



Community Topics

Number 6

**The right of establishment and
the supply of services**

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The right of establishment and the supply of services

Gradually, the key pieces which make up the structure of the Community's economic union are being put into place. With the fixing on October 25, 1961, of the broad timetable for abolition of the barriers now hindering firms and individuals from establishing themselves or supplying their services anywhere in the Community, another foundation stone has been laid.

Under the Common Market Treaty, all economic frontiers within the Community are to disappear by the end of the transition period, i.e. by 1970 or at the latest by 1973. Barriers to the movement of goods within the area (chiefly tariffs and quotas) are already being eliminated ahead of schedule. Restrictions on the movement of capital began to be removed on May 11, 1960. On June 12, 1961, the Community set its first timetable for removing restrictions on the free movement of labour.

By its decision of October 25, 1961, the Community's Council of Ministers approved a series of deadlines, beginning with Stage 2 of the transition period (1962-65), which will ultimately enable any citizen of the Community, and any firm established within it, to do business or exercise a profession and to supply services in any Community country on the same terms as nationals or firms of the country concerned.

THE RIGHT OF ESTABLISHMENT AND THE SUPPLY OF SERVICES

The restrictions which are to go

At present, the citizens of any Common Market country who wish to set up in business elsewhere in the Community face a maze of restrictions and difficulties. They may be quite simply prohibited from doing so: or if they are not, their path may be obstructed by any or all of the following restrictive measures affecting foreigners:

- the need for entry and residence permits which limit their freedom;
- the qualifying period of residence or apprenticeship which they may be required to complete;
- special dues or taxes;
- Special sums which they have to put down as 'caution money';
- restrictions on access to supplies or markets;
- restrictions on their participation in firms;
- limitation of their social security rights, or of their compensation in the event of expropriation, requisition, or nationalization;
- limitation of the right to make contracts or acquire property;
- restricted access to credit facilities;
- limited legal protection or right of legal redress;
- restrictions, or even an outright ban, on membership of professional associations;
- refusal to recognize their national qualifications and diplomas (this applies particularly to the professions).

All in all, the restrictions on freedom of establishment are most oppressive in small and medium-sized businesses (regardless of their field of activity), the liberal professions, agriculture, and craft industries.

Some of these handicaps are overcome or mitigated by bilateral agreements which have been concluded between member states. However favourable these are, they are still a long way from the full freedom granted by the Treaty. This lays down that, by the end of the transition period, each member country of the Community shall grant citizens and firms of other Community countries the same treatment as its own citizens and firms. Bilateral agreements deal only with particular points; the Treaty rules cover the whole field of professional and industrial activity and therefore forbid discrimination even when it is produced by national legislation not dealing specifically with establishment and services. The removal of national restrictions, in so far as they discriminate against citizens of other Community countries in the exercise of their business or profession, is subject only to the legitimate requirements of public order, health and safety. By the end of the transition period, no Community citizen will in this sense be an 'alien' or a 'foreigner' in another Community country; all will enjoy similar rights throughout Community territory. This is why Commission Vice-President Giuseppe Caron, announcing the Commission's proposals in this field, called the right of free establishment and the unrestricted provision of services 'an almost revolutionary innovation'.

Services - the Rome Treaty definition

The unrestricted provision of services (*libre prestation de services*), as defined by the Treaty, may at first seem confusing, particularly when compared with the usual economic and statistical definitions of services (economic activities such as transport, banking, distribution, insurance, and medical, legal and personal services, not directly resulting in the production of goods). This is because, in the Treaty, services are largely a residual concept. They comprise 'services (*prestations*) normally supplied against remuneration, in so far as they are not governed by the regulations concerning the free circulation of goods, capital and persons,' (article 60) or by those governing transport (article 61). A wide variety of services, in the economic sense, is in fact covered by these regulations.

Progress by stages

Just as the removal of trade barriers within the Community could not be accomplished overnight without causing dislocation and hardship, so the removal of restrictions on the right of establishment and the freedom to supply services must be gradual; otherwise, upheavals and difficulties might result, particularly for small businesses, agriculture, and craft industries. Apart from the lengthier transition period envisaged for them, the Commission has promised to see that present difficulties in these sectors are not aggravated. Much preparatory work was needed to fix the order of priorities, and in fact the Commission's proposals were only made a few weeks after the deadline by which they were required under the Rome Treaty (December 31, 1959). The Council then had to consult the European Parliament and the representatives of business, the trade unions and the professions in the shape of the Economic and Social Committee. The proposals finally approved by the Council of Ministers will now be implemented through specific directives to be issued during the next few years. In some cases, the timetable may be speeded up.

