584/66 OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES 8.3.66

COUNCIL DIRECTIVE

of 28 February 1966

concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons engaging in the provision of electricity, gas, water and sanitary services (ISIC Division 5)

(66/162/EEC)

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY,

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 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 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 year of the second stage, of all discriminatory treatment based on nationality as regards establishment and provision of services in the electricity, gas, steam, water and sanitary services sectors;

Whereas this Directive covers activities pertaining to the operation of services of general economic interest, but does not affect the application of Article 90 of the Treaty to undertakings entrusted with the operation of such services;

Whereas, in order to ensure that this Directive is correctly applied, it is necessary to define its scope by specifying what is meant by activities of self-employed persons in the sectors in question;

Whereas production and distribution include all operations the purpose of which is to make gas, electricity or water available in usable form to the consumer; whereas consequently any treatment or transforming activities carried out in connection with production, catchment, transmission or transportation and distribution come within the scope of this Directive;

Whereas when applying this Directive account should be taken of the various modern techniques covered by the term 'gasworks' in its broadest sense, and whereas production and distribution of steam also include production and distribution of hot water for heating purposes;

Whereas the Group relating to sanitary services covers in particular street cleansing operations and the disposal of industrial or domestic waste and of sewage, but does not cover auxiliary health services, which fall within ISIC Group 822;

Whereas certain activities which fall within the general scope of energy or water supply are not covered by this Directive, but fall within other Groups of the nomenclature used as a basis for drawing up the timetable in the General Programme for liberalisation; whereas the activities in question include in particular the exploitation of sources of natural gas, production of gas in coke ovens, in so far as this latter is not covered by Group 512 of ISIC, and the production of gas by oil refineries; whereas the time limit for liberalisation laid down in the General Programme is the same for all these various activities; whereas it follows that in the normal course of events all activities relating to the production of manufactured gas should be liberalised by the same date;

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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 96, 2.6.1965, p. 1682/65.
[4] OJ No 103, 12.6.1965, p. 1789/65.

Whereas the ISIC (International Standard Industrial Classification of All Economic Activities, Statistical Office of the United Nations, Series M, No 4 Rev. 1, New York, 1958) excludes the transportation of natural gas as an independent service from activities relating to energy supply (Major Group 51), by classifying this activity under 'Transport not elsewhere classifed' (Group 719); whereas however the transportation of natural gas as an independent service is, like that of gas of any other kind, closely connected with the activities falling within ISIC Group 512, which this Directive is intended to cover; whereas such transportation should therefore be included in this Directive, the stage at which it is to be liberalised remaining as laid down in the timetable in the General Programme;

Whereas, as regards transmission of electricity and transportation by pipeline of gas and of water, this Directive is to apply only to freedom of establishment;

Whereas separate Directives,[1] 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, for the purposes of applying measures concerning right of establishment and freedom to provide services, companies or firms are to be treated in the same way as natural persons who are nationals of Member States, subject only to the conditions laid down in Article 58 and, where necessary, to the condition that there should exist a real and continuous link with the economy of a Member State; whereas therefore no company or firm may be required, in order to obtain the benefit of such measures, to fulfil any additional condition, and in particular no company or firm may be required to obtain any authorisation not required of a domestic company or firm wishing to pursue a particular economic activity; whereas, however, such uniformity of treatment should not prevent Member States from requiring that a company having a share capital should operate in their countries under the description by which it is known in the law of the Member State under which it is constituted, and that it should indicate the amount of its subscribed capital on the business papers which it uses in the host Member State;

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 abolition of the restrictions in question need not be preceded or accompanied either by measures for the co-ordination of the provisions laid down by law, regulation or administrative action in this field of activity, or by measures concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications;

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 transmission of electricity and transportation by pipeline of gas, steam and water, this Directive applies only to the abolition of restrictions on freedom of establishment.

Article 2

1. The provisions of this Directive shall apply to activities of self-employed persons being activities falling within Major Groups 51–52 in Annex I to the General Programme for the abolition of restrictions on freedom of establishment or within Group ex 719 in Annex III to that same General Programme, namely the production, distribution and transmission or transportation of electricity, gas, water and steam and the provision of sanitary services.

2. These activities comprise:

(a) the generation, transmission and distribution of electricity;

(b) the manufacture of gas in gasworks and the distribution to consumers of gas of all types, including the transportation by pipeline of gas of all types carried out as an independent service;

(c) the production and distribution of steam for heating and power purposes;

(d) water services, i.e. catchment, purification and distribution of water to consumers;

(e) waste and sewage disposal (sanitary services).

[1] OJ No 56, 4.4.1964, p. 845/64.