

**Draft Council directive concerning arrangements for freedom to supply services
connected with agriculture and horticulture**

(Submitted by the Commission to the Council on 3 March 1964)

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EXECUTIVE SECRETARIAT OF THE COMMISSION
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Draft Council directive concerning arrangements for freedom to supply services connected with agriculture and horticulture

(Submitted by the Commission to the Council on 3 March 1964)

Explanatory Memorandum

1. *Basis of the proposal*

The general programme for the removal of restrictions on the supply of services ⁽¹⁾, adopted by the Council on 18 December 1961, contains a special provision laying down for agriculture and horticulture a liberalization plan in three stages, as from the end of 1963 (Title V-C-d). The text of this provision is as follows:

"Title V: Time-table.

The removal of restrictions will take place:

[...]

d) For agriculture and horticulture:

1. Before the expiry of the second year of the second stage for:

i) Technical assistance;

ii) The destruction of weeds and vermin; spraying of plants and soil; pruning, picking, packing and packaging, the running of irrigation systems and the hiring out of agricultural machinery.

2. By the end of the second stage for work involving the care and dressing of soil or crops, harvesting, threshing, pressing and gathering whether done by hand or mechanical means.

3. By the end of the third stage for services not included in the above list."

In accordance with Article 63(2) of the Treaty, the Commission submits the present proposal to the Council with a view to putting the above provision into effect.

The same article lays down that the Council must consult the Economic and Social Committee and the European Parliament before taking its decision by qualified majority.

2. *Measure covering all agricultural and horticultural services.*

1. In submitting its draft general programme to the Council, the Commission drew attention to the requirement in Article 63(3) of the Treaty that agricultural services should be given priority in liberalization, since they directly affect production costs (see second point in the considerations of the present proposal).

(1) Official gazette of the European Communities, No 2, 15 January 1962, p. 32/62.

It was therefore proposed that all these services should be grouped together to be dealt with at the earliest possible date compatible with the periods that must elapse before the various parts of the programme could be put into operation, i.e. by the end of the second year of the second stage of the transitional period. At the same time, without disputing the sound basis of this proposal, some of the Member States insisted that only a part of these services should be scheduled for liberalization before 31 December 1963. The Commission and the Council therefore decided that the liberalization measures should be split up, some being introduced before, others after the above date. The third group of services, the liberalization of which is not to take place until the third stage, was at that time considered to be mainly residual; subsequent studies showed that the importance of this group had been somewhat underestimated.

2. As in several other sectors of activity, the directive took longer to prepare than was expected at the time when the general programme was being drawn up, so that the measures applicable to the first group of services will come into force after a delay which will cause them to coincide with the second group (Article 6 1 a) of the proposal).

With a view to lightening the task, the Commission proposes that the Council should adopt immediately the provisions dealing with the third group, of which the content is practically speaking limited to services connected with stock-raising. In this way the liberalization of agricultural and horticultural services can be covered by a single Community text.

3. Favourable influence on agricultural development

Rapid progress has been made in agriculture within the Community, since it has been possible, after completing the initial stage of the removal of obstacles to trade, to go a long way towards drawing up a common policy. For this policy to succeed, it is important that progress should also be made in other sectors of economic integration which, while not coming under common policy, still have a certain relationship with it.

The growth of services and their improved efficiency due to the keener competition that springs from liberalization will have a favourable influence on the development of agriculture. Just as a healthy economic structure cannot exist on a national or regional level without a sufficiently developed services sector, the rapid adaptation of agriculture and its full integration into the economy are out of

the question unless the services required by this sector are fostered along appropriate lines.

In the growth of productivity without which the hoped-for development of agriculture cannot be realized, liberalization of the supply of services between Member States will encourage technical progress and the rationalization of agricultural production, as well as optimum use of the factors of production within the sector. Among the main activities likely to benefit from the liberalization of services, technical assistance, for instance, has a direct effect on the farmer's decisions and action, by acquainting him with new methods of management and techniques and persuading him to accept and assimilate them; with their aid he will be able to adapt his produce and marketing to economic needs. Similarly, the more ready availability of outside services, offered at competitive prices and using powerful or specialized equipment operated by skilled men, offers various advantages to the farmer. He can avoid being over-equipped and can solve temporary or permanent manpower problems; he can organize his work more rationally, correlate his means of production more efficiently, and adapt them to the needs of the market more easily (see second point in the considerations).

