

COUNCIL DIRECTIVE

of 25 February 1964

concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of intermediaries in commerce, industry and small craft industries

(64/224/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 respect of activities of intermediaries in commerce, industry and small craft industries;

Whereas certain activities of intermediaries 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 neither does this Directive apply to activities of intermediaries in respect of toxic products and pathogens, whether in wholesale trade, in industry, or in small craft industries; whereas it has become evident that, having regard to the provisions laid down by law, regulation or administrative action in force in the Member States, special problems arise in respect of these activities with regard to 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, however, it is appropriate to provide in this Directive for the abolition of restrictions on freedom to provide services in respect of intermediaries in the employment of one or more industrial, commercial or small craft undertakings; whereas it is sometimes difficult to distinguish between activities of employed intermediaries and those of self-employed agents because the legal distinction between the two is not the same in all six countries; whereas the activities of employed intermediaries fall within the same economic category as those of self-employed agents and it would be neither convenient nor useful to split up the liberalisation of this very special form of provision of services into a series of measures of partial liberalisation, effected as and when the activities of the employers are liberalised;

Whereas, moreover, separate Directives, applicable to all activities of self-employed persons, concerning provisions relating to the movement and residence of

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. 468/63.

⁴ OJ No 56, 4.4.1964, p. 876/64.

beneficiaries, and where necessary Directives on the co-ordination of the safeguards required by Member States for 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 or 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 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 certain Member States activities of intermediaries in commerce, industry and small craft industries are governed by rules relating to the taking up of such activities, while other Member States will, where necessary, adopt such rules; whereas, therefore, certain transitional measures, the purpose of which is to make it easier for nationals of other Member States to take up and pursue those activities, are the subject of a separate Directive;

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

The provisions of this Directive shall apply to:

1. the following activities of self-employed persons:
 - (a) professional activities of an intermediary who is empowered and instructed by one or more persons to negotiate or enter into commercial transactions in the name of and on behalf of those persons;
 - (b) professional activities of an intermediary who, while not being permanently so instructed, brings together persons wishing to contract directly with one another or arranges their commercial transactions or assists in the completion thereof;
 - (c) professional activities of an intermediary who enters into commercial transactions in his own name on behalf of others;
 - (d) professional activities of an intermediary who carries out wholesale selling by auction on behalf of others.
2. provision of services, by way of professional activities, by an intermediary in the employment of one or more commercial, industrial or small craft undertakings. Both such intermediary and the undertakings employing him must reside or be established in a Member State other than that in which the services are carried out.

The activities referred to in paragraph 1 include those of intermediaries who go from door to door seeking orders.

Article 3

Restrictions in respect of the activities set out in Article 2 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:

	Self-employed persons	Paid employees
<i>Belgium</i>	Agent commercial Représentant autonome Courtier Commissionnaire Organisateur de ventes aux enchères en gros Handelsagent Handelsvertegenwoordiger Makelaar Commissionair Veilinghouder-groothandel	Commis-voyageur Voyageur de commerce Représentant de commerce Handelsreiziger Handelsvertegenwoordiger
<i>Germany</i>	Handelsvertreter Handelsmakler Kommissionär Großhandelsversteigerer	Handlungsgehilfe (Handelsreisender)
<i>France</i>	Agent commercial (ou représen- tant mandataire) Courtier libre Courtier inscrit et assermenté Commissionnaire	Représentant de commerce Voyageur de commerce (ou commis-voyageur) Placier
<i>Italy</i>	Agente di commercio Rappresentante Mediatore Commissionario Astatore	Agente Viaggiatore di commercio Piazzista
<i>Luxembourg</i>	Représentant de commerce autonome Courtier Commissionnaire	Commis-voyageur Représentant de commerce
<i>Netherlands</i>	Handelsagent Makelaar in roerende goederen Commissionair Veilinghouder-groothandel	Handelsreiziger

Article 4

1. Activities of intermediaries in the following fields shall in all Member States be excluded from the scope of this Directive:

- insurance of all kinds (in particular insurance agents, brokers and assessors);
- banks and other financial establishments (in particular foreign exchange dealers, stockbrokers mortgage brokers and the like);
- matters concerning immovable property (in particular estate agents and brokers);
- transport undertakings (in particular shipbrokers (including *courtiers interprètes* and *conducteurs*);

de navires), forwarding agents, customs agents and travel agencies);

- toxic products and pathogens;
- medicinal and pharmaceutical products;
- coal.

2. Also excluded from the scope of this Directive in the Member State concerned shall be those activities involving in that State the exercise of official authority. These are as follows:

in France: the sale by auction of goods and other articles of moveable property by *officiers publics* or *officiers ministériels*;

in Italy: the sale by auction of goods by *pubblici mediatori*;

in Germany, Belgium, Luxembourg and the Netherlands: participation by court bailiffs and notaries in auction sales.

in Luxembourg: the activity of a commissionaire in respect of cattle for slaughter.

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 of provision of services by beneficiaries by the following means:

(a) *in Germany*

- the requirement that, for the purpose of soliciting in person the custom of others in connection with their business activities, a person shall hold an itinerant trader's card (*Reisegewerbekarte*) (*Gewerbeordnung*, paragraph 55d, version of 5 February 1960; *Verordnung* of 30 November 1960);
- the requirement that the issue of such itinerant trader's card permitting the soliciting of private persons for the purpose of gaining custom be subject to a test of economic necessity (*Bedürfnisprüfung*); and the limitation on the

area in which that document is valid (*Gewerbeordnung*, paragraph 55d, version of 5 February 1960; *Bundesgesetzblatt* I, p. 61, *Corrigendum*, p. 92; *Verordnung* of 30 November 1960);

- 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);
- the requirement that any person wishing to pursue the activity of *Mandataire et Approvisionnement aux Halles de Paris* shall be of French nationality (*Décret* of 30 September 1953, *Décret* of 2 December 1960, Article 9);

(d) *in Italy*

- the obligation to hold a licence granted by the *questore* to *agenti, rappresentanti, commessi viaggiatori and piazzisti* (Article 127 of the consolidated text of the *Leggi di Pubblica Sicurezza* approved by *Regio Decreto* No 773 of 18 June 1931 and Article 243 of the *Regolamento* implementing the consolidated text approved by *regio Decreto* No 635 of 6 May 1940);
- the requirement that in order to be eligible for enrolment in the *Ruolo dei mediatori* a person shall be of Italian nationality (Law No 253 of 21 March 1959);

(e) *in Luxembourg*

- the limited period of validity of authorisation granted to foreign nationals pursuant to Article 21 of the Luxembourg Law of 2 June 1962 (*Memorial A* No 31 of 19 June 1962).

Article 6

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 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 employés privés* shall not give beneficiaries 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 any activity referred to in Article 2 any aid liable to distort the conditions of establishment.

Article 8

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 of no previous bankruptcy, 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 any 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.

However, in the case of intermediaries who go from door to door seeking orders, facts other than those which may be given in the document referred to in the preceding paragraph may also be taken into consideration where such facts have been officially certified and clearly show that the person concerned does not satisfy all the conditions as to good repute which persons wishing to pursue that activity are required to satisfy. However, this check shall not be carried out as a matter of regular routine.

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

Article 9

Those Member States where the taking up of the activities in question 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, 25 February 1964.

For the Council

The President

H. FAYAT