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COUNCIL DIRECTIVE

of 4 June 1974

on the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons and of intermediaries engaging in the trade and distribution of toxic products

(74/557/EEC)

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▼B**COUNCIL DIRECTIVE****of 4 June 1974**

on the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons and of intermediaries engaging in the trade and distribution of toxic products

(74/557/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) and Article 63 (2) and (3) thereof;

Having regard to the General Programme for the abolition of restrictions on freedom of establishment⁽¹⁾ and in particular Titles IV A and C 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 Council Directive No 64/233/EEC⁽³⁾ of 25 February 1964 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities related to wholesale trade;

Having regard to Council Directive No 64/224/EEC⁽⁴⁾ 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;

Having regard to Council Directive No 68/363/EEC⁽⁵⁾ of 15 October 1968 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons engaged in the retail trade;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament⁽⁶⁾;

Having regard to the Opinion of the Economic and Social Committee⁽⁷⁾;

Whereas the General Programmes provide for the abolition of all discriminatory treatment based on nationality with regard to establishment and provisions of services

- in the area of activities of wholesale trade of intermediaries in commerce, industry and small craft industries, before the end of the second year of the second stage,
- in the area of activities of retail trade, after the end of the second year of the second stage of the transitional period and before the end of the second stage;

Whereas Directives No 64/223/EEC, No 64/224/EEC and No 68/363/EEC do not apply to the field of toxic products, the latter, on account of the particular problems posed by protection of public health, are governed by the provisions laid down by law, regulation or administrative action in the Member States;

Whereas Directives No 64/223/EEC and No 68/363/EEC mentioned above also do not apply to activities in respect of wholesale trade,

⁽¹⁾ OJ No 2, 15. 1. 1962, p. 36/62.

⁽²⁾ OJ No 2, 15. 1. 1962, p. 32/62.

⁽³⁾ OJ No 56, 4. 4. 1964, p. 863/64.

⁽⁴⁾ OJ No 56, 4. 4. 1964, p. 869/64.

⁽⁵⁾ OJ No L 260, 22. 10. 1968, p. 1.

⁽⁶⁾ OJ No C 63, 28. 5. 1969, p. 21.

⁽⁷⁾ OJ No C 10, 27. 1. 1970, p. 23.

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intermediaries and retail trade of pathogens; whereas, however, besides pathogens classified as medicinal preparations for human or animal use in the sense of Council Directive No 65/65/EEC ⁽¹⁾ of 26 January 1965, on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products, amended by Directive No 66/454/EEC ⁽²⁾ only pathogens called 'biological pesticides for use in agriculture' form the subject of the activities mentioned; whereas therefore, with regard to pathogens, the abolition of restrictions on freedom to provide services and freedom of establishment can be limited to trade and the distribution of such pesticides;

Whereas it has become evident that it is desirable and timely to take measures to regulate on a Community level the measures referred to in the two preceding recitals, taking into account the dangerous action which toxic products may have on the health of man, animals, and plants, either directly or indirectly through the environment;

Whereas the activities of intermediaries in commerce, industry and small craft industries are the subject of Directives No 64/224/EEC and No 68/363/EEC; whereas the activities of intermediaries in respect of toxic products and pathogens are excluded from the scope of these Directives; whereas this Directive is also designed to liberalize the activities of intermediaries; whereas accordingly the terms 'trade and distribution' in this Directive include also the activities of intermediaries in these fields;

Whereas the General Programme for the abolition of restrictions on freedom of establishment provides that restrictions on the power to exercise the right to join professional or trade organizations must be abolished where the professional activities of the person concerned involve the exercise of this power;

Whereas this 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 the movement and residence of beneficiaries, and where necessary Directives on the coordination of the safeguards required by Member States of companies or firms for the protection of members and of others, have been or will be adopted;

Whereas in some Member States trade, distribution and professional use of toxic products are governed by rules relating to the taking up of that profession, while other States will, where necessary, implement such rules; whereas, therefore, certain special transitional measures, the purpose of which is to make it easier for nationals of other Member States to take up and pursue activities in the trade of toxic products, are the subject of a separate Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The 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 these General Programmes affecting the right to take up and pursue the activities mentioned in Article 2.

Article 2

1. This Directive shall apply to activities of self-employed persons in the trade and distribution of toxic products (substances and preparations) and of biological pesticides for use in agriculture which have been excluded from the scope of Directive No 64/223/EEC under

⁽¹⁾ OJ No C 22, 9. 2. 1965, p. 369/65.

⁽²⁾ OJ No C 144, 5. 8. 1966, p. 2658/66.

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Article 2 (1) thereof, Directive No 64/224/EEC under Article 4 (1) fifth indent thereof, and Directive No 68/363/EEC Article 2 (1) thereof.

