10.8.67 OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES No 190/1

COUNCIL DIRECTIVE

of 25 July 1967

concerning the freedom of nationals of a Member State established as farmers in another Member State to transfer from one holding to another

(67/530/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 3 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament[2];

Having regard to the Opinion of the Economic and Social Committee[3];

Whereas the General Programme for the Abolition of Restrictions on Freedom of Establishment includes a special timetable for the attainment of such freedom in agriculture, which takes into account the particular nature of agricultural activities; whereas the third series of measures provided for in this timetable entails that, at the beginning of the third year of the second stage, each Member State shall procure to farmers who have resided in that Member State for more than two years but who are nationals of another Member State the right to transfer from one holding to another;

Whereas the right of transfer which is the subject of this Directive is independent of the legal form under which the holding is exploited; whereas the effect of such transfer must not be to reduce the rights of the person concerned with regard to his status as a foreign national;

Whereas beneficiaries under the Council Directive of 2 April 1963 laying down detailed provisions for the attainment of freedom of establishment in agriculture in the territory of a Member State in respect of nationals of other countries of the Community who have been employed as paid agricultural workers in that Member State for a continuous period of two years (63/261/EEC)[4] already enjoy the same treatment as nationals of such Member State with regard to the right to transfer from one holding to another;

Whereas, where a definition of an agricultural holding is required for the purpose of implementing this Directive, such definition is a matter for the Member State concerned;

Whereas, in Article 4 (2) of the Council Directive of 2 April 1963 laying down detailed provisions for the attainment of freedom of establishment on holdings abandoned or left uncultivated for more than two years (63/262/EEC),[5] the granting of the right of transfer was expressly deferred pending implementation of the present Directive;

HAS ADOPTED THIS DIRECTIVE:

Article 1

All Member States, acting in accordance with the following provisions, shall abolish in respect of nationals and companies or firms of other Member States having pursued in their territory activities as self-employed persons in agriculture for more than two years (hereinafter called 'beneficiaries') all restrictions the effect of which is to exclude or limit their right to transfer from one holding to another.

Article 2

1. For the purposes of this Directive, the 'right to transfer' means the right of beneficiaries to move freely, under the same conditions as nationals of the State concerned, from one holding to another holding

[1] OJ No 2, 15.1.1962, p. 36/62.
[2] OJ No 23, 5.2.1966, p. 386/66.
[3] OJ No 146, 23.8.1965, p. 2465/65.
[4] OJ No 62, 20.4.1963, p. 1323/63.
[5] OJ No 62, 20.4.1963, p. 1326/63.

of their choice in the State in which they have settled. Such transfer shall be permitted irrespective of the legal form under which exploitation of the new or the old holding takes place.

2. For the purposes of this Directive, 'agricultural activities' means:

— activities falling within Annex V to the General Programme for the abolition of restrictions on freedom of establishment (ex Major Group 01, Agriculture, of the International Standard Industrial Classification of all Economic Activities),[6] and in particular:

  (a) general agriculture including the growing of field crops and viticulture; growing of fruits, nuts, seeds, vegetables, flowers, both in the open and under glass;

  (b) raising of livestock, poultry, rabbits, fur-bearing or other animals, bees; and the production of meat, milk, wool, skins and fur, eggs, honey;

— felling of timber, commercial exploitation of woodlands, and planting and replanting of trees, where such operations are practised as ancillary activities on holdings taken over under the provisions of this Directive and are compatible with a Member State's internal legislation and in particular with land utilisation plans.

Article 3

1. Member States shall abolish the following restrictions:

— those which in pursuance of provisions laid down by law, regulation or administrative action prevent beneficiaries from transferring from one holding to another or subject such transfers to conditions which render them more difficult or more costly;

— those existing by reason of administrative practices which, in respect of the right to transfer, 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 by the following means the right of beneficiaries to transfer from one holding to another under the same conditions as nationals of the Member State concerned:

in Belgium:

— the power, under Article 3 of the Law of 19 February 1965 on the pursuit by foreign nationals of activities as self-employed persons, to require agricultural activities to be carried on in a specified place.

in France:

— the requirement that foreign nationals who are beneficiaries under the Council Directive of 2 April 1963 (63/262/EEC) shall obtain authorisation if they wish to establish themselves on holdings other than those abandoned or left uncultivated (Article 3 of *Décret* No 63-1019 of 10 October 1963);

— the requirement that foreign nationals wishing to transfer from one holding to another shall obtain a *carte professionnelle d'exploitant agricole* or an *autorisation d'exploiter* (Article 4 of *Décret* No 5472 of 20 January 1954 and Article 4 of *Arrêté ministériel* of 30 March 1955).

3. Where beneficiaries under the Council Directive of 2 April 1963 (63/262/EEC) exercise their right to transfer they shall retain the rights granted to them pursuant to that Directive.

Article 4

1. Any Member State where the taking up by certain nationals of other Member States of activity as a farmer is still subject to their obtaining a special permit for foreign nationals shall issue to beneficiaries, on their application and without charge, an individual certificate stating their special circumstances in relation to the rules on establishment by foreign farmers.

2. Member States shall grant beneficiaries a right of appeal against any decision whereby a competent authority raises objection to their transfer.

Article 5

Member States shall take the measures necessary to comply with this Directive within six months of its notification and shall forthwith inform the Commission thereof.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 25 July 1967.

For the Council

The President

Fr. NEEF

[6] Statistical Office of the United Nations, Statistical Papers, Series M No 4, Rev. 1 (New York, 1958).