

COUNCIL DIRECTIVE

of 24 October 1967

laying down detailed provisions for the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in forestry and logging

(67/654/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,¹ and in particular Title IV E 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 timetable in the General Programmes provides for the abolition of all discriminatory treatment based on nationality in forestry and logging (ISIC Major Group 02)⁵ between the end of the second year of the third stage and the end of the transitional period;

Whereas activities in forestry and logging include the sale by the producer of the products of his operations;

whereas, however, this Directive does not apply to itinerant trading, nor to retail selling by producers who are not established in the host country;

Whereas certain forestry activities and certain other ancillary activities pursued by persons engaged in forestry work are excluded from the scope of this Directive, since such activities fall within other categories of the ISIC and are therefore dealt with in other Council Directives;

Whereas, however, it follows from the definition given for ISIC Group 400 that where an undertaking whose activities are classified within another Group pursues for its own use and as an ancillary activity construction, repair or demolition work, such activity falls not within Group 400, but within that of the main activity;

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 freedom to provide services entails that, where a service is performed in the country of the recipient, the person providing the service should not be obliged to satisfy requirements which persons established in that country satisfy solely by reason of the stable and permanent nature of their activity in such country, as may be the case in certain circumstances in certain Member States with regard to enrolment in the commercial register or membership of certain professional or trade organisations;

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;

¹ OJ No 2, 15.1.1962, p. 36/62.

² OJ No 2, 15.1.1962, p. 32/62.

³ OJ No 96, 28.5.1966, p. 1509/66.

⁴ OJ No 205, 7.12.1965, p. 3064/65.

⁵ International Standard Industrial Classification of all Economic Activities, Statistical Office of the United Nations, Statistical Papers, Series M, No 4, Rev. 1, New York, 1958.

Whereas the conditions of movement and residence for all persons enjoying freedom of establishment and freedom to provide services were the subject of two Directives adopted by the Council on 25 February 1964¹;

Whereas the Recommendation of 8 November 1962² addressed by the Commission to the Member States, which provides that 'tools, instruments or equipment... temporarily imported into one Member State from another Member State to be used in the performance of any kind of work in the importing Member State should be covered by the rules governing temporary admission, provided that they do not remain in the importing Member State for more than six months', is of particular importance in relation to freedom to provide services in forestry and logging;

Whereas, finally, freedom of establishment and freedom to provide services in respect of forestry activities will, in particular as regards technical assistance and the use of toxic or otherwise dangerous products, be made easier by the mutual recognition of diplomas, certificates and other evidence of formal qualifications and by the co-ordination of certain national rules; whereas further Directives will have to be issued to this end;

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.

Article 2

1. The provisions of this Directive shall apply to activities of self-employed persons in forestry and logging being activities covered by Annex IV to the General Programme for the abolition of restrictions on freedom of establishment, which constitute Major Group 02, Groups 021 and 022, of the International Standard Industrial Classification of all Economic Activities³.

2. A detailed list of the different activities falling within the Groups referred to in paragraph 1 is given in the Annex to this Directive.

3. These Groups of activities shall be understood to include also construction, repair and demolition work ancillary to the main activity undertaken because it is necessary for the pursuit of that activity, and in particular: construction of timber-chutes, installation of cable railways, construction and maintenance of forest roads and rides, construction of shelters and accommodation for forestry workers.

4. The provisions of this Directive shall not apply to itinerant trading pursued by beneficiaries.

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 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);
- the requirement that, for the purposes of being recognised as an approved contractor, and thereby being permitted to carry out State-subsidised work in forests administered by the State, by communes or by public bodies, a person shall possess Belgian nationality or, in the case of a company or firm, that its capital shall be at least two-thirds Belgian-owned (*Arrêté-loi* of 3 February 1947; *Arrêté du Régent* of 29 March 1947; *Arrêté ministériel* of 31 March 1947);

(b) in France:

- the requirement that foreign nationals shall obtain a *carte professionnelle d'exploitant agricole* or an *autorisation d'exploiter* (*Décret* No 54-72 of 20 January 1954; *Arrêté* of 30 March 1955);
- the obligation to hold a *carte spéciale d'étranger* (*Décret-loi* of 12 November 1938; Law of 8 October 1940);

(c) in Luxembourg:

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

¹ OJ No 56, 4.4.1964, pp. 845/64 and 850/64.

² OJ No 125, 30.11.1962, p. 2767/62.

³ Statistical Office of the United Nations, Statistical Papers, Series M, No 4, Rev. 1, New York, 1958.

Article 4

1. Freedom to provide services shall include the right of beneficiaries to carry out the various preliminary operations necessary for the pursuit of their activities, and in particular the seeking of custom by means of advertising, canvassing and the conclusion of contracts.

