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COUNCIL DIRECTIVE

of 25 February 1964

concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of intermediaries in commerce, industry and small craft industries

(64/224/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 activities of intermediaries in commerce, industry and small craft industries;

Whereas certain activities of intermediaries are not covered by this Directive, either because they belong to branches of activity for which separate Directives are to be adopted or because, in accordance with the General Programmes, they are to be liberalised at a later date;

Whereas neither does this Directive apply to activities of intermediaries in respect of toxic products and pathogens, whether in wholesale trade, in industry, or in small craft industries; 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 with regard to 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, however, it is appropriate to provide in this Directive for the abolition of restrictions on freedom to provide services in respect of intermediaries in the employment of one or more industrial, commercial or small craft undertakings; whereas it is sometimes difficult to distinguish between activities of employed intermediaries and those of self-employed agents because the legal distinction between the two is not the same in all six countries; whereas the activities of employed intermediaries fall within the same economic category as those of self-employed agents and it would be neither convenient nor useful to split up the liberalisation of this very special form of provision of services into a series of measures of partial liberalisation, effected as and when the activities of the employers are liberalised;

Whereas, moreover, separate Directives, applicable to all activities of self-employed persons, concerning provisions relating to the movement and residence of

[1] OJ No 2, 15.1.1962, p. 36/62.
[2] OJ No 2, 15.1.1962, p. 32/62.
[3] OJ No 33, 4.3.1963, p. 468/63.
[4] OJ No 56, 4.4.1964, p. 876/64.

beneficiaries, and where necessary Directives on the co-ordination of the safeguards required by Member States for companies or firms for the protection of the interests of members and of others 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 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, moreover, in certain Member States activities of intermediaries in commerce, industry and small craft industries are governed by rules relating to the taking up of such activities, while other Member 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 those activities, 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 of this Directive.

Article 2

The provisions of this Directive shall apply to:

1. the following activities of self-employed persons:
   (a) professional activities of an intermediary who is empowered and instructed by one or more persons to negotiate or enter into commercial transactions in the name of and on behalf of those persons;
   (b) professional activities of an intermediary who, while not being permanently so instructed, brings together persons wishing to contract directly with one another or arranges their commercial transactions or assists in the completion thereof;
   (c) professional activities of an intermediary who enters into commercial transactions in his own name on behalf of others;
   (d) professional activities of an intermediary who carries out wholesale selling by auction on behalf of others.
2. provision of services, by way of professional activities, by an intermediary in the employment of one or more commercial, industrial or small craft undertakings. Both such intermediary and the undertakings employing him must reside or be established in a Member State other than that in which the services are carried out.

   The activities referred to in paragraph 1 include those of intermediaries who go from door to door seeking orders.

Article 3

Restrictions in respect of the activities set out in Article 2 shall be abolished irrespective of the description applied to the persons pursuing those activities.

The customary descriptions currently used in the Member States are as follows: