

COUNCIL DIRECTIVE

of 16 December 1970

laying down detailed provisions for the attainment of freedom of establishment in respect of self-employed persons providing agricultural and horticultural services

(71/18/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (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 F 6 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament²;

Having regard to the Opinion of the Economic and Social Committee³;

Whereas the General Programme for the abolition of restrictions on freedom of establishment lays down a timetable for the attainment of freedom of establishment as regards 'agricultural services' which differs from that laid down in respect of freedom to provide such services; whereas, in accordance with this latter timetable, the Council adopted on 14 December 1964 a Directive laying down detailed provisions for the attainment of freedom to provide services in agriculture and horticulture; whereas freedom of establishment in respect of agriculture and horticulture is to be attained by the end of the transitional period;

Whereas certain activities are common both to agricultural services and to forestry, in particular ploughing; whereas freedom of establishment was attained in respect of forestry by the Council Directive of 24 October 1967⁴ concerning freedom of

establishment and freedom to provide services in forestry and logging; whereas agricultural services provided in connection with the work of mixed forestry and agricultural concerns are already covered by that Directive;

Whereas other Directives will be adopted in respect of activities of agronomists and veterinary surgeons and in respect of animal care centres;

Whereas freedom of establishment in respect of the construction of plant for water catchment, irrigation and drainage, and of land draining and reclamation operation—activities often connected with certain agricultural services covered by this Directive—has been attained under the Council Directives of 7 July 1964⁵ concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23-40 (industry and small craft industries) and concerning transitional measures in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23-40 (industry and small craft industries);

Whereas the General Programme 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 conditions of movement and residence for all persons enjoying freedom of establishment were the subject of two Directives adopted by the Council on 25 February 1964⁶;

¹ OJ No 2, 15.1.1962, p. 36/62.

² OJ No C 139, 28.10.1969, p. 20.

³ OJ No C 10, 27.1.1970, p. 19.

⁴ OJ No 263, 30.10.1967, p. 6.

⁵ OJ No 117, 23.7.1964, pp. 1880/64 and 1863/64.

⁶ OJ No 56, 4.4.1964, pp. 845/64 and 850/64.

Whereas, where necessary, Directives have been or will be adopted 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;

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 Programme for the abolition of restrictions on freedom of establishment (hereinafter called 'beneficiaries'), the restrictions referred to in Title III of that General Programme affecting the right of establishment as regards the activities specified in Article 2.

Article 2

1. The provisions of this Directive shall apply to the agricultural and horticultural services covered by Annex V to the General Programme, namely:

- (a) technical assistance;
- (b) spraying, weed killing and pest control;
- (c) pruning;
- (d) picking, packing and presentation;
- (e) operation of irrigation systems;
- (f) letting out for hire of agricultural machinery;
- (g) soil cultivation and tillage;
- (h) reaping and harvesting, threshing, baling and collecting, whether by mechanical or non-mechanical means;
- (i) activities not elsewhere specified.

2. For the purposes of this Directive, the term 'agricultural and horticultural services' refers to all activities falling within Group 011 of the 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), and in particular:

- (a) general agriculture, including the growing of field crops, viticulture, and the cultivation of tropical produce; growing of fruits, nuts, seeds, vegetables, flowers, both in the open and under glass; landscaping;
- (b) raising of livestock, poultry, rabbits, fur-bearing or other animals, bees; and the production of meat, milk, wool, skins and fur, eggs, honey.

3. A detailed list of the services to be included under the various headings in paragraph 1 is given in the Annex to this Directive.

Article 3

1. Member States shall in particular abolish the following restrictions:

- (a) those which, in pursuance of provisions laid down by law, regulation or administrative action, prevent beneficiaries from establishing themselves 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 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 Luxembourg*
 - the limited period of validity of authorisations granted to foreign nationals (Article 21 of the Law of 2 June 1962).

Article 4

Member States shall in particular ensure:

- (a) that beneficiaries pursuing activities in their territory enjoy the same rights as their own nationals with regard to:
 - access to the various forms of credit, aid and subsidy for which their laws provide;
 - the customary taxation allowances, in particular those relating to the purchase of motor fuel used in performing the service in question;
- (b) that beneficiaries have the same rights as their own nationals with regard to the conclusion of contracts under public or private law in the pursuit of their professional activity and in particular contracts for work which falls within the scope of programmes to improve the structure of agriculture, including the submission of tenders in this connection, and participation as a main contractor or as sub-contractor;

(c) that, where under the provisions of law in force in their territory persons wishing to carry out certain work, in particular that which involves the use of toxic or dangerous products, are required to obtain special authorisation, beneficiaries are able to seek and obtain such authorisation with no greater difficulty than Member States' own nationals.

Article 5

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.

