

COUNCIL DIRECTIVE

of 12 January 1967

concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons concerned with:

1. matters of 'Real Estate' (excluding 6401) (ISIC Group ex 640)
2. the provision of certain 'Business services not elsewhere classified' (ISIC Group 839)

(67/43/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 Parliament³;

Having regard to the Opinion of the Economic and Social Committee⁴;

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 as regards establishment and provision of services in matters of real estate and in respect of business services not elsewhere classified;

Whereas it is possible to simplify the procedure for attaining freedom of establishment and freedom to

provide services by combining these two fields of activity in a single Directive;

Whereas certain activities pertaining to matters of real estate or to the provision of business services not elsewhere classified 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 certain activities economically related to those covered by this Directive but belonging to branches falling within other Groups of the ISIC Nomenclature have been or will be the subject of separate Directives;

Whereas the provisions of this Directive concerning employment agencies do not apply to public employment offices;

Whereas separate Directives,⁵ applicable to all activities of self-employed persons, concerning provisions relating to the movement and residence of beneficiaries, and where necessary Directives 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 should 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 be-

¹ OJ No 2, 15.1.1962, p. 36/62.

² OJ No 2, 15.1.1962, p. 36/62.

³ OJ No 96, 2.6.1965, p. 1704/65.

⁴ OJ No 33, 1.3.1965, p. 507/65.

half will be governed by the provisions laid down in pursuance of Articles 48 and 49 of the Treaty;

Whereas in the fields covered by this Directive it does not seem appropriate to adopt at this moment measures concerning the co-ordination of provisions and the recognition of diplomas, certificates and other evidence of formal qualifications, but whereas transitional measures may be adopted if necessary;

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

(Real Estate)

1. The provisions of this Directive shall apply to activities of self-employed persons in matters concerning immoveable property as referred to in Annex I to the General Programme for the abolition of restrictions on freedom of establishment (Group ex 640, excluding the activities of a land surveyor).

2. This Group includes all operations relating to immoveable property carried on by individuals, companies or firms who in the course of their trade or profession derive income from:

- the purchase, sale, letting or management:
 - of immoveable property, whether or not built upon, and in particular of premises used for industrial, commercial, or other trade or professional purposes, or for residential purposes; or
 - of rights relating to such property;
- or from the pursuit of activities as an expert or an agent in respect of transactions relating to such property or rights.

3. Restrictions affecting such professional or trade activities 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:

in Belgium:

- agents immobiliers, marchands de biens, conseils immobiliers, makelaars-handelaars in onroerende goederen, raadgevers in onroerende zaken,
- lotisseurs, verkavelaars,
- administrateurs de biens, gérants et régisseurs d'immeubles, beheerders van onroerende goederen,
- syndics de copropriété, syndici van medeëigendom,
- agences de location, verhuuragentschappen,
- promoteurs d'opérations de construction, promotoren van bouwverrichtingen,
- sociétés immobilières sous leurs diverses formes, vennootschappen in onroerende goederen onder hun verschillende vormen,
- experts immobiliers, deskundigen inzake onroerende goederen;

in Germany:

- Immobilien-, Hypotheken- und Finanzmakler,
- Immobilientaxatoren, Immobilienschätzer, Immobiliensachverständige,
- Immobilienhändler, Grundstücksverwertungsgesellschaften,
- Baubetreuer,
- Immobilien-, Haus- und Vermögensverwalter;

in France:

- marchands de biens et agents immobiliers,
- lotisseurs,
- administrateurs de biens, gérants et régisseurs d'immeubles,
- syndics de copropriété,
- agences de location,
- promoteurs d'opérations de construction,
- sociétés immobilières sous leurs diverses formes,
- experts immobiliers et fonciers;

in Italy:

- intermediari nell'acquisto, nella vendita o nell'affitto o nella locazione di terreni urbani e fondi rustici,
- intermediari nell'acquisto, nella vendita o locazione di fabbricati ad uso di abitazione, albergo, pensione, autorimessa o ad uso commerciale, industriale o professionale,
- agenzie od imprese per la compra-vendita di immobili per gli usi predetti,
- agenzie od imprese di riscossione di canoni di affitto, di fondi rustici o di locazione di immobili urbani,
- amministratori e gerenti di immobili;

in Luxembourg:

- agences immobilières,
- gérances d'immeubles,
- sociétés immobilières,
- experts immobiliers et fonciers;

in the Netherlands:

- makelaars in onroerende goederen, tussenpersonen in onroerende goederen (niet zijnde makelaars), taxateurs in onroerende goederen,
- woningbureaus, woningruilcentrales, bouw- en bemiddelingsbureaus, administratiekantoren van onroerende goederen, bouw- en exploitatiemaatschappijen (waaronder begrepen bouwfondsen, bouwkassen en woningbouwcoöperaties).