2. The products referred to in paragraph 1, because of the dangerous action which they may have on the health of man, animals and plants, are, according to the laws in the Member States, subject to separate provisions, (the products concerned are set out in the Annex). Amendments to these lists by a Member State shall be communicated to the Commission which will bring them to the attention of the Member States.

3. This Directive shall not apply to the trade and distribution of medicinal products as defined by Directive No 65/65/EEC, or to the commercial activities of itinerant traders, hawkers or pedlars.

Article 3

1. Restrictions in respect of the activities set out in Article 2 shall be abolished regardless of the description applied to the persons pursuing one of those activities.

2. The customary descriptions currently used in the Member States to define persons pursuing activities of intermediaries in commerce are those of Article 3 of Council Directive No 64/224/EEC.

Article 4

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

- (a) those which prevent beneficiaries from establishing themselves or providing services in the host Member States under the same conditions and with the same rights as their nationals;
- (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 provisions which prevent or limit establishment of beneficiaries or provision of services by the latter by the following means:

(a) *in Belgium:*

the obligation to hold a *carte professionnelle* (Article 1, 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, Décret of 2 February 1939, Law of 8 October 1940, Law of 10 April 1954, Décret No 59—852 of 9 July 1959);

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

(c) *in Luxembourg:*

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

Article 5

1. Member States shall ensure that beneficiaries have the right to join professional or trade organizations 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 organizations shall entail eligibility for election or appointment to high office in such organizations. However, such posts may be reserved for nationals where, in pursuance of any provision laid down by law or regulation, the organization concerned is connected with the exercise of official authority.

3. In the Grand Duchy of Luxembourg, membership of the *Chambre de commerce* and of the *Chambre des métiers* shall not give benefici-

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aries the right to take part in the election of the management organs of those Chambers.

Article 6

No Member States 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 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 Member State of origin or the Member State whence the foreign national comes showing that these requirements have been met.

2. Where a host Member State imposes on its own nationals wishing to take up one of the activities referred to in Article 2, certain requirements as to 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 the requirements in question have been met. Such certificate shall relate to the specific facts regarded as relevant by the host country.

3. Where the country of origin or the country whence the foreign national comes does not issue the document referred to in paragraph 1 or the certificate referred to in paragraph 2 furnishing proof of good repute or proof of no previous bankruptcy, such proof may be replaced by a declaration on oath — or, in States where there is no provision for declaration on oath, by a solemn declaration — made by the person concerned before a competent judicial or administrative authority, or where appropriate a notary, in the country whence that person comes; such authority or notary will issue a certificate attesting the authenticity of the declaration on oath or solemn declaration. The declaration in respect of no previous bankruptcy may also be made before a competent professional or trade body in the said country.

4. Documents issued in accordance with paragraphs 1 and 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 the documents referred to in paragraphs 1 and 2 and shall forthwith inform the other Member States and the Commission thereof.

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

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.



ANNEX

The following categories of products referred to in Article 2 (2) are the subject of special arrangements in the Member States (as of 4 June 1974):

— *Belgium:*

Toxic substances and preparations

1. listed in the *arrêté du Régent* of 6 February 1946 (with amendments) regulating the preservation and supply of poisonous and toxic substances (in implementation of the law of 24 February 1921);
2. classified in categories 1 and 2 of the *arrêté royal* of 31 May 1958 regulating the preservation, trade in and use of pesticides and phytopharmaceutical products.

— *Denmark:*

1. (a) Venomous or toxic substances and harmful products referred to in the Annex to the Law No 119 of 3 May 1961 and referred to in the Decree (*bekendtgørelse*) No 305 of 9 October 1961 (made in execution of the latter) which establish the rules for the manufacture, receipt, storage and dispensing of these poisons and products;
- (b) Venomous or toxic substances and harmful products set out in Decree (*bekendtgørelse*) No 304 of 9 October 1961 establishing rules on the use of these poisons and products.
2. Products (phytopharmaceuticals, weed-killers, pesticides, plantgrowth regulators) set out in Law No 118 of 3 May 1961 and referred to in the Decrees (*bekendtgørelser*) made in application of that Law which provide that these products may not be marketed or used by the trade unless it is approved and classified by the Poisons Board (*giftnevnet*) and which also lay down detailed rules on the receipt, storage, packaging, labelling etc. of these products.
3. Products (phytopharmaceuticals, weedkillers, pesticides, plantgrowth regulators) referred to in the Decree (*bekendtgørelse*) of 25 September 1961 which provides that the authorization to use the products marked with an X usually conditional upon the user having taken a course in toxicology organized by the Poisons Board (*giftuevnet*).

— *Germany:*

Toxic substances and preparations classified in categories 1, 2 and 3 of the laws and regulations of Länder concerning the trade in and distribution of phythosanitary toxic products and products having toxic effects on plant health, and in paragraph 34 subparagraph 5 of the Commercial Code (*Gewerbeordnung*), version of 15 February 1963.