2. The right to join professional or trade organisation 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 corrected with the exercise of official authority.

3. In the Grand Duchy of Luxembourg, membership of the *Chambre de commerce*, the *Chambre des metiers* or of the *Chambre de l'agriculture*, shall not give beneficiaries the right to take part in the election of the administrative organs of those Chambers.

Article 6

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 7

1. Where a Member State requires of its own nationals wishing to pursue any activity referred to in Article 2 proof of good character 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 beneficiaries, 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 in the country whence the beneficiary comes showing that these requirements have been met.

2. Where the country of origin or the country whence the beneficiary 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. Where a Member State imposes on its own nationals wishing to take up certain activities involving the use of pesticides or toxic products 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 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 these requirements have been met. Such certificates shall relate to the specific facts regarded as relevant by the host country.

4. Documents issued in accordance with paragraph 1 or with paragraph 2 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 8, designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

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 Brussels, 16 December 1970.

For the Council
The President
H. LEUSSINK

ANNEX

Activities falling with headings (a) to (i) of Article 2 (1)

(a) *'Technical assistance'*:

The giving of advice and information in all spheres of agriculture and horticulture whether carried on individually or collectively, in particular with regard to:

- techniques of agricultural and horticultural production;
- techniques (at farm level) of preparation, handling and sale of agricultural and horticultural products;
- acquisition, installation and use of means of production;
- acquisition, installation and use of capital goods;
- farm management and organisation of work, agricultural accounting and administration generally;
- domestic economy;
- training of personnel;
- agricultural co-operation (co-operatives), horizontal co-operation and vertical integration;
- soil and structural improvement (e.g. erosion control, drainage and irrigation, consolidation of holdings extension and resettlement of agricultural holdings, cultivation of new land);

(b) *'Spraying, weed killing and pest control'*:

All work carried out by hand or by mechanical means, including vehicles, watercraft and aircraft, for the purpose of destroying or preventing by physical, chemical or biological treatment weeds and all kinds of pest harmful to crops, livestock or their products, including pests in soil, water, air and buildings and those on stored products;

(c) *'Pruning'*:

Pruning of trees, shrubs and similar plants (e.g. vines, osiers), carried out by hand or by mechanical means;

(d) *'Picking, packing and presentation'*:

All work carried out by hand or by mechanical means in respect of:

- harvesting of fruit, vegetables and other horticultural products and of special crops (e.g. grapes, hops, tobacco, olives, flower bulbs, plants or herbs for medicinal or seasoning purposes);
- sorting, cleaning, drying, storing, packing and labelling of such products;

(e) *'Operation of irrigation systems'*:

All operations involving the use of plants for spraying, watering and otherwise supplying water for agricultural and horticultural production;

(f) *'Letting out for hire of agricultural machinery'*:

Making available under contract and for payment, on a short- or long-term basis, any implement or machine used in carrying out agricultural and horticultural work before, during or after the production stage, including tractors and trailers for agricultural use;

(g) *'Soil cultivation and tillage':*

All work connected with land reclamation and improvement and with cultivation and tillage before, during and after the growing period, whether carried out by hand or by mechanical means, and in particular:

- root clearance, ploughing of waste, fallow or grassland, subsoiling, terracing, levelling, stone clearance, trenching;
- ploughing, deep ploughing, rotavation;
- spreading or injecting with fertiliser, manure and other soil improvers of all kinds;
- preparing the topsoil for sowing and planting; sowing and planting;
- weeding, hoeing, earthing, rolling;

(h) *'Reaping and harvesting, threshing, baling and collecting, whether by hand or by mechanical means:*

All work carried out by hand or by mechanical means connected with the harvesting and handling at farm level of the products of arable land and grassland (harvesting of fruit, vegetables, horticultural products and special crops is covered by heading (d)), and in particular:

- harvesting and threshing (combine harvesting, threshing on the spot or on the threshing floor) of gramineae (grasses and cereals), leguminosae (pulses, vetches and clovers), cruciferae (crucifers);
- lifting and gathering of root crops, pulling and treatment of flax;
- cutting, gathering and baling of straw;
- all work connected with preparing and conserving green, succulent and coarse fodder, such as cutting, chopping, tearing and gathering of fodder, drying on the ground, on racks or by artificial means; kiln drying, ensiling;
- all operations performed by pneumatic or mechanical elevators, loaders and unloaders;
- sorting, cleaning, drying, storing, packing and labelling of such products;

(i) *'Activities not elsewhere specified':*

Agricultural and horticultural services not elsewhere specified, whether carried out by hand or by mechanical means, and in particular:

- work connected with the raising of livestock, such as artificial insemination, milking, cleaning of sheds and stables, sheep shearing;
- certain specialised work such as maintenance of glasshouses and forcing frames.