A system of priorities - industry and trade first

The timetable laid down for freeing the right of establishment and services follows the general timetable of the Rome Treaty - that is, a 12 to 15-year transition period divided into three four-year stages, each of which may be prolonged.

In drawing up its proposals for this timetable, the Commission gave priority, as laid down by the Treaty, to activities which in its opinion were most important for the development of production and trade (article 54 of the Treaty).

The program for the right of free establishment and unrestricted supply of services thus becomes a particularly powerful weapon in the development of a single Community market.

The majority of industrial and trading activities will be freed very rapidly - by the end of the second year of the second stage of the transition period, i.e. by the end of 1963. The same activities on the craft level will be freed simultaneously, but more flexible measures of implementation will safeguard the interests of craftsmen.

Freedom of establishment also means that, as restrictions are lifted, the prevailing laws and regulations of the member states will have to be brought into line. In some cases this will be a complex task; that is why the liberal professions and insurance are among the last activities on which restrictions will be abolished.

Transport

Transport is covered by the right of free establishment in the same way as other sectors. The program envisages the abolition of restrictions by the end of the second year of the third stage for carriers and the end of the second stage for commission agents. For transport by road and inland waterway in particular, the right of free establishment must be fitted in with the common transport policy. The free circulation of services, as far as transport is concerned, will be dealt with as part of the common transport policy.

For individuals - a single date

The Common Market Commission has proposed that all restrictions on the movement and residence of nationals of Community countries in connection with the establishment of a business, professional practice, or the supply of services should be abolished by January 1, 1964.

According to the original program adopted by the Council of Ministers, restrictions on residence and movement would have been abolished piecemeal as the various activities were liberalized. But the Community Governments have requested a common date to avoid constant amendment to their immigration laws.

Agriculture

For agriculture, too, the application of a common policy plays a dominant rôle in the right of establishment.

Restrictions on freedom of establishment will be affected as follows:

1. Restrictions on freedom of establishment on farmlands that have been derelict or uncultivated for more than two years are immediately abolished;
2. Restrictions on freedom of establishment in agriculture were abolished as from the beginning of 1962 for nationals of other member states who have worked as paid agricultural workers in the host country for an unbroken period of two years.
3. From the beginning of the third year of the second stage (normally 1964), the system of farming leases will be adjusted so that the legislation on this subject applies to farmers who are nationals of other member states in the same way as to the nationals of the state concerned. On the same date the right to move from one holding to another shall be accorded to those farmers who are nationals of other member states and who have been established for more than two years.
4. From the beginning of the third stage (normally January 1, 1966), farmers who are nationals of other member states shall be entitled to receive any type of loan or credit and to join co-operatives subject to the same conditions as the nationals of the state concerned.
5. From the beginning of the third year of the third stage (normally January 1, 1968), farmers who are nationals of other member states shall be entitled to receive any type of aid subject to the same conditions as the nationals of the state concerned.
6. All remaining restrictions on admission to, and exercise of, activities set out above shall be abolished at the end of the transition period (normally end-1969)

The timetable in brief

How restrictions are being removed

The following summary is based on the assumption of a twelve-year transition period, whose first four-year stage ended on December 31, 1961. Should either of the two remaining four-year stages be prolonged or shortened, the dates would correspondingly be postponed or advanced.

Stage 1

By the end of 1961

Establishment: Restrictions on farmworkers having completed two years uninterrupted employment in host country. (Restrictions on occupancy of farms idle or waste for two years or more to be removed as from adoption of general program).

Services: Restrictions on movement of material, machines, etc., and on finance payments except for tourist allowances: latter to be increased and freed by end of transition period. One-third enlargement of any bilateral film quotas.

Stage 2

By the end of 1963

Establishment: Restrictions on most of industry and commerce. General restrictions on entry and residence; restrictions on residence of wage-earners preventing access to non-wage-earning activity. Restrictions on public tender, subject to certain conditions. Restrictions on farm leases and land transfer (at beginning of 1964).

Services: General restrictions on entry, exit, and residence. Restrictions on banking services other than capital movement. Restrictions on certain farm services. Restrictions on public tender subject to certain conditions.