2. When providing services in the country of the recipient, beneficiaries shall pursue their activities on a temporary basis, without establishing themselves and for a length of time appropriate to the nature of the services being performed, the centre of their operations remaining fixed in another Member State.

The person providing the services shall, however, be entitled in the host country on the same terms as nationals of that country to acquire, hire, use or dispose of any movable or immovable property needed by him for the pursuit of his activities, provided that such property taken as a whole does not constitute fixed and permanent premises in the form of a branch or agency.

3. Where services are provided as indicated in paragraphs 1 and 2, the Member State in which such services are performed may, where provision of those services entails movement of persons, require the person providing the service to furnish documentary or other proof of the date from which he has pursued his activity in the territory of that State. Where the person concerned provides services for several recipients, each service or group of services must be indicated separately.

Article 5

1. Member States shall ensure that beneficiaries have the right to join professional or trade organisations and the right to be enrolled in the commercial register 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 the right to take part in the election of the administrative organs of those Chambers.

4. In the case of provision of services, the membership or enrolment referred to in paragraph 1 may be required of beneficiaries only where a service or

series of services is provided for a period exceeding ninety days in any calendar year.

Article 6

1. Where a host Member State requires of its own nationals wishing to take up or pursue 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.

2. 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.

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 8, designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

Article 7

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 8

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 9

This Directive is addressed to the Member States.

Done at Luxembourg, 24 October 1967.

For the Council

The President

K. SCHILLER

ANNEX

Activities falling within the Groups referred to in Article 2¹

- (a) The acquisition, occupation and exploitation of woodlands and forest soils, including accommodation and working premises and other installations for forestry purposes.
- (b) Harvesting, preparation for sale and sale of fruits, seeds and cuttings:
all work done by hand or by mechanical means in connection with the harvesting and treatment of fruits, seeds and cuttings of tree species for reproduction, up to the marketing stage.
- (c) Nursery work, preparation for sale and sale of planting stock:
all work done by hand or by mechanical means in connection with the cultivation of forest planting stock up to the marketing stage.
- (d) Planting work:
all work done by hand or by mechanical or chemical means in connection with the preparation of the soil for natural regeneration, sowing or planting within or outside the forest;
all work done by hand or by mechanical means in connection with sowing or the setting of planting stock within or outside the forest;
all work done by hand or by mechanical or chemical means in connection with the care of seedlings or plantations within or outside the forest during their early years.
- (e) Care and protection of the forest:
all routine forest maintenance work, and in particular: the opening up of rides, clearing of undergrowth and scrub, thinning, including the removal of unsaleable products, pruning;
all phytosanitary treatment done by hand or by mechanical means, including vehicles, water craft and aircraft, for the purpose of controlling pests harmful to seeds, planting stock, trees and other forest vegetation including pests in soil, water, air and forestry working premises and those on stored forest products, and for the purpose of preventing damage caused by such pests;
all work done by hand or by mechanical means, including vehicles, water craft and aircraft, for the purpose of preventing or fighting forest fires;
all work done by hand or by mechanical means in connection with the protection of the forest against damage by man or animals, and in particular: the erection and maintenance of fences and notices.
- (f) Harvesting, preparation for sale and sale of forest produce other than actual timber or seeds and planting stock:
all work done by hand or by mechanical means in connection with the harvesting, storage, preparation for sale and sale of forest produce other than actual timber or seeds and planting stock, and in particular, resin, cork, forest fruits and mushrooms, ornamental branches, cones, fruits and mosses, litter, fern, heather, osiers.
- (g) Manufacture of charcoal in the forest, whether in pits or kilns, sorting, sizing, packaging, loading and marketing.

¹ Activities which are not specifically mentioned in this classification should be included under the heading covering the activities most closely related to them, having regard to the circumstances of the industry within the European Economic Community, and in particular to technical developments.

(h) Harvesting, preparation for sale and sale of timber:

all work done by hand or by mechanical means in connection with the harvesting, preparation for sale and sale of timber, and in particular:

- marking for felling;
- measuring, estimating and effecting the sale of standing timber;
- felling, lopping and barking;
- measuring and sale of timber in the round;
- hewing and stacking in stacked cubic metres, preparation of veneer logs, shaping of posts, piles, railway sleepers and pit-props;
- measuring, classifying, hauling by means of horses, tractors, cable railways or sledges, floating, sale of untreated timber, whether or not classified;
- loading, stockpiling and dispatch;
- gathering, sorting and sale of Christmas trees.

(i) Technical assistance and expert forestry advice concerning in particular:

- forestry technology and forest utilisation;
- management of forests and forestry undertakings, drawing up of working plans and forest maps;
- utilisation of forest products and their preparation for sale;
- organisation of work, forestry accounting;
- consolidation of holdings, formation of syndicates, associations and co-operatives;
- expert advice on various subjects (methods of operation, felling, reparation of damage, etc.).