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DIRECTIVE OF THE COUNCIL

of 14 December 1964

laying down detailed provisions for the attainment of freedom to provide services in agriculture and horticulture

(65/1/EEC)

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 63 (2) and (3) and 227 (2) thereof;

Having regard to the General Programme for the abolition of restrictions on freedom to provide services,[1] and in particular Title V C (d) thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament[2];

Having regard to the Opinion of the Economic and Social Committee[3];

Whereas the General Programme includes a special timetable for the abolition of restrictions in agriculture and horticulture; whereas it is provided that such restrictions shall be abolished by 31 December 1963 in respect of one group of services, by the end of the second stage of the transitional period in respect of a second group and during the third stage in respect of other services;

Whereas services of this kind both constitute a factor directly affecting agricultural and horticultural production costs and promote technical progress; whereas, therefore, in accordance with Article 63 (3) of the Treaty and with the objectives of the common agricultural policy, liberalisation of such services must be achieved as soon as possible.

Whereas freedom of establishment in respect of the activities covered by this Directive is scheduled only for the end of the transitional period,[4] except as regards certain paid agricultural workers who come within the provisions of the Council Directive of 2 April 1963[5]; whereas, further, freedom to provide services entails that, where a service is performed in the country of the recipient, the person providing the service should not be obliged to satisfy requirements which persons established in that country satisfy solely by reason of the stable and permanent nature of their acitivity in such country, as may be the case in certain circumstances in certain Member States with regard to enrolment in the commercial register or membership or of certain professional or trade organisations;

Whereas, in view of this difference between the timing and arrangements for the right of establishment and those for freedom to provide services, it is necessary to specify in this Directive what is meant by the term 'provision of services' as regards services performed in the country of the recipient, and in so doing to give the widest possible meaning to that term;

Whereas freedom to provide services in respect of the construction of plant for water catchment, irrigation and drainage, and of land draining and reclamation operations—activities often carried on in conjunction with certain agricultural and horticultural activities covered by this Directive—is to be attained under the Council Directives 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) and concerning

[1] OJ No 2, 15.1.1962, p. 32/62.
[2] OJ No 109, 9.7.1964, p. 1739/64.
[3] OJ No 174, 4.11.1964, p. 2772/64.
[4] Cf. General Programme for the abolition of restrictions on freedom of establishment (OJ No 2, 15.1.1962, p. 36/62), Title IV F 6 and Annex V, ex Group 012.
[5] OJ No 62, 20.4.1963, p. 1323/63.
[6] OJ No 117, 23.7.1964, p. 1880/64 and p. 1863/64.

transitional measures 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), and under the Directive which will subsequently be adopted on public works contracts; whereas, in accordance with the General Programme, the provision of services in forestry and logging and in respect of certain independent occupations which may on occasion relate to agriculture will be dealt with in subsequent Directives;

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 conditions of movement and residence, for all persons enjoying freedom of establishment and freedom to provide services, were the subject of two Directives adopted by the Council on 25 February 1964[1];

Whereas the Recommendation of 8 November 1962[2] addressed by the Commission to the Member States, which provides that 'tools, instruments or equipment ... temporarily imported into one Member State from another Member State to be used in the performance of any kind of work in the importing Member State should be covered by the rules governing temporary admission, provided that they do not remain in the importing Member State for more than six months', is of particular importance in relation to freedom to provide services in agriculture and horticulture;

Whereas, finally, freedom to provide services in respect of agriculture and horticulture will, in particular as regards technical assistance and the use of toxic or otherwise dangerous products, be made easier by the mutual recognition of diplomas, certificates and other evidence of formal qualifications and by the co-ordination of certain national rules; whereas further Directives will have to be issued to this end;

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 Programme for the abolition of restrictions on freedom to provide services (hereinafter called 'beneficiaries'), the restrictions referred to in Title III of that General Programme affecting the right to provide the services specified in Article 2.

Article 2

1. The provisions of this Directive shall apply to provision of the services in agriculture and horticulture set out under Title V C (d) of the General Programme, namely:

(a) technical assistance;

(b) spraying, weed killing and pest control;

(c) pruning;

(d) picking, packing and presentation;

(e) operation of irrigation systems;

(f) letting out for hire of agricultural machinery;

(g) soil cultivation and tillage;

(h) reaping and harvesting, threshing, baling and collecting, whether by mechanical or non-mechanical means;

(i) activities not elsewhere specified.