4. Persons benefiting by the measures proposed

A brief review of the present situation regarding the supply of services in agriculture within Member States will give an idea of the probable effects of the liberalization measures which the Commission proposes the Council should include in its directive.

1. Services in agriculture and horticulture are provided by different categories of suppliers.

Assistance in technical matters is most often provided by specialized firms or consultants, for instance in the field of management and accounting. It is also supplied as one of the activities of co-operatives or professional associations, or, as a supplementary service, by private firms selling primary products and other materials used in agriculture.

A large amount of agricultural work is done by contractors. There are approximately 8 000 of them in the Federal Republic of Germany, 3 000 in Belgium, 8 000 in France, 25 000 in Italy, 40 in the Grand Duchy of Luxembourg, and 4 000 in the Netherlands. From unofficial and unfortunately very incomplete figures, it appears that in Belgium, for example, where small contractors are still very numerous, the average capital invested in machines by each undertaking was over Bfrs. 2 million in 1961. The land improvement works now proceeding in most of the countries of the Community offer an incen-

tive to a growing number of contractors to acquire specialized heavy equipment. In view of the increasing variety of mechanized operations, a fair number of them can now work for most of the year ⁽¹⁾. In France 70% of the contractors extend their activities over nine months of the year.

A large amount of work is also done for farmers by co-operatives and associations of farmers specially set up for the collective use of agricultural machinery. It is estimated that there are today around 850 organizations with more than 10 members and 5 000 smaller ones serving this purpose in Germany; in Belgium, 117 co-operatives with more than 10 members and 183 smaller ones, in France around 10 000 co-operatives with more than 10 members, in Luxembourg 153 associations and in the Netherlands 209 co-operatives. In Italy, collective ownership and use of machinery by groups of less than five farmers is very common, but the number of co-operatives is comparatively small.

It should also be remembered that in all the member countries many farmers occasionally use their machinery to do work for others, usually by way of mutual aid.

2. Probably agricultural engineers and contractors will be the principal beneficiaries of the liberalization measures proposed in the present directive.

Admittedly, up to now only a few of them cover a wide area. Moreover, the rendering of services across frontiers which should be possible as things stand, has so far come up against insuperable obstacles. There are discrepancies between regulations governing the movement and use of equipment (dimensions, licensing, safety standards, etc.), and in addition customs concessions for temporary imports have too often been withheld by Member States anxious to protect the interests of their own contractors, equipment co-operatives or machinery manufacturers.

However, the liberalization of services in agriculture and horticulture will take place at a moment when the situation is radically changing. As we have seen, these firms are now expanding rapidly. Some of them are specializing and increasing the number of their operating units; they can, for example, undertake extensive land consolidation works a long way from their base, or move combine harvesters several hundred kilometres in the course of a season to gather different crops (wheat, clover heads, maize and rice).

(1) Some operations often carried out by agricultural engineers and contractors (drainage, irrigation, silviculture and forestry) are, however, not covered by the directive. (see fifth point in the considerations).

Others prefer to widen the range of their equipment, so as to have a fleet capable of meeting most of the needs of farmers in their region. Under conditions which vary according to their size, their location and the kind of services they offer, there is no doubt that many of these firms will take advantage of the liberalization of services, whether it be in frontier areas, in the interior of a neighbouring Member State, or even at far greater distances. This extension of their activities will improve their productivity and the profitability of their equipment; thus the directive will be beneficial both to farmers, as we have seen above, and contractors.

