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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 mining and quarrying (ISIC Major Groups 11–19)

(64/428/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 introduction of freedom of establishment and freedom to provide services in mining and quarrying by the end of the second year of the second stage; whereas what is involved is the right to take up and pursue activities relating to mineral production; whereas effective liberalisation of the activities covered by this Directive requires liberalisation of the sale of their products by the industries in question, including retail sales, 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;

Whereas wholesale trade activities in respect of such products have been liberalised by another Directive, with the exception, however, of wholesale trade in coal, which for the time being is excluded from liberalisation;

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' (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 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 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 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, for the purposes of applying measures concerning right of establishment and freedom to pro-

[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. 2898/63.
[4] OJ No 117, 23.7.1964, p. 1878/64.

vide 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 its 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;

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 mining and quarrying industries, as listed within Major Groups 11–19 in Annex I to the General Programme for the abolition of restrictions on freedom of establishment.

Such activities correspond to those listed within Major Groups 11–19 of the Nomenclature of Industries in the European Communities (NICE), which takes into account the particular structure of the European mining and quarrying industries; the activities in question are set out in the Annex to this Directive.

2. The activities in question are those whose purpose is the extraction of minerals which occur in nature as solids, liquids or gases. They include the working of underground and open-cast mines, quarries and oil wells and all related operations necessary for dressing and enriching ores and other crude minerals, such as breaking, crushing, washing, cleaning and grading, where such operations are carried out by an undertaking whose main activity is the extraction of minerals. Such activities include exploration for minerals and preparation of sites before extraction.

3. The provisions of this Directive shall apply also to the sale of their own products, whether wholesale or retail, by producers. However, where activities of self-employed persons in respect of trade of 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

In accordance with the General Programmes the provisions of this Directive shall not apply to prospecting and drilling activities in respect of crude oil and natural gas where such activities are not carried out by the holder of the production licence.

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 in comparison with that applied to nationals;

(c) those which, as a result of rules or practices, prevent beneficiaries from being granted licences or authorisations, or subject beneficiaries to restrictions or to conditions imposed on them alone;

(d) those which exclude beneficiaries from pursuing an activity within a professional or trade organisation.

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