

COUNCIL DIRECTIVE

of 21 June 1989

amending Directive 74/561/EEC on admission to the occupation of road haulage operator in national and international transport operations, Directive 74/562/EEC on admission to the occupation of road passenger transport operator in national and international transport operations and Directive 77/796/EEC 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

(89/438/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the express aim of the common rules introduced by Directives 74/561/EEC ⁽⁴⁾, as last amended by Directive 85/578/EEC ⁽⁵⁾, and by Directive 74/562/EEC ⁽⁶⁾, as last amended by Directive 85/579/EEC ⁽⁷⁾, is to help rationalize the transport market and improve the quality of the services provided by operators and to ensure that the right to freedom of establishment is effectively exercised;

Whereas these Directives lay down three conditions for admission to the occupation of transport operator, namely good repute, appropriate financial standing and professional competence; whereas, although they lay down a number of rules governing professional competence, they do not define the content of the first two conditions, leaving it to the Member States to adopt appropriate measures at national level; whereas they do, however, recommend coordination of such measures at a later date;

Whereas Council Regulation (EEC) No 3164/76 of 16 December 1976 on access to the market in the international carriage of goods by road ⁽⁸⁾, as last amended by Regulation

(EEC) No 1841/88 ⁽⁹⁾, provides that from 1 January 1993 access to the market of transfrontier transport operations will be governed by a system of Community licences issued on the basis of qualitative criteria;

Whereas, as regards the good-repute requirement, it is necessary, in order effectively to reorganize the market, to make admission to the pursuit of the occupation of transport operator uniformly conditional on the applicant having no convictions for serious criminal offences, including offences of a commercial nature, not having been declared unfit to pursue the occupation and on compliance with the regulations applicable to the occupation of transport operator;

Whereas, as regards the requirement of appropriate financial standing, it is necessary, in particular in order to ensure the equal treatment of undertakings in the various Member States, to lay down certain criteria which transport operators must satisfy, and which are applicable to transport operators seeking authorization for admission to the occupation as from 1 January 1990;

Whereas, as regards the requirement of professional competence, it is advisable to stipulate that the applicant transport operator demonstrate such competence by passing a written examination but that Member States may exempt the applicant from such an examination if he provides proof of sufficient practical experience; whereas the list of subjects of which knowledge is required in order to demonstrate the transport operator's professional competence should be supplemented;

Whereas provision should be made for a system of mutual assistance between Member States for the purpose of applying this Directive;

Whereas, in order to take account of the amendments to Directives 74/561/EEC and 74/562/EEC, it is necessary to amend Directive 77/796/EEC ⁽¹⁰⁾, as last amended by Directive 80/1180/EEC ⁽¹¹⁾;

Whereas the Commission should submit, within an appropriate time limit, a well-founded report on the implementation of this Directive,

⁽¹⁾ OJ No C 102, 16. 4. 1988, p. 5.

⁽²⁾ OJ No C 12, 16. 1. 1989, p. 39.

⁽³⁾ OJ No C 318, 12. 12. 1988, p. 11.

⁽⁴⁾ OJ No L 308, 19. 11. 1974, p. 18.

⁽⁵⁾ OJ No L 372, 31. 12. 1985, p. 34.

⁽⁶⁾ OJ No L 308, 19. 11. 1974, p. 23.

⁽⁷⁾ OJ No L 372, 31. 12. 1985, p. 35.

⁽⁸⁾ OJ No L 357, 29. 12. 1976, p. 1.

⁽⁹⁾ OJ No L 163, 30. 6. 1988, p. 1.

⁽¹⁰⁾ OJ No L 334, 24. 12. 1977, p. 37.

⁽¹¹⁾ OJ No L 350, 23. 12. 1980, p. 43.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 74/561/EEC is hereby amended as follows:

1. Article 1 (2) is replaced by the following:

- '2. For the purposes of this Directive,
- "the occupation of road haulage operator" shall mean the activity of any undertaking transporting goods for hire or reward by means of either a self-contained motor vehicle or a combination of coupled vehicles;
 - "undertaking" shall mean any natural person, any legal person, whether profit-making or not, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such personality.'

2. In Article 2:

- in paragraphs 1 and 2, 'natural persons or undertakings' is replaced by 'undertakings';
- paragraph 2 is supplemented by the following subparagraph:
'In the event of unforeseen circumstances, Member States may grant a temporary exemption pending completion of the consultations with the Commission.'

3. In Article 3 (1):

- in the first subparagraph, 'natural persons or undertakings' is replaced by 'undertakings';
- the third subparagraph is replaced by the following:
'Where the applicant is not a natural person:
 - requirement (a) must be satisfied by the person or persons who will continuously and effectively manage the transport operations of the undertaking. Member States may require that other persons in the undertaking also satisfy this requirement,
 - requirement (c) must be satisfied by the person or persons referred to in the first indent.'