It will also be easier to liberalize services at the conclusion of the work at present being done by the Community on the removal of the technical obstacles mentioned above, which do not legally fall within the purview of the directive. Furthermore the recommendation addressed by the Commission to Member States on 8 November 1962, proposing to make temporary duty-free admission the general practice for equipment used in supplying services, represents for the agricultural sector a great improvement on the previous situation (see penultimate point in the considerations).

As regards the consequences of the directive for the large sector constituted by agricultural service co-operatives, the picture is different.

Article 58 of the Treaty, which is referred to in Article 66 in the chapter on services, makes express mention of "co-operative societies" as being among the legal persons assimilated to natural persons benefiting from freedom to supply services. Co-operatives must therefore be included among the suppliers of services referred to in Title I of the General Programme and in principle will benefit from the directive (see Article 1 of the proposal).

The possibility of an agricultural co-operative supplying services in a Member State other than the one in which it is based can be examined in respect of two categories of farmers receiving the service, those who are members of the co-operative and those who are not. In the case of farmers who are not members of the co-operative, the latter would be considered as working for third parties; under national regulations at present in force for agricultural service co-operatives, this is entirely forbidden in one of the member countries and subject to certain restrictions in several others. In the case of the services to be supplied to farmers who are members of the co-operative, under existing regulations this does not appear to be permissible, at any rate in certain member countries, where agricultural co-operatives cannot supply services outside a strictly limited area.

From an examination of provisions now in force in member countries it would appear that the liberalization of services will have very little effect on the activities of agricultural service co-operatives, at least until some of these provisions are modified. The Com-

mission hopes that Community solutions will one day be found to the difficulties arising in this matter, solutions serving the interests of farmers as well as those of the agricultural service co-operatives, particularly in frontier areas.

Proposed draft Council directive on arrangements to liberalize services in agriculture and horticulture

(Proposal submitted by the Commission to the Council)

The European Economic Community,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 63(2 and 3), 106(1) and 227(2) thereof;

Having regard to the General Programme for removal of restrictions on freedom to supply services ⁽¹⁾ and in particular Title V-C-d thereof;

Having regard to the proposal of the Commission;

Having regard to the opinion of the European Parliament;

Having regard to the opinion of the Economic and Social Committee;

Whereas the General Programme has a special time-table for the removal of restrictions with regard to agriculture and horticulture; and whereas the removal of such restrictions was to take place before 31 December 1963 for a first group of services, before the end of the second stage of the transition period for a second group and during the third stage for other services;

Whereas these services directly affect production costs in agriculture and horticulture and assist technical progress, whereas their liberalization must therefore be achieved as soon as possible, in accordance with Article 63(3) of the Treaty and the aims of the common agricultural policy;

Whereas freedom of establishment in occupations covered by the directive is scheduled only for the end of the transition period ⁽²⁾, except for certain paid agricultural workers who benefit under the Council directive of 2 April 1963 ⁽³⁾; and whereas a person being

free to supply services in another member country must not be obliged to satisfy requirements which persons established in that country satisfy merely because their activities are stable and permanent, such as the requirement, in some Member States and in certain circumstances, that such persons be enrolled in the commercial register and affiliated to a professional organization;

Whereas, in view of this difference between the arrangements and timing for the right of establishment and those for freedom to supply services, it is necessary to state in the directive the meaning of supply of services as regards the category which involves the supplier moving to the client's country;

Whereas freedom to supply services in most operations concerned with water-catchment, irrigation, drainage and land reclamation — which are often necessary for certain agriculture and horticultural activities covered by the directive — should be instituted by applying the Council directives of ... and ..., concerning respectively manufacturing and craft industries ⁽⁴⁾ and public works contracts ⁽⁵⁾; and whereas, in accordance with the General Programme, the supply of services in sylviculture and forestry will be the subject of a later directive;

Whereas the arrangements applicable to paid workers accompanying suppliers of services or working on their account are governed, so far working conditions and social security are concerned, by measures taken in pursuance of Articles 48, 49 and 51 of the Treaty;

Whereas conditions relating to movement and residence for all persons exercising freedom of establishment and freedom to supply services are the subject of two directives issued by the Council on ... ⁽¹⁾;

Whereas for freedom to supply services in agriculture and horticulture special importance must be attached to the Recommendation

(1) Official gazette of the European Communities, No 2, 15 January 1962, p. 32/62.

