

COUNCIL DIRECTIVE

of 12 December 1977

aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for goods haulage operators and road passenger transport operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment

(77/796/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 49, 57 and 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas, in its Directives 74/561/EEC ⁽³⁾ and 74/562/EEC ⁽⁴⁾, the Council imposed certain conditions for admission to the occupation of goods haulage operator and road passenger transport operator in national and international transport and whereas it is appropriate to ensure the mutual recognition of diplomas, certificates and other evidence of formal qualifications in respect of the activities covered by these Directives; whereas this Directive does not concern those undertakings referred to in the abovementioned Directives unless they are companies or firms within the meaning of Article 58 of the Treaty;

Whereas, in respect of good repute and financial standing, it would be appropriate to acknowledge [relevant] documents issued by a competent authority in the transport operator's country of origin or the country whence he comes as sufficient proof for admission to the activities concerned in a host Member State;

Whereas, in respect of professional competence, the certificates issued pursuant to the Community provisions on admission to the occupation of transport operator, must be recognized as sufficient proof by the host Member State;

Whereas to the extent that Member States also make admission to, or the carrying out of, the activities covered by this Directive by employees subject to the possession of skills and professional competence, this Directive must also apply to that category of person; whereas it would therefore also be appropriate to apply to employees the provisions on proof of good repute and of no previous bankruptcy,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall, in respect of the activities referred to in Article 2, take the measures defined in this Directive concerning the establishment in their territories of the natural persons and undertakings referred to in Title I of the General Programme for the abolition of restrictions on freedom of establishment.

2. This Directive shall also apply to nationals of Member States who, pursuant to Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community ⁽⁵⁾, carry on the activities referred to in Article 2 in the capacity of employees.

Article 2

This Directive shall apply to activities covered by Council Directives 74/561/EEC and 74/562/EEC.

Article 3

1. Without prejudice to paragraphs 2 and 3 below, a host Member State shall, for the purpose of admission to any of the activities referred to in Article 2, accept as

⁽¹⁾ OJ No C 125, 8. 6. 1976, p. 54.

⁽²⁾ OJ No C 197, 23. 8. 1976, p. 35.

⁽³⁾ OJ No L 308, 19. 11. 1974, p. 18.

⁽⁴⁾ OJ No L 308, 19. 11. 1974, p. 23.

⁽⁵⁾ OJ No L 257, 19. 10. 1968, p. 2.

sufficient proof of good repute or of no previous bankruptcy an extract from a judicial record or, failing that, an equivalent document issued by a competent judicial or administrative authority in the transport operator's country of origin or the country whence he comes, showing that these requirements have been met.

2. Where the host Member State imposes on its own nationals 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 stating that the requirements in question have been met. Such certificates shall relate to the specific facts regarded as relevant by the host country.

3. Where the country of origin or country whence the foreign national comes does not issue the document required in accordance with paragraphs 1 and 2, such document may be replaced by a declaration on oath or by a solemn declaration — made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary in that person's country of origin or the country whence he comes; such authority or notary shall 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 body in the same country.

4. Documents issued in accordance with paragraphs 1 and 2 shall not be accepted if produced more than three months after their date of issue. This condition shall apply also to declarations made in accordance with paragraph 3.

Article 4

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

2. Where a Member State imposes on its own nationals certain requirements as to financial standing and where 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 administrative auth-

ority in the country of origin or in the country whence the foreign national comes, stating that the requirements in question have been met. Such certificate shall relate to the specific facts regarded as relevant by the host country.

Article 5

1. Member States shall recognize the certificates referred to in the second subparagraph of Article 3 (4) of Directive 74/561/EEC and the second subparagraph of Article 2 (4) of Directive 74/562/EEC and issued by another Member State as sufficient proof of professional competence if they are based on an examination passed by the applicant or on three years' practical experience.

2. With regard to natural persons and undertakings authorized, before 1 January 1975, under national regulations in a Member State to engage in the occupation of goods haulage operator or passenger transport operator in national and/or international road transport and in so far as the undertakings concerned are companies or firms within the meaning of Article 58 of the Treaty, Member States shall accept as sufficient proof of professional competence certificates stating that the activity concerned has actually been carried on in a Member State for a period of three years. This activity must not have ceased more than five years before the date of submission of the certificate.

In the case of an undertaking, the certificate stating that the activity has actually been carried on shall be issued in respect of one of the natural persons actually in charge of the transport activities of the undertaking.

Article 6

Member States shall, within the time limit laid down in Article 7, designate the authorities and bodies competent to issue the documents referred to in Articles 3 and 4 and the certificate referred to in Article 5 (2). They shall immediately inform the other Member States and the Commission thereof.

Article 7

1. Member States shall bring into force the measures necessary to comply with this Directive before 1 January 1979 and shall immediately inform the Commission thereof.

2. Member States shall forward to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Done at Brussels, 12 December 1977.

Article 8

This Directive is addressed to the Member States.

For the Council

The President

L. DHOORE
