

COUNCIL DIRECTIVE

of 28 February 1966

concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons engaging in the provision of electricity, gas, water and sanitary services (ISIC Division 5)

(66/162/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 as regards establishment and provision of services in the electricity, gas, steam, water and sanitary services sectors;

Whereas this Directive covers activities pertaining to the operation of services of general economic interest, but does not affect the application of Article 90 of the Treaty to undertakings entrusted with the operation of such services;

Whereas, in order to ensure that this Directive is correctly applied, it is necessary to define its scope by specifying what is meant by activities of self-employed persons in the sectors in question;

Whereas production and distribution include all operations the purpose of which is to make gas, electricity or water available in usable form to the consumer; whereas consequently any treatment or transforming activities carried out in connection with production, catchment, transmission or transportation and distribution come within the scope of this Directive;

Whereas when applying this Directive account should be taken of the various modern techniques covered by the term 'gasworks' in its broadest sense, and whereas production and distribution of steam also include production and distribution of hot water for heating purposes;

Whereas the Group relating to sanitary services covers in particular street cleansing operations and the disposal of industrial or domestic waste and of sewage, but does not cover auxiliary health services, which fall within ISIC Group 822;

Whereas certain activities which fall within the general scope of energy or water supply are not covered by this Directive, but fall within other Groups of the nomenclature used as a basis for drawing up the timetable in the General Programme for liberalisation; whereas the activities in question include in particular the exploitation of sources of natural gas, production of gas in coke ovens, in so far as this latter is not covered by Group 512 of ISIC, and the production of gas by oil refineries; whereas the time limit for liberalisation laid down in the General Programme is the same for all these various activities; whereas it follows that in the normal course of events all activities relating to the production of manufactured gas should be liberalised by the same date;

¹ OJ No 2, 15.1.1962, p. 36/62.

² OJ No 2, 15.1.1962, p. 32/62.

³ OJ No 96, 2.6.1965, p. 1682/65.

⁴ OJ No 103, 12.6.1965, p. 1789/65.

Whereas the ISIC (International Standard Industrial Classification of All Economic Activities, Statistical Office of the United Nations, Series M, No 4 Rev. 1, New York, 1958) excludes the transportation of natural gas as an independent service from activities relating to energy supply (Major Group 51), by classifying this activity under 'Transport not elsewhere classified' (Group 719); whereas however the transportation of natural gas as an independent service is, like that of gas of any other kind, closely connected with the activities falling within ISIC Group 512, which this Directive is intended to cover; whereas such transportation should therefore be included in this Directive, the stage at which it is to be liberalised remaining as laid down in the timetable in the General Programme;

Whereas, as regards transmission of electricity and transportation by pipeline of gas and of water, this Directive is to apply only to freedom of establishment;

Whereas separate Directives,¹ applicable to all activities of self-employed persons, concerning provisions relating to the movement 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, have been or 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 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 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 the abolition of the restrictions in question need not be preceded or accompanied either by measures for the co-ordination of the provisions laid down by law, regulation or administrative action in this field of activity, or by measures concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications;

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 of this Directive. As regards the transmission of electricity and transportation by pipeline of gas, steam and water, this Directive applies only to the abolition of restrictions on freedom of establishment.

Article 2

1. The provisions of this Directive shall apply to activities of self-employed persons being activities falling within Major Groups 51-52 in Annex I to the General Programme for the abolition of restrictions on freedom of establishment or within Group ex 719 in Annex III to that same General Programme, namely the production, distribution and transmission or transportation of electricity, gas, water and steam and the provision of sanitary services.
2. These activities comprise:
 - (a) the generation, transmission and distribution of electricity;
 - (b) the manufacture of gas in gasworks and the distribution to consumers of gas of all types, including the transportation by pipeline of gas of all types carried out as an independent service;
 - (c) the production and distribution of steam for heating and power purposes;
 - (d) water services, i.e. catchment, purification and distribution of water to consumers;
 - (e) waste and sewage disposal (sanitary services).

¹ OJ No 56, 4.4.1964, p. 845/64.

Article 3

In accordance with the General Programmes, this Directive shall not apply to:

- (a) the exploitation of sources of natural gas (including prospecting and drilling);
- (b) construction work carried out by private enterprise or by public authorities, in particular the construction of plant for the production of electricity or gas; construction work for water catchment, irrigation and regulation of watercourses; the installation of sanitary services and the laying of lines for the transmission of electricity and of mains and pipelines for gas, water, etc.

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 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;
- (c) those which, as a result of rules or practices, prevent beneficiaries from being granted licences or authorisations, or subject beneficiaries to restrictions or to conditions imposed on them alone.

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);

(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);
- the requirement that the following shall be of French nationality:
persons holding licences or permits to utilise hydraulic power (Article 26 of the Law of 16 October 1919) or thermal energy (*Décret* of

30 July 1935); persons holding licences or permits to provide certain public services (*Décret-loi* of 12 November 1938); in the case of companies or firms, the chairman of the Board of Directors (*Conseil d'administration*), the executive directors (*administrateurs délégués*), the managers (*gérants*), the executives authorised to sign on behalf of the company (*directeurs ayant la signature sociale*), the auditors (*commissaires aux comptes*) and two-thirds of the members of a firm (*associés en nom collectif*), or of the members of the Board of Directors (*administrateurs*) or of the Board of Management (*Conseil de direction*) or of the Supervisory Board (*Conseil de surveillance*);

- the requirement that, subject to any exception authorised by *Décret*, any company or firm holding such licence or permit shall have been formed under French law (Article 26 of the Law of 16 October 1919);

(c) *in Italy*

- the requirement that a person shall be of Italian nationality in order to be eligible for enrolment in the register of undertakings (Article 31 of Law No 366 of 20 March 1941, *Raccolta, trasporto e smaltimento dei rifiuti solidi urbani*);

(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 5

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

5. Where in the host Member State proof of financial standing is required, that State shall regard certificates issued by banks in the country 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.

Done at Brussels, 28 February 1966.

For the Council
The President
P. WERNER