(2) General Programme for the removal of restrictions on freedom to supply services (Official gazette of the European Communities, No. 2, 15 January 1962, p. 36/62, Title IV-F-6 and Annex V ex group 012.

(3) Official gazette of the European Communities, No 62, 20 April 1963, p. 1323/63.

(4) Official gazette of the European Communities No. ... p. /6

(5) *Ibid.*, No p. /6

(6) *Ibid.*, No p. /6

made by the Commission to member countries on 8 November 1962, (1) whereby "implements, appliances or equipment ... which are temporarily imported into one Member State from another Member State, to be used in the performance of any kind of work in the importing Member State, shall be covered by the rules governing temporary importation provided that they do not remain in the importing Member State for more than six months"; and whereas such temporary admission should be duty-free, save in exceptional cases where payment of a proportion of the duties imposed on permanent importation may be required:

Whereas freedom to supply services in agriculture and horticulture, particularly as regards technical assistance and the use of dangerous toxic products, will be facilitated by mutual recognition of diplomas, certificates or other qualifications, and by the co-ordination of certain national regulations; and whereas these matters should be the subject of later directives,

Has issued the present directive:

Article 1

The Member States shall remove, in respect of individuals and companies mentioned in Title I of the General Programme for the removal of restrictions on freedom to supply services, hereinafter referred to as beneficiaries, the restrictions mentioned in Title III of the said programme, regarding the supply of services in the branches of activity mentioned in Article 2 below.

Article 2

1. The provisions of this directive shall apply to the supply of services in agriculture and horticulture included under Title V-C-d of the General Programme, that is to say:

- a) Technical assistance;
- b) The destruction of weeds and vermin, the spraying of plants and soil;
- c) Pruning;
- d) Picking, packing and packaging;
- e) The operation of irrigation systems;
- f) The hiring out of agricultural machinery;
- g) The care of dressing of soil or crops;
- b) Harvesting, threshing, pressing and gathering whether or not by mechanical means;
- i) Other services not listed above.

2. By agriculture and horticulture, for the purposes of this directive, is meant the field of activity included in 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), i.e. mainly:

a) General agriculture, including vine-growing and tropical crops; stock-raising, poultry-raising, rabbit-raising, raising fur-bearing animals, and various other types of animal husbandry; bee-keeping; the production of meat, milk, wool, hides and furs, eggs and honey;

b) Market gardening, the growing of flowers and ornamental plants, whether or not under glass; fruit-tree cultivation and seed production.

3. A detailed list of the services to be included under each of the sections of paragraph 1 is given in an annex to the present directive.

Article 3

1. Freedom to supply services shall include, so far as the beneficiaries of the present directive are concerned, the right to undertake in the territory of Member States other than that in which they are established the preliminary operations necessary for the supply of services, especially seeking clients by advertising and canvassing and making contracts.

2. Should the supplier go to the country where his client resides to pursue his occupation, there is for the purposes of the present directive a supply of services if the supplier's place of business is and remains in a Member State other than that in which he supplies the service.

The supplier can, however, within this State and in the same way as its nationals, acquire, rent, use and dispose of movable or immovable property which he needs to perform his services. Provided that this property does not constitute a permanent establishment in the form of a branch or agency.

3. For the category of services mentioned in paragraph 2, the Member State in which the service is rendered may request the supplier to state the date from which he has been pursuing his occupation in its territory: the supplier may furnish proof of this in any legally valid form. If the supplier supplies several clients, he must if necessary furnish information on each service or series of services separately.

Article 4

1. When the performance of a service included in Article 2, or the enjoyment of rights and privileges attached to it are subject, in the

(1) Official gazette of the European Communities No. 125, 30 November 1962, p. 2767/62.

