 36/62.
[2] OJ No 2, 15.1.1962, p. 32/62.
[3] OJ No 187; 9.11.1965, P./2914/65.
[4] OJ No 199, 20.11.1965, p. 3009/65.
[5] OJ No 117, 23.7.1964, p. 1871/64.
[6] OJ No 117, 23.7.1964, p. 1880/64.

establishing himself in another Member State on the basis of the Council Directives of 7 July 1964 referred to above will, by virtue of those same Directives, be authorised, to the extent that trade in the products in question has been liberalised, to sell his own products from more than one establishment in that Member State;

Whereas the effect of this Directive must also be to allow industrial or small craft producers, following liberalisation hereunder of retail trade in the products in question, to establish themselves in another Member State, not as producers but in order to sell their own products directly to the ultimate consumer from one or more establishments;

Whereas activities in respect of retail selling of goods by auction must also be included in the scope of this Directive;

Whereas this Directive does not apply to retail trade in medicinal and pharmaceutical products; whereas, in accordance with the General Programmes, those activities will be liberalised at a later date;

Whereas, having regard to the differences which exist between Member States with regard to the organisation of retail trade in tobacco and in salt, those activities should be excluded from the scope of this Directive;

Whereas this Directive does not apply to retail trade in toxic products or pathogens; whereas it has become evident that, having regard to the provisions laid down by law, regulation or administrative action in force in the Member States, special problems arise in respect of these activities concerning the protection of public health;

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 separate Directives, applicable to all activities of self-employed persons, concerning provisions relating to the movement and residence of workers, 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 retail trade in certain products is governed by rules relating to the taking up of that trade, while other 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 activities in retail 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.

Article 2

1. The provisions of this Directive shall apply to activities of self-employed persons in retail trade (ISIC ex Group 612)[1] with the exception of retail trade in medicinal and pharmaceutical products, in toxic products and pathogens, in tobacco and in salt.

The provisions of this Directive shall not apply to commercial activities of itinerant traders, hawkers or pedlars. Neither shall they apply to activities of persons who sell in open-air markets or who sell in covered markets but not from permanently fixed installations, even where such activities are not subject to provisions of national law regarding itinerant traders or hawkers or pedlars.

This Directive shall not apply to examination of the organs of sight or hearing, or of other organs or parts of the body, carried out with a view to the fitting, adjustment or sale of appliances for the correction of sight or hearing defects, or of orthopaedic appliances.

2. For the purposes of this Directive, 'activities in retail trade' means activities pursued by any natural person, or company or firm, who habitually and by way of trade buys goods in his own name and on his own account and resells such goods directly to the final consumer.

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

3. The provisions of this Directive shall apply also to the retail sales activities of producers who,

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