Article 3

(Business services not elsewhere classified)

1. The provisions of this Directive shall apply also to activities of self-employed persons engaging in business services not elsewhere classified as referred to in Annex I to the General Programme for the abolition of restrictions on freedom of establishment (ISIC Group 839, but excluding the following activities):
 - journalism;
 - activities of customs agents;
 - advice on economic, financial, commercial, statistical and labour and employment matters;
 - debt collection.

2. Pursuant to paragraph 1 of this Article, the following groups of activities fall within the scope of this Directive:

- (a) private employment agencies;
- (b) enquiry agencies, security services;
- (c) publicity services, advertising agencies;
- (d) organisation of private trade events (in particular fairs, exhibitions, trade days, etc.);
- (e) agencies specialising in auxiliary office services, including the letting out for hire of mechanical and electronic machines, and translation services;
- (f) advice on business organisation and methods;
- (g) literary and artistic activities;
- (h) valuation activities, excluding insurance;
- (i) interpreting services;
- (j) press-cuttings services.

Article 4

The provisions of this Directive shall not apply in the Member State concerned to activities involving in that State the exercise of official authority (Article 55 (1) of the Treaty)

- (a) in all Member States: the occupations of rural policeman, forest-ranger, gamekeeper and water bailiff;
- (b) in Italy: the occupation of sworn watchman (*guardia giurata*).

Article 5

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 Belgium*: the obligation to hold a *carte professionnelle* (Article 1 of the law of 19 February 1965);

(b) *in France*: the obligation to hold a *carte d'identité d'étranger commerçant* (Décret-loi of 12 November 1938, Décret of 2 February 1939, Law of 8 October 1940, Law of 10 April 1954, Décret No 58-852 of 9 July 1959);

(c) *in Italy*: the requirement that a person shall be of Italian nationality:

— in order to exercise the professions of valuer (*stimatore pubblico*) and expert (*perito ed esperto*) (Article 32, No 3, of *Regio Decreto* No 2011 of 20 September 1934);

— in order to be eligible for enrolment in the *Ruolo dei mediatori* (Law No 253 of 21 March 1958);

— in order to exercise the profession of interpreter (*interprete indipendente*) (Article 123 of the consolidated text of the *Leggi di Pubblica Sicurezza* approved by *Regio Decreto* No 773 of 18 June 1931; Articles 234, 236, 239 of the *Regolamento* implementing the consolidated text approved by *Regio Decreto* No 635 of 6 May 1940);

— in order to carry on the business of an agency providing commercial information to private individuals (Article 134 of the consolidated text of the *Leggi di Pubblica Sicurezza*).

(d) *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 6

1. Member States shall ensure that the 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 high office in such organisations. However, such 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 under this Directive the right to take part in the election of the administrative organs of those Chambers.

Article 7

No Member State shall grant to any of its nationals who go to another Member State for the purpose of pursuing the activity referred to in Article 2 or in Article 3 any aid liable to distort the conditions of establishment.

Article 8

1. Where a host Member State requires of its nationals wishing to take up or pursue any activity referred to in Article 2 or in Article 3 proof of good repute and proof that they have not previously been declared bankrupt, or proof of either one of these, that State shall accept as sufficient evidence, in respect of nationals of other Member States, the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or the country whence the foreign national comes showing that these requirements have been met.

2. Where a host Member State requires of its nationals wishing to take up or pursue any activity referred to in Article 2 or in Article 3 proof that they have not previously been the subject of professional or administrative disciplinary measures (for example, withdrawal of the right to hold certain offices, suspension from practice or striking off), that State shall accept as sufficient evidence in respect of nationals of other Member States a document issued by a competent judicial or administrative authority in the country of origin or the country whence the foreign national comes showing that this requirement has been met.

3. Where, as regards proof of no previous bankruptcy or proof that the person concerned has not been the subject of disciplinary measures, the country of origin or the country whence that person comes does not issue documents such as those referred to in paragraphs 1 and 2, such documents may be replaced by a declaration on oath made by the person concerned before a judicial or administrative authority, a notary, or a competent professional or trade body, in the country of origin or in the country whence that person comes.

4. Documents issued in accordance with paragraphs 1 and 2 of this Article may not be produced more than three months after their date of issue.

5. Member States shall, within the time limit laid down in Article 10, designate the authorities and bodies competent to issue these documents, and shall forthwith inform the other Member States and the Commission thereof.

6. Where in the host Member State proof of financial standing is required, that State shall regard certificates issued by banks in the country or origin or in the country whence the foreign national comes as equivalent to certificates issued in its own territory.

Article 9

Those Member States where the taking up of a trade or profession is conditional upon the taking of an oath shall ensure that the current form of the oath is such that it can also be sworn by foreign nationals. Where this is not the case, Member States shall provide for a suitable and equivalent form.

Article 10

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

Article 11

This Directive is addressed to the Member States.

Done at Brussels, 12 January 1967.

For the Council

The President

R. VAN ELSLANDE