Member State where the service is rendered, either to enrolment in a commercial register, or to membership of a trade association or other organization of the kind, the beneficiaries of the present directive shall not be obliged to fulfil either of these conditions unless they are rendering a service or a series of services lasting more than three months in any one calendar year.

2. The Member States shall ensure that, in the latter case, it shall be open to beneficiaries of the present directive to enrol in the said register or join the said association with the same rights as nationals, with due regard to the special situation of these beneficiaries, and within the normal period of time.

The right of affiliation does not necessarily include, so far as the beneficiaries of the present directive are concerned, the right to be elected or appointed to office in such associations. In the Grand Duchy of Luxembourg, membership of the Chamber of Commerce does not imply that these beneficiaries have the right to take part in the election of the managing bodies.

3. When the enrolment or affiliation mentioned in paragraph 1 is subject, in a Member State, to furnishing proof of good character or of not having previously been bankrupt or both, the State shall accept as sufficient the production by beneficiaries of the present directive of an extract from their *casier judiciaire* (police record), or failing that an equivalent document, issued by the competent legal or administrative authority of the country where they are established, showing that these requirements have been met.

When the country where the supplier is established does not issue documents testifying to non-bankruptcy, these can be replaced by a declaration made by the person concerned under oath, in the said country, before a legal or administrative authority, a lawyer or a qualified professional organization.

The documents drawn up in accordance with the two foregoing paragraphs must not be dated more than three months earlier than the date on which they are submitted. Member States shall inform one another of the authorities and organizations qualified to issue them, at the same time informing the Commission, within the time-limit laid down in Article 6 (1 a).

Article 5

1. Every Member State shall remove any restriction which places suppliers of services who are nationals of other Member States in a less advantageous position than its own nationals, by prohibiting or hindering the said

suppliers from pursuing their professional activities in its territory, whether the said restriction arises from

a) a law or regulation, or an explicitly discriminatory administrative practice;

b) from a law or regulation or an administrative practice which, although not explicitly discriminatory, does in fact hinder mainly or exclusively the activities of non-nationals.

2. The restrictions to be removed are principally those contained in provisions which forbid or limit the supply of services by beneficiaries in the following ways:

a) *In the Federal Republic of Germany:* by making it necessary to have a "Reisegewerbekarte" before paying exploratory visits to individuals with a view to obtaining orders (Gew.O. of 5 February 1960 para. 55 d; regulation of 30 November 1960);

By making the issue of the said "Reisegewerbekarte" subject to economic needs ("Bedürfnisprüfung"), and the geographical limitations imposed by this document (Gew.O. of 5 February 1960 para. 55 d; regulation of 30 November 1960);

b) *In Belgium:* by the need to possess a foreigner's work permit (Royal decree No. 62 of 16 November 1939; ministerial order of 17 December 1945);

c) *In France:* by the need to possess a foreign trader's card (decree-law of 12 November 1938; decree of 2 February 1939; law of 8 October 1940; law of 10 April 1954; decree No. 59-852 of 9 July 1959).

By the need to be of French nationality to obtain a licence to perform artificial insemination (order of 24 April 1948 — Art. 17).

3. The Member States shall in particular ensure that:

a) Work done in their territory by beneficiaries of the directive shall be eligible, as if it were carried out by their own nationals, for:

i) the granting of various forms of credit, assistance and subsidies provided for this purpose;

ii) benefit from the usual tax reliefs, notably in respect of purchase of fuel used in the supply of services;

b) The beneficiaries shall be able, on the same terms as nationals, to make contracts in private or public law with individuals or companies to supply their professional services, especially in connection with programmes for improving agricultural structures, to submit tenders and participate as joint contractors or sub-contractors;

c) In cases where provisions in force in their territory require certain types of work, especially those involving the use of dangerous toxic products, to be carried out by an approved contractor, the beneficiaries shall be able to apply for and obtain this approval with no more difficulty than their own nationals.

Article 6

1. The Member States shall take the necessary measures to comply with the present directive within the following time-limits:

a) For the supply of services included under Article 2(1) a) to b) inclusive: six months from the date of notification:

b) For the supply of services included under Article 2(1) i); before the end of the first year of the third stage of the transition period.