2. For the purposes of this Directive, the term 'agriculture and horticulture' refers to all activities falling within Group 011 of the 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), and in particular:

(a) general agriculture including the growing of field crops, viticulture, and the cultivation of tropical produce; growing of fruits, nuts, seeds, vegetables, fowers, both in the open and under glass; landscaping;

(b) raising of livestock, poultry, rabbits, fur-bearing or other animals, bees; and the production of meat, milk, wool, skins and fur, eggs, honey.

3. A detailed list of the services to be included under the various headings in paragraph 1 is given in the Annex to this Directive.

Article 3

1. Freedom to provide services shall include the right of beneficiaries under this Directive to carry out in the territory of Member States other than that in which they are established the various preliminary operations necessary for the performance of the service provided, in particular the seeking of custom by means of advertising, canvassing and the conclusion of contracts.

[1] OJ No 56, 4.4.1964, p. 845/64 and p. 850/64.
[2] OJ No 125, 30.11.1962, p. 2767/62.

2. When providing services in the country of the recipient, beneficiaries shall pursue their activities on a temporary basis, without establishing themselves and for a length of time appropriate to the nature of the services being performed, the centre of their operations remaining fixed in another Member State.

The person providing the services shall, however, be entitled in the host country on the same terms as nationals of that country to acquire, hire, use or dispose of any moveable or immoveable property needed by him for the performance of the service, provided that such property taken as a whole does not constitute fixed and permanent premises in the form of a branch or agency.

3. Where services are provided as indicated in paragraph 2, the Member State in which such services are performed may, where the provision of those services entails movement of persons, require the person providing the service to furnish documentary or other proof of the date from which he has pursued his activity in the territory of that State. Where the person concerned provides services of several recipients, each service or group of services must be indicated separately.

Article 4

1. Where the pursuit of any activity falling within Article 2 or the enjoyment of any right or power attached thereto is conditional in the Member State in which the service is performed either on enrolment in the commercial register or on membership of a trade association or other similar body, beneficiaries under this Directive shall be required to fulfil such condition only where a service or series of services is provided for a period exceeding ninety days in any calendar year.

2. Member States shall ensure that beneficiaries under this Directive have the right to be enrolled in the aforementioned register, or to join professional or trade organisations, within a normal period of time and under the same conditions and with the same rights as nationals, having regard to the particular situation of such beneficiaries.

3. The right of beneficiaries under this Directive to join such organisations shall not necessarily entail eligibility for election or appointment to high office therein. In the Grand Duchy of Luxembourg membership of the *Chambre de commerce* shall not give beneficiaries the right to take part in the election of the administrative organs of that Chamber.

Article 5

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

(a) those which prevent beneficiaries from providing services under the same conditions and with the same rights as their own nationals;

(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 their own nationals.

2. The restrictions to be abolished shall include in particular those arising out of measures which prevent or limit provision of services by beneficiaries by the following means:

(a) *in the Federal Republic of Germany*

— the requirement that, for the purpose of soliciting in person the custom of other persons in connection with their business activities, a person shall hold an itinerant trader's card *(Reisegewerbekarte) (Gewerbeordnung* paragraph 55d, version of 5 February 1960; *Verordnung* of 30 November 1960);

— the condition that the issue of such itinerant trader's card be subject to a test of economic necessity *(Bedürfnisprüfung)*; and the limitation on the area in which that document is valid (*Gewerbeordnung* paragraph 55d, version of 5 February 1960; *Verordnung* of 30 November 1960);

(b) *in Belgium*

— the obligation to hold a *carte professionelle (Arrêté royal* No 62, of 16 November 1939, *Arrêté ministériel* of 17 December 1945, and *Arrêté ministériel* of 11 March 1954);

(c) *in France*

— the obligation to hold a *carte spécial d'étranger (Décret-loi* of 12 November 1938, Law of 8 October 1940);

— the condition that, for the purpose of obtaining a licence to carry out artificial insemination, a person shall be of French nationality *(Arrêté* of 24 April 1948, Article 17).

3. Member States shall in particular ensure:

(a) that beneficiaries pursuing activities in their territory enjoy the same rights as their own nationals with regard to:

— access to the various forms of credit, aid and subsidy for which their laws provide;

— the customary taxation allowances, in particular those relating to the purchase of motor fuel used in performing the service in question;