

## COUNCIL DIRECTIVE

of 2 April 1963

laying down detailed provisions for the attainment of freedom of establishment in agriculture in the territory of a Member State in respect of nationals of other countries of the Community who have been employed as paid agricultural workers in that Member State for a continuous period of two years

(63/261/EEC)

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (2) and (3) thereof;

Having regard to the General Programme for the abolition of restrictions on freedom of establishment<sup>1</sup> and in particular Title IV F 2 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament<sup>2</sup>;

Having regard to the Opinion of the Economic and Social Committee;

Whereas the General Programme for the abolition of restrictions on freedom of establishment includes a special timetable for the attainment of such freedom in agriculture, which takes account of the particular nature of agricultural activities; whereas the second measure provided for in that timetable is the abolition by Member States, at the end of the first stage of the transitional period, of restrictions on freedom of establishment in agriculture in respect of nationals of other Member States who have been continuously employed for two years as paid agricultural workers in their territory;

Whereas, in order to ensure that this Directive is correctly applied, it is necessary to define what is meant by a paid agricultural worker having been employed in that capacity in the host country for a continuous period of two years;

Whereas, when laying down the minimum period during which a person must have been actually working in the course of those two years in order for him to be able to claim the rights, provided for in this Directive, the particular nature of agricultural activities must be taken into account;

Whereas, in view of the fact that the timetable in the General Programme provides for the abolition of restrictions on freedom of establishment in respect of agricultural activities to take place by stages, persons covered by this Directive should be given a document certifying the extent of the rights they enjoy in the host country;

Whereas the conditions of establishment must not be distorted by aids granted by the Member State of origin; whereas aid granted to a paid agricultural worker to assist him in the event of the transfer of his family, personal effects, furniture, livestock and farm implements should not be regarded as constituting such an aid;

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Each Member State, acting in accordance with the following provisions, shall abolish all restrictions on the right of nationals of other Member States having been employed in its territory for a continuous period of two years as paid agricultural workers (hereinafter called 'beneficiaries under this Directive') to take up and pursue activities as self-employed persons in agriculture.

*Article 2*

1. For the purposes of this Directive, 'paid agricultural worker' means any person employed under a

<sup>1</sup> OJ No 2, 15.1.1962, p. 36/62.

<sup>2</sup> OJ No 134, 14.12.1962, p. 2867/62.

contract of service to engage in any activity falling within Article 3 who actually performs work proper to such activity.

2. For the purposes of this Directive, a paid agricultural worker shall be considered to have been employed for a continuous period of two years if he has been engaged in work as a paid agricultural worker for two consecutive periods of twelve months during each of which he has performed a minimum of eight months of actual work in that capacity.

Public holidays, absences not exceeding a total of forty days in any one year caused by sickness, accident at work or occupational disease, and maternity leave, shall be treated as if they were periods of actual work.

3. The fact that, during such period of two consecutive years, a paid agricultural worker has retained a residence outside the host Member State, that his family has not followed him to that Member State, or that he has worked for more than one employer or in more than one of the activities falling within Article 3 shall not be taken into account for the purpose of applying paragraphs 1 and 2;

#### Article 3

For the purposes of this Directive, 'agricultural activities' means activities falling within Annex V to the General Programme (ex Major Group 01, Agriculture, of the International Standard Industrial Classification of all Economic Activities, compiled by the UN Statistical Office, Statistical Papers, Series M, No 4, Rev. 1, New York, 1958), and in particular:

- (a) general agriculture including the growing of field crops and viticulture; growing of fruits, nuts, seeds, vegetables, flowers, both in the open and under glass;
- (b) raising of livestock, poultry, rabbits, fur-bearing or other animals, bees; and the production of meat, milk, wool, skins and fur, eggs, honey;
- (c) agricultural, animal husbandry and horticultural services on a fee or contract basis.

Felling of timber, commercial exploitation of woodlands, and planting and replanting of trees may be practised as ancillary activities on holdings taken over or set up under this Directive where such operations are compatible with a Member State's internal legislation and in particular with land utilisation plans.

#### Article 4

The restrictions to be abolished shall be those set out under Title III of the General Programme.

Each Member State shall in particular ensure that beneficiaries under this Directive have the right, on the same terms and with the same legal effects as its own nationals:

- (a) under whatever legal form, to acquire, take on lease, take by grant or licence, occupy or exploit, any property on which it is possible to pursue the activities set out in Article 3; to exercise the right of pre-emption on the occasion of the sale of all or part of the property under exploitation; to transfer their activities to another holding;
- (b) to obtain any general or special forms of credit, aid or subsidy provided for the taking up and pursuit of the activities set out in Article 3, including in particular measures to make it easier for a paid agricultural worker to take up activity as a farmer;
- (c) to be members of or hold managerial positions in co-operatives, irrespective of the duties involved, or in any other agricultural associations of a co-operative nature and to form such associations, which shall likewise be open to nationals of the host country.

#### Article 5

1. Member States shall procure that beneficiaries under this Directive are entitled as of right to take up and pursue as self-employed persons the activities set out in Article 3 under the same conditions as their own nationals, simply upon notification and without prior authorisation.

2. Any objection raised by the competent authority on the grounds that one or more of the provisions of Articles 1, 2 and 3 is not satisfied shall, if it is to have legal effect, save in a case of fraudulent practice, be made known to the person concerned within two months of notification by that person to the competent authority of his intention, as a beneficiary under this Directive, to establish himself.

3. Member States shall grant to beneficiaries under this Directive the right to appeal against any decision whereby the competent authority raises objection to their establishment.

4. Any Member State where, as a general rule, the taking up by nationals of other Member States of the activities set out in Article 3 is still subject to their obtaining a special permit for foreign nationals shall issue to beneficiaries under this Directive, on their application and without charge, after expiry of the period provided for in paragraph 2, an individual certificate stating their special circumstances and their right, in accordance with Article 4, to the same treatment as nationals of that State.

*Article 6*

1. No Member State shall grant to its nationals, with the view to or on the occasion of their establishment under this Directive, any direct or indirect aid, whether financial or other, which would result in distortion of the conditions of establishment in the host country.

2. Any financial or practical aid given by the Member State of origin of a paid agricultural worker to assist him in transporting his family, personal effects, furniture, livestock, and deadstock as far as the frontier of the host country shall not be regarded as an aid distorting the conditions of establishment.

*Article 7*

1. Member States shall, not later than one month after notification of this Directive, inform the Commission of all provisions laid down by law, regulation or administrative action and of all administrative

practices which, in their territory, govern specifically the taking up in a self-employed capacity by paid agricultural workers of the activities set out in Article 3.

2. Member States shall take the measures necessary to comply with this Directive within six months of its notification and shall forthwith inform the Commission thereof.

*Article 8*

This Directive is addressed to the Member States.

Done at Brussels, 2 April 1963.

*For the Council*

*The President*

Eugène SCHAUS