2. Member States shall inform the Commission immediately of the measures they have taken.

Article 7

The present directive is addressed to the Member States.

ANNEX

Activities to be included under a) to i) of Article 2(1)

a) *"Technical assistance"*:

Advice and information on all sectors of agricultural and horticultural activity, whether individual or collective, in particular with regard to:

- i) methods of agricultural and horticultural production;
- ii) methods (on the farm, market garden or establishment) of preparation, treatment and marketing of agricultural and horticultural products;
- iii) the acquisition and use of means of production;
- iv) the acquisition, installation and utilization of items of capital investment;
- v) the organization of the farm and work on it, agricultural accountancy and in general everything regarding the management of the farm;
- vi) domestic economy;
- vii) training of personnel;
- viii) agricultural co-operation (co-operatives), association and vertical integration;
- ix) improvement of land and structures (for example, the prevention of erosion, drainage and irrigation, consolidation of holdings, extension and re-establishment of agricultural undertakings, cultivation of new land);

b) *"The destruction of weeds and vermin, spraying of plants and soil"*:

All kinds of work carried out manually or by machine, by land vehicles or aircraft, designed to destroy or prevent from appearing by

physical, chemical or biological treatment weeds, parasites of every kind on plants and animals and their products, and harmful creatures or agents found in the earth, in water, in the air, in buildings and on stored products;

c) *"Pruning trees"*:

Pruning trees, shrubs and similar plants (for example, vines and osiers), whether done manually or by mechanical means;

d) *"Picking, packing and packaging"*:

All work done by hand or mechanically connected with:

- i) Gathering the products of fruit, market garden and other horticultural cultivation, and special crops (for example, grapes, hops, tobacco, olives, flower bulbs, and medicinal and condimental herbs);
- ii) Picking, cleaning, drying, storing, packaging and labelling the above-mentioned products;

e) *"The operation of irrigation systems"*:

All operations involving the use of spraying and watering equipment, and other forms of water supply for agricultural and horticultural production;

f) *"Hiring agricultural machinery"*:

Making available by contract and against payment, for a long or short period, various implements and machinery used in agricul-

tural and horticultural work prior to, during and after the growing stage, including tractors and trailers for agricultural use:

g) *"The care and dressing of soil or crops":*

Any operation concerned with making land fit for cultivation or improving it, as well as working the land before, during and after the growing period, done manually or by mechanical means, in particular:

Lifting stumps, ploughing uncultivated land, fallow land and grassland, sub-oil work, terracing, grading, removing stones, filling in holes;

Deep ploughing, rotary hoe operation;

Use of all forms of fertilizers, manure and other soil-improvement materials;

Preparation of topsoil for sowing and planting; sowing and planting;

Hoeing, second dressing, earthing up, rolling;

h) *"Harvesting, threshing, pressing and gathering whether done by and or by mechanical means":*

All work done manually or by mechanical means consisting in harvesting and processing, on the farm, products of cultivable lands and grassland (harvesting the products of fruit and market garden horticultural and special

cultivation being included in paragraph d), in particular:

i) Harvesting and threshing (combine harvesting, threshing in the field or in the barn), of grasses, leguminosae and cruciferae;

ii) Uprooting and gathering up hoed weeds, lifting and treating flax;

iii) Chopping, gathering and baling straw;

iv) All work in connection with preparing and the conservation of green fodder, succulent feeds and roughage, such as cutting, chopping, tearing up and gathering green fodder, drying in field, in stocks or artificially; steaming and silage;

v) Any operations involving pneumatic or mechanical elevators, loaders and unloaders;

vi) Picking, cleaning, drying, storing, packaging and labelling the above-named products;

i) *"Services not included in the above list":*

Any services for agriculture and horticulture not included in the above paragraphs, performed manually or by mechanical means, in particular:

i) Work connected with stock-raising, such as artificial insemination, milking, cleaning stables, sheep shearing;

ii) Certain special work such as the maintenance of hothouses and cold frames.