By the end of 1965

Establishment: Restrictions on most of agriculture, foodstuffs, retailing, insurance other than life insurance. Restrictions on access to technical services (engineers, architects, accountants, etc.), and to farm credit and co-operatives (at beginning of 1966).

Services: Certain farm services.

Stage 3

By the end of 1967

Establishment: Restrictions on most other agricultural activities, fishing, tobacco industry, life insurance, transport, etc. Restrictions on access to health services (doctors, dentists, pharmacists, etc.), and to farm aid (at beginning of 1968).

Services: Insurance other than life insurance.

By the end of 1969

Removal of restrictions on all other activities

Who will benefit ?

The right of establishment is open to :

Citizens of the Community countries or of the associated overseas countries and territories ;

Companies constituted in accordance with the law of a member state or of an associated overseas country or territory and having their registered office, central management, or main establishment within the Community or in an associated overseas country or territory.

The right to set up branches, subsidiaries or agencies is open to :

Citizens as above, but *established* within the Community or in an associated overseas country or territory ;

Companies as above, except that those which have only their registered office within a member state or an associated overseas country or territory must show that their activity affords *an effective and continuous link* with the economy of a member state or associated overseas country or territory.

Freedom to supply services is open to :

Citizens of the Community countries *established* within the Community ;

Companies constituted in accordance with the law of a member state and having their registered office, central management, or main establishment within the Community, except that those which have only their registered office there are subject to the same conditions as for the right to set up branches, subsidiaries, or agencies.

The only group excluded from these provisions by the Rome Treaty is that of persons holding public office.

Mutual recognition of diplomas

In step with the measures outlined above, work is going ahead on the mutual recognition of professional qualifications. Until this is done, the right of establishment and the right to provide services without restriction cannot be applied effectively for the professions and the skilled crafts. The problem involves not only the recognition, by each member country, of diplomas and certificates granted in other Community countries, but also the fixing of the equivalence between the qualifications recognized in the different Community countries. Whether he is a doctor or a plumber, a person wishing to carry out his tasks in a Community country other than his own will want to know just how his qualifications compare with those of his colleagues and the kind of activities they entitle him to carry out. His colleagues in that country will be just as interested, to safeguard their own interests and those of their clients.

Meanwhile, until these complex tasks have been completed, the Council's decision allows temporary measures to be taken to meet any practical difficulties which arise.

The effect on the Community's economy

The creation of an economic union would be unthinkable without the right of free establishment and the unrestricted supply of services. It would be like creating a large market and then preventing people from enjoying its advantages to the full.

In many fields, the right of establishment and to supply services without restriction will be the key provision enabling Community citizens to obtain the full benefit of the large single market. In many industries, firms are considering whether, in order to conduct their production and sales at the optimum level, they should expand existing plant, set up new factories in their own country, or start operations in another Community country.

The knowledge that they can do the latter on the same terms as citizens of that country will play an important part in their decisions, and accordingly in the sound and realistic location of industry.

Some firms which may not find it necessary to set up branches or new centres of activity in Community countries other than their own may still consider it vital to extend their operations to

those countries in order to take full advantage of rationalization. This is likely to be the case with large public works contractors, whose activities might otherwise be hampered financially and technically. By extending their operations to other Community countries, they may in turn improve their efficiency and their competitiveness in tendering for contracts in non-member countries. Thus the removal of restrictions on the supply of services will offer important new opportunities on overseas as well as Community markets.

In numerous other sectors, the possibility of offering their services without restriction throughout the Community will provide new outlets for go-ahead firms and individuals. Research and after-sales service are likely to be examples of this; and one may well see the emergence of a new group of experts in Community law and medicine who will be consulted by people from all the Community countries.

General program for freedom of establishment¹

Schedule 1

Before the expiry of the second year of the second stage : i.e. by the end of 1963

Coal Mining

Ore Mining

Crude Petroleum and Natural Gas, except prospecting and drilling.

Stone Quarrying, Clay and Sand Pits

Other Non-Metallic Mining and Quarrying

Textiles

Spinning, weaving and finishing, knitting mills, cordage, rope and twine industries, manufacture of textiles not elsewhere classified.

Footwear, Clothing and Textile Piece Goods, including footwear repairs.

Wood and Cork Industries, except furniture. Sawmills, planing and other wood mills, wooden and cane containers and cane small ware, manufacture of cork and wood products not elsewhere classified.

Furniture

Paper and Paper Products

Pulp, paper and paperboard manufacture.