— *France:*

1. Poisonous substances listed in Tables A (toxic products) and C (dangerous products) of Section I of Décret 56—1197 of 26 November 1956 (*Code de la Santé publique*, Book V, Part 2, Title III, Chapter 1, Sections I and II, Articles R 5149 to 5168).
2. Noxious products for use in industry specified in the *Code du travail*, Book II, Title II, Articles 67, 2, 78, 79 and 80 and in the regulations and decrees issued pursuant to the implementation of these provisions.
3. Harmful products specified in the list of dangerous, unhealthy and unsuitable premises established in pursuance of Articles 5 and 7 of the Law of 19 December 1917.
4. Antiparasitic products for use in agriculture (Law of 2 November 1943 as amended by the Law of 30 July 1963; arrêté of 6 September 1954 on the approval of branded antiparasitic products for use in agriculture, supplemented by the arrêté of 6 February 1962).

— *Ireland:*

Poisons which are for the time being listed in Regulations under the Poisons Act, 1961, and the sale of which is prohibited except by certain authorized persons.

— *Italy:*

1. Toxic gases (Article 58 — single text of the Laws on Public Safety approved by the royal decree No 773 of 18 June 1931; royal decree No 147 of 9 January 1927; tables of toxic gases annexed to the Ministerial decree of 6 February 1935 and subsequent amendments thereof).
2. Poisonous substances for use in industry (Article 147 — single text of the Health Laws approved by the royal decree No 1265 of 27 July 1934).
3. Medico-surgical products (bactericides, germicides, and disinfectants) (royal decree No 3112 of 6 December 1928 and implementing regulation of the Law No 1070 of 23 June 1927, approved by the royal decree

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No 3112 of 6 December 1928) and medical products (phytopharmaceuticals and products intended for use as food preservatives) (Article 6 of the Law No 283 of 30 April 1962, amended by Article 4 of the Law No 441 of 26 February 1963, and regulations governing the production, trade in and sale of phytopharmaceuticals and products intended for use as food preservatives, approved by the decree of the President of the Republic No 1095 of 3 August 1968).

4. Ceruse (Law No 706 of 19 July 1961).
5. Benzol (Law No 245 of 5 March 1963).
6. Cosmetic products and dyes containing poisonous substances (Article 7 of the royal decree No 1938 of 30 October 1924).

— *Luxembourg:*

1. Trade in and distribution of certain products (Law of 25 September 1953 — Memorial No 62 of 10 October 1953).
2. Trade in and use of phytopharmaceutical products (pesticides for use in agriculture, plant growth regulators, preservatives, herbicides, micro-organisms and viruses as antiparasitic agents ...) (Law of 20 February 1968, Memorial No 9 of 12 March 1968 — Grand-Ducal regulation of 29 May 1970, Memorial No 33 of 15 June 1970).

— *Netherlands:*

Toxic substances and preparations, Law (*Bestrijdingsmiddelenwet* of 1962).

— *United Kingdom:*

1. Poisons which for the time being are listed in the Poisons List Order and are subject to the Pharmacy and Poisons Act 1933 and to the Poisons Rules, or poisons in the Poisons Schedule which are subject to the Pharmacy and Poisons Acts (Northern Ireland) 1925 to 1967 and to the Poisons Regulations (Northern Ireland).
2. Substances covered by the Farm and Garden Chemicals Act 1967 and Regulations.
3. Substances covered by the Agriculture (Poisonous Substances) Act 1952 and Regulations.

▼A1— *Austria:*

Substances and preparations which are classified as 'strongly toxic' or 'toxic' under the Law on Chemical Substances (*Chemikaliengesetz* BGBl. Nr. 326/1987), and regulations based thereon (§ 217 (1), *Gewerbeordnung* BGBl. Nr. 194/1994).

— *Finland:*

1. Chemicals covered by the Chemicals Act (744/89) and regulations;
2. Biological pesticides covered by the Pesticides Act (327/69) and regulations.

— *Sweden:*

1. Extremely dangerous and very dangerous chemical products referred to in the Regulation on Chemical Products (1985:835).
2. Certain drug precursors referred to in the Instructions on Permits to Produce, Trade and Distribute Venomous and Very Hazardous Chemical Products (KIFS 1986:5, KIFS 1990:9).
3. Pesticides, class 1, referred to in Regulation 1985:836.
4. Waste which is hazardous to the environment referred to in Regulation 1985:841.
5. PCBs and chemical products containing PCBs referred to in Regulation 1985:837.
6. Substances listed under group B in the Public Notice on Instructions Concerning Sanitary Limit Values (AFS 1990:13).
7. Asbestos and materials containing asbestos referred to in Public Notice AFS 1986:2.