

COUNCIL DIRECTIVE

of 25 February 1964

concerning the attainment of freedom of establishment and freedom to provide services
in respect of activities in wholesale trade

(64/223/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 with regard to establishment and provision of services in wholesale trade;

Whereas wholesale trade in medicinal and pharmaceutical products and wholesale trade in coal are not covered by the provisions of this Directive; whereas, in accordance with the General Programmes, those activities will be liberalised at a later date;¹

Whereas this Directive does not apply to wholesale trade in toxic products or pathogens either; whereas

it has become evident that in respect of these activities, having regard to the provisions laid down by law, regulation or administrative action in force in the Member States, special problems arise concerning 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 separate Directives, applicable to all activities of self-employed persons, concerning provisions relating to the entry 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, will be adopted;

Whereas, for the purposes of applying measures concerning right of establishment and freedom to provide services, companies and 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

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. 466/63.

⁴ OJ No 56, 4.4.1964, p. 868/64.

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 some Member States wholesale trade in certain products is governed by rules relating to the taking up of that trade, while other States will, where necessary, adopt such rules; whereas, therefore, certain transitional measures, designed to make it easier for nationals of other Member States to take up and pursue activities in wholesale trade, are the subject of a separate Directive;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall abolish, in respect of 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 wholesale trade, with the exception of wholesale trade in medicinal and pharmaceutical products, in toxic products and pathogens and in coal (ex Group 611).

2. For the purposes of this Directive, 'wholesale trade activities' means activities pursued by any natural person, or company or firm, who habitually and by way of trade buys goods in his own name and on his own account and resells such goods to other wholesale or retail traders, or to processors, or to professional, trade or large-scale users.

The goods may be resold either in the unaltered state or after such processing, treatment or preparation for sale as is customary in wholesale trade.

Wholesale trade activities may be carried on by way of domestic, export, import or transit trade.

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 the Federal Republic of Germany*

— the requirement that, for the purpose of soliciting in person the custom of other persons in connection with their business activities, a person shall hold an itinerant trader's card (*Reisegewerbekarte*) (*Gewerbeordnung*, paragraph 55d, version of 5 February 1960 [*Bundesgesetzblatt* Part I, p. 61, *corrigendum*, p. 92]; Law of 30 November 1960 [*Bundesgesetzblatt*, Part I, p. 871]);

— the requirement that any foreign legal person wishing to pursue professional or trade activities on Federal territory must obtain special authorisation (*Gewerbeordnung*, paragraph 12, and *Aktiengesetz*, paragraph 292).

(b) *in Belgium*

— The obligation to hold a *carte professionnelle* (*Arrêté royal* No 62 of 16 November 1939, *Arrêté ministériel* of 17 December 1945, and *Arrêté ministériel* of 11 March 1954).

(c) *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 59-852 of 9 July 1959).

(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 4

1. Member States shall ensure that 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 eligi-

bility 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* shall not give beneficiaries under this Directive the right to take part in the election of the administrative organs of that Chamber.

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.

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

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 Brussels, 25 February 1964.

For the Council

The President

H. FAYAT