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## COUNCIL DIRECTIVE

of 15 October 1968

concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in the food manufacturing and beverage industries (ISIC Major Groups 20 and 21)

(68/365/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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,<sup>1</sup> and in particular Title VI C thereof;

Having regard to the General Programme for the abolition of restrictions on freedom to provide services,<sup>2</sup> and in particular Title V C thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament<sup>3</sup>;

Having regard to the Opinion of the Economic and Social Committee<sup>4</sup>;

Whereas the General Programmes provide for the abolition, before the end of the second stage, of all discriminatory treatment based on nationality with regard to establishment and provision of services in the food manufacturing and beverage industries; whereas in this respect the Programmes make no distinction between industrial undertakings and small craft undertakings 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 provisions of national laws, such measures being dealt with in a separate Directive;

Whereas the present Directive does not apply to itinerant trading as defined in the second subparagraph of Article 2 (1) of the Council Directive of 15 October 1968<sup>5</sup> concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in retail trade (ISIC ex Group 612), that is commercial activities of hawkers or pedlars, and activities of persons who sell in open-air markets and of those who sell in covered markets but not from permanently fixed installations;

Whereas it does not apply to the primary production of foodstuffs and beverages by agriculture, including viticulture, or by forestry, hunting or fishing, nor to the processing of fish carried out on board fishing vessels or factory ships; whereas those activities will be liberalised under other Directives;

Whereas, since the adoption of the General Programmes, the European Communities have drawn up their 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

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

<sup>2</sup> OJ No 2, 15.1.1962, p. 32/62.

<sup>3</sup> OJ No 23, 5.2.1966, p. 345/66.

<sup>4</sup> OJ No 14, 25.1.1966, p. 211/66.

<sup>5</sup> OJ No L 260, 22.10.1968, p. 1.

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 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 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 the retail sales activities of manufacturers who, without being established as producers in the host country, themselves sell their products in that country to the final consumer are governed by the provisions of the Council Directive of 15 October 1968 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in retail trade (ISIC ex Group 612); whereas therefore this Directive does not apply to such activities;

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 food manufacturing and beverage industries, as listed within Major Groups 20 and 21 in Annex II to the General Programme for the abolition of restrictions

on freedom of establishment, with the exception of the manufacture of medicinal and pharmaceutical products.

Such activities correspond to those listed within Major Groups 20 A, 20 B and 21, and as Group 304, of the Nomenclature of Industries in the European Communities (NICE), which takes into account the particular structure of European manufacturing 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 established as such in the host country.

3. The provisions of this Directive shall not apply to itinerant trading activities.

#### Article 3

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.

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; Law of 8 October 1940);

— exclusion from the right to renew commercial leases (*décret* of 30 September 1953, Article 38);

(c) *in Luxembourg:*

— the limited period of validity of authorisations granted to foreign nationals (Article 21 of the Law of 2 June 1962).

*Article 4*

1. Member States shall ensure that beneficiaries have the right to join professional or trade organisations under the same conditions and with the same rights and obligations as their own nationals. In particular, the French Republic shall ensure that beneficiaries have the right to join the *Confédération des industries de traitement des produits de la pêche maritime*.

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 connected with 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 5*

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.

*Article 6*

1. Where a host Member State requires of its own nationals wishing to take up any activity referred to in Article 2 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.

Where the country of origin or the country whence the foreign national comes does not issue such documentary proof of no previous bankruptcy, such proof 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.

2. Where the host Member State imposes on its own nationals wishing to take up activities in the milk and milk products industry (NICE Group 202) certain requirements as to good character or good repute, and proof that such requirements are satisfied cannot be obtained from the document referred to in the first paragraph of paragraph 1, that State shall accept as sufficient evidence in respect of nationals of other Member States a certificate issued by a competent judicial or administrative authority in the country of origin or in the country whence the foreign national comes indicating that the requirements in question have been met. Such certificate shall relate to the specific facts regarded as relevant by the host country.

3. Documents issued in accordance with paragraph 1 or with paragraph 2 may not be produced more than three months after their date of issue.

4. Member States shall, within the time limit laid down in Article 7, designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

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

*Article 7*

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 8*

This Directive is addressed to the Member States.

Done at Luxembourg, 15 October 1968.

For the Council  
The President  
G. SEDATI

## ANNEX

List of activities covered by this Directive, based on the Nomenclature of Industries in the European Communities (NICE)<sup>1</sup>

Major Group	Group	
20 A	200	<i>Industries producing animal and vegetable fats and oils</i>
20 B		<i>Food manufacturing industries (excluding the beverage industry)</i>
	201	Slaughtering, preparation and preserving of meat
	202	Milk and milk products industry
	203	Canning and preserving of fruits and vegetables
	204	Canning and preserving of fish and other sea foods
	205	Manufacture of grain mill products
	206	Manufacture of bakery products, including rusks and biscuits
	207	Sugar industry
	208	Manufacture of cocoa, chocolate and sugar confectionery
	209	Manufacture of miscellaneous food products
21		<i>Beverage industry</i>
	211	Production of ethyl alcohol by fermentation, production of yeast and spirits
	212	Production of wine and other unmalted alcoholic beverages
	213	Brewing and malting
	214	Soft drinks and carbonated water industries
ex 30		<i>Manufacture of rubber products, plastic materials, artificial and synthetic fibres and starch products</i>
	304	Manufacture of starch products

<sup>1</sup> This list has been compiled in the Community languages on the basis of the Nomenclature of Industries in the European Communities (NICE)-Supplementary issue in the 'Industrial Statistics' series, Statistical Office of the European Communities, Brussels, June 1963.