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COUNCIL DIRECTIVE

of 7 July 1964

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)

(64/429/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 with regard to establishment and provision of services in respect of a large number of activities in the manufacturing and processing industries; whereas in this respect the Programmes make no distinction between industrial undertakings and small craft industries 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 national laws, such measures being dealt with in a separate Directive;

Whereas the manufacture of medicinal and pharmaceutical products and the construction of certain transport equipment are not covered by the provisions of this Directive; whereas, in accordance with the General Programmes, those activities will be liberalised at a later date;

Whereas neither does this Directive apply to sight-testing activities carried out by opticians; whereas it has become evident that in respect of such activities, having regard to the provisions laid down by law, regulation or administrative action in force in the Member States, special problems arise concerning the protection of public health; whereas exclusion of these activities does not preclude co-ordination as regards the field covered by the professional activities of an optician;

Whereas, since the adoption of the General Programmes, the EEC has drawn up its own nomenclature of industrial activities, entitled 'Nomenclature of Industries in the European Communities'; 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

[1] OJ No 2, 15.1.1962, p. 36/62.
[2] OJ No 2, 15.1.1962, p. 32/62.
[3] OJ No 182, 12.12.1963, p. 2891/63.
[4] OJ No 117, 23.7.1964, p. 1890/64.

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 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 Directive 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 Treaty establishing the European Coal and Steel Community contains no provisions regarding freedom of establishment or freedom to provide services; whereas, therefore, liberalisation of the activities covered by this Directive comes entirely under the provisions of the Treaty establishing the European Economic Community;

Whereas, for the purposes of applying measures concerning freedom 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 special 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 the subscribed capital on the business papers which it uses in the host Member State;

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 effective liberalisation of the activities covered by this Directive requires liberalisation of the sale of their products by the producers in question, including retail sale, but in such a way as to avoid causing any disturbance of the conditions of competition in retail trade, which is to be liberalised under a later 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 referred to in Article 2 of this Directive.

Article 2

1. The provisions of this Directive shall apply to activities of self-employed persons in the manufacturing and processing industries listed within Major Groups 23—40 in Annex I to the General Programme for the abolition of restrictions on freedom of establishment. Such activities correspond to those listed in Major Groups 23—40 of the 'Nomenclature of Industries in the European Communities' (NICE), which takes into account the particular structure of the European manufacturing and processing 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. However, where activities of self-employed persons in respect of trade in the products in question have not been liberalised by other Directives, such activities shall be restricted to selling in a single establishment in the country of production.

Article 3

1. Activities in the following fields shall, in all Member States, be excluded from the scope of this Directive:

(a) the chemical industry:

— manufacture of medicinal and pharmaceutical products;

(b) manufacture of transport equipment:

— ship building and repairing;

— construction of rail and tramway locomotives and rolling stock and parts thereof;

— aircraft manufacture (including manufacture of equipment for use in space).

2. This Directive shall not apply to sight testing carried out by opticians with a view to the manufacture of spectacles.

Article 4

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 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 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; *Verordnung* of 30 November 1960);

— the requirement that any foreign legal person wishing to pursue professional or trade activities on Federal territory must obtain special authorisation *(Gewerbeordnung,* paragraph 12; *Aktiengesetz,* paragraph 292);

(b) *in Belgium*

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

— the requirement, in the case of petroleum refining companies holding special authorisations to import crude oil, petroleum products and residues, that the Chairman of the Board of Directors *(Conseil d'Administration),* the Chairman and chief executive *(Président-directeur général)* and a majority of the members of the Board of Directors be of French nationality, and the requirement that the holder of such authorisation reserve a certain number of posts within the administrative, technical and commercial management of the undertaking for French staff (Article 16 of *Décrets* Nos 53-198 to 63-207 and Article 17 of *Décrets* Nos 63-199 to 63-204, of 27 February 1963);

(d) *in Italy*

— the rule that foreign nationals wishing to obtain the special authorisation from the *questore* required in respect of certain products shall hold a consular visa (Consolidated text of the *Leggi di Pubblica Sicurezza,* Article 127, paragraph 5, last sentence);

(e) *in Luxembourg*

— the limited period of validity of authorisations granted to foreign nationals pursuant to Article 21 of the Luxembourg law of 2 June 1962 (*Mémorial A* No 31 of 19 June 1962).

Article 5

1. Member States shall ensure that beneficiaries under this Directive have the right to join professional or trade organisations under the same conditions and with the same rights and obligations as their own nationals.

2. In the case of establishment, the right to join professional or trade organisations shall entail eligibility for election or appointment to managerial posts in such organisations. However, such managerial posts may be reserved for nationals where, in pursuance of any provision laid down by law or regulation, the organisation concerned is involved in the exercise of official authority.

3. In the Grand Duchy of Luxembourg, membership of the *Chambre de commerce* or of the *Chambre des métiers* shall not give beneficiaries the right to take part in the election of the administrative organs of those Chambers.

Article 6

No Member State shall grant to any of its nationals who go to another Member State for the purpose of pursuing any activity referred to in Article 2 any aid liable to distort the conditions of establishment.