Printing, Publishing and Allied Industries

Leather, and Leather and Fur Products, except footwear and other clothing.

Rubber Products

Chemicals and Chemical Products

Basic industrial chemicals, including fertilizers, vegetable and animal oils and fats, paints,

varnishes and lacquers, miscellaneous chemical products, except medical and pharmaceutical preparations.

Petroleum and Coal Products

Oil refining, miscellaneous petroleum and coal products.

Non-Metallic Mineral Products, except petroleum and coal products.

Sanitary ware, glass and glass products, pottery, china and earthen-ware, cement, non-metallic mineral products not classified elsewhere.

Basic Metal Industries

Iron and steel, non-ferrous industries.

Metal Products, except machinery and vehicles.

Machinery, except electrical machinery.

Electrical Machinery and Appliances

Vehicles

Manufacture and repair of motor vehicles, manufacture of motorcycles and bicycles, transport equipment not elsewhere classified.

Miscellaneous Manufacturing Industries

Professional, scientific, measuring and control instruments, photographic and optical goods, watches and clocks, jewellery and related articles, musical instruments, manufacturing industries not elsewhere classified.

Construction²

Electricity, Gas and Steam Supply

Water and Sanitary Services

Garbage and sewage disposal.

1. (a) In preparing this list the authors have drawn on the 'International Standard Industrial Classification of All Economic Activities' (ISIC), published by the Statistical Office of the United Nations, Statistical Papers, Series M, No. 4, Rev. 1, New York 1958.

This publication, together with its explanatory notes, must be taken as a basis for classification of activities. Any activities not named in ISIC should be included in the nearest related group.

(b) Manufacturing establishments are classified according to the nature of their output, irrespective of whether their products are hand or machine-made.

(c) Major groups are shown in **bold** letters.

2 'Construction' includes public works, irrespective of the form of contract under which they are carried out.

Wholesale Trade

Agents (non-salaried) and commercial travellers, agricultural raw materials, minerals, metals and industrial chemicals (except coal), timber and construction materials, industrial, commercial and agricultural machinery and equipment and motor vehicles, hardware and electrical goods, furniture and household equipment, textiles and apparel, food, beverages and tobacco, wholesale trade not elsewhere classified, except pharmaceutical products.

Banks and Other Financial Institutions

Insurance

Reinsurance.

Real Estate, except surveying.

Transport, including incidental services.

Storage and Warehousing

Communications

Business Services not elsewhere classified.

Entertainment

Motion picture production and distribution, the operation of cinemas exclusively specializing in showing foreign films in their original languages.

Schedule 2

By the end of the second stage : probably by the end of 1965

Agriculture

Agricultural and agronomic services.

Food Manufacturing Industries, except

beverages.

Slaughtering, preparation and preserving of meat, manufactured dairy products, canning and preserving, grain mill products, baking, sugar refining, cocoa, chocolate and sugar confectionery, miscellaneous food products.

Beverage Industries

Distilling, rectifying and blending of spirits, wine, brewing and malt production, soft drinks and carbonated water industries.

Chemicals and Chemical Products

Manufacture of chemical products not elsewhere classified, medical and pharmaceutical preparations.

Wholesale and Retail Trade

Wholesale trade not elsewhere classified, medical and pharmaceutical preparations.

Retail trade, except distribution of

pharmaceuticals and drugs, and hawkers and pedlars.

Insurance

Direct insurance except life insurance.

Real Estate

Surveying.

Business Services

Legal advisers and tax consultants, accounting, auditing and book-keeping services (this group includes all activities carried out by qualified accountants, whatever the field in which they are working), engineering and technical services (this group includes in particular the independent activities of engineers, architects, physicists and chemists, geologists, etc.).

Entertainment, except theatres and cinemas

(this group includes sports instructors).

Personal Services

Restaurants, cafés, bars and other drinking and eating places, hotels, boarding houses, camps and other lodging places.

Schedule 3

By the end of the second year of the third stage : probably by the end of 1967

Agriculture

Veterinary services, animal hospitals and care centres.

Fishing

Deep-sea and coastal fishing, factory-vessel fishing, inland water fishing.

Crude Petroleum and Natural Gas

Prospecting and drilling.

Tobacco Manufactures

Wholesale and Retail Trade

Wholesale trade: minerals, metals and industrial chemicals, coal.

Retail trade: pharmaceuticals, and drugs.

Insurance

Life insurance, insurance agents and brokers.

Transport

Railways, tram and bus operators, road passenger transport, other road transport not elsewhere classified, ocean transport, except coastal traffic, other water transport, air transport, transport not elsewhere classified.

Social Services

Medical and other health services, research and scientific institutes.¹

Personal Services

Domestic service, laundries, cleaning and dyeing, barbers and beauty shops, portrait and commercial photographic studios, personal services not elsewhere classified.

¹ This group also includes medical and veterinary research laboratories for the examination or analysis of foodstuffs.

Schedule 4

By the end of the transition period : probably by the end of 1969

Forestry and Timber

Hunting, Trapping and Game Preservation

Transport

Shipbuilding and repairing, railroad equipment, aircraft construction including space craft and equipment.

Retail Trade

Hawkers and pedlars.

Social Services

Education.

Business Services

Legal advisers other than those mentioned in Schedule 2. Patent-agents.

Entertainment

Motion picture production, distribution and projection (other than those mentioned in Schedule 1), theatres and related services.

Activities not dealt with in the other schedules

Timetable for freeing the supply of services

The following timetable has been adopted for the removal of restrictions on the supply of services :

A. Equipment used in the performance of a service

By the end of the first stage, i.e. the end of 1961.

B. Transfer of funds, payment for services

By the end of the first stage, i.e. the end of 1961.

During the transition period, limitation of foreign currency allowances for tourists can be maintained for the time being, but the limit will be progressively raised from the end of the first stage onwards.

C. Other restrictions

The other restrictions on the freedom to supply services will be lifted not later than on implementation of the timetable for freedom of establishment in the activity concerned.

Nevertheless, the lifting of restrictions on certain activities shall be timed as follows :

Direct Insurance

1. For insurance companies, provided that freedom of establishment has been introduced in the branch concerned, that the laws and regulations governing insurance contracts have been coordinated where any prejudice to the insured or to third parties may ensue from differences between such laws or regulations, and that the formalities necessary for reciprocal recognition and enforcement of judgements have been simplified:
 - a. By the end of the second year of the second stage (probably 1963) for direct insurance, excluding life assurance ;
 - b. By the end of the third stage (probably 1969) for life assurance.
2. For non-wage-earning insurance agents in the sectors set out above, at the same time as freedom to supply their services is accorded to the companies concerned.

Banking

1. By the end of the second year of the second stage (probably 1963) for services other than those connected with movements of capital.
2. Concurrently with the liberalization of capital movements for services connected with such movements.

The Cinematograph Industry

By the end of the third stage (probably end 1969).

Bilateral quotas in existence between member states at the time of the Treaty's coming into force shall, however, be raised by one-third in those states where there is a regulation in force restricting the importation of exposed and developed film.

Agriculture and Horticulture

Before the expiry of the second year of the second stage (probably 1963) for :

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

By the end of the second stage (probably 1965) for work involving the care and dressing of soil or crops, harvesting, threshing, pressing and gathering whether done by hand or by mechanical means.

By the end of the third stage (probably end 1969) for services not included in the above list.

Public Works Contracts

1. Where the supply of services takes the form of participation by the nationals or companies of one member state in the public works contracts of another, or its local authorities, the final date shall be December 31, 1963, subject to the conditions set out below:

a. When the amount of public works contracts awarded by a country or its local or other authorities to the nationals or companies of other members of the Community exceeds a given quota, the country concerned shall be entitled to suspend the award of further contracts to foreign nationals or companies until the end of the current year. This quota shall be determined on the basis of a given percentage of the average total of public works contracts awarded during the preceding two years, the percentage being, in principle, the same for all member states and rising every two years from December 31, 1963 to December 31, 1969.

The amount of public works contracts which the nationals or companies of one country obtain in other Community countries shall also be taken into account in the absence of special circumstances.

b. Public works contracts awarded in any country to the nationals or companies of other Community countries shall be understood to mean:

i. Contracts awarded in any country to the nationals or companies of other Community countries, and

ii. Contracts allocated to such nationals or companies through their agencies or branches established in that country.

Each country shall take the necessary steps to determine and make known periodically the amount of public works contracts awarded to the nationals or companies of other Community countries.

2. The final date shall be the end of the transition period in cases where the supply of services takes the form of participation in public works contracts awarded by public authorities which, on December 31, 1963, have not been included among those referred to in paragraph 1. above.

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