4. Article 3 (2) is replaced by the following:

- '2. Member States shall determine the conditions which must be fulfilled by undertakings established within their territory in order to satisfy the good-repute requirement.

They shall provide that this requirement is not satisfied, or is no longer satisfied, if the natural person or persons who are deemed to satisfy this condition under Article 3 (1):

- have been convicted of serious criminal offences, including offences of a commercial nature,
- have been declared unfit to pursue the occupation of transport operator under any regulations in force,
- have been convicted of serious, repeated offences against the regulations in force concerning:
 - the pay and employment conditions in the profession, or
 - road haulage, in particular the rules relating to drivers' driving and rest periods, the weights and dimensions of commercial vehicles, road safety and vehicle safety.

In the cases referred to in the above three indents, the good-repute requirement shall continue to be unsatisfied until rehabilitation or any other measures having an equivalent effect has taken place, pursuant to the existing relevant national provisions.'

5. Article 3 (3) is replaced by the following:

- '3. (a) Appropriate financial standing shall consist in having available sufficient resources to ensure proper launching and proper administration of the undertaking.
- (b) For the purposes of assessing financial standing, the competent authority shall have regard to: annual accounts of the undertaking, if any; funds available, including cash at bank, overdraft and loan facilities; any assets, including property which are available to provide security for the undertaking; costs, including purchase cost or initial payment for vehicles, premises, plant and equipment, and working capital.
- (c) The undertaking must have available capital and reserves of at least ECU 3 000 per vehicle or ECU 150 per tonne of the maximum authorized weight of the vehicles used by the undertaking, whichever is the lower.

Member States may derogate from the first subparagraph in the case of transport undertakings which pursue their activities exclusively on the national market.

- (d) For the purposes of points (a), (b) and (c), the competent authority may accept as evidence of

financial standing confirmation or assurance given by a bank or other suitably qualified establishment. Such confirmation or assurance may be given in the form of a bank guarantee or by any other similar means.

- (e) Points (b), (c) and (d) shall apply only to undertakings authorized in a Member State, as from 1 January 1990 under national regulations, to engage in the activities of a road haulage operator.'

6. Article 3 (4) is replaced by the following:

'4. The condition relating to professional competence shall consist in the possession of skills demonstrated by passing a written examination, which may take the form of a multiple-choice examination, organized by the authority or body designated for this purpose by each Member State in the subjects listed in the Annex.

Member States may exempt from examination applicant transport operators who provide proof of at least five years' practical experience in a transport undertaking at management level.

Member States may exempt the holders of certain advanced diplomas or technical diplomas which provide proof of a sound knowledge of the subjects listed in the Annex to be defined by them from sitting an examination in the subjects covered by the diplomas.

A certificate issued by the authority or body referred to in the first subparagraph must be produced as proof of professional competence.'

7. In Article 5 (1) 'natural persons and undertakings' is replaced by 'undertakings'.
8. In Article 6 (3) 'natural persons or undertakings' is replaced by 'undertakings'.
9. The following Article is inserted:

'Article 6a

1. Where serious offences or minor, repeated offences against the rules governing road haulage have been committed by non-resident transport operators and might lead to withdrawal of the authorization to practise as a road haulage operator, the Member States shall provide the Member State in which such a transport operator is established with all the information in their possession concerning those offences and the penalties they have imposed.

2. If a Member State withdraws the authorization to practise as a road haulage operator in international

transport operations, it shall inform the Commission, which shall pass the necessary information to the Member States concerned.

3. Member States shall afford each other mutual assistance for the purpose of applying this Directive.'
10. In paragraph A of the Annex:
- the following indents are added at the end of point 2:
 - '— managements techniques for a road haulage undertaking,
 - marketing'
 - the following indents are added at the end of point 4:
 - '— carriage of dangerous goods,
 - carriage of foodstuffs,
 - the relevant environmental protection concepts with reference to the use and maintenance of motor vehicles.'

Article 2

Directive 74/562/EEC is hereby amended as follows:

1. In Article 1:

- paragraph 2 is replaced by the following:
 - '2. For the purposes of this Directive:
 - "the occupation of road passenger transport operator" shall mean the activity of any undertaking operating, by means of motor vehicles so constructed and equipped as to be suitable for carrying more than nine persons — including the driver — and intended for that purpose, passenger transport services for the public or for specific categories of users against payment by the person transported or by the transport organizer.
 - "undertaking" shall mean any natural person, any legal person, whether profit-making or not, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such personality.'
 - in paragraph 3, 'natural persons or undertakings' is replaced by 'undertakings'.

2. In Article 2 (1):

- in the first subparagraph, 'natural persons or undertakings' is replaced by 'undertakings',
- the third subparagraph is replaced by the following:
 - 'Where the applicant is not a natural person:

- requirement (a) must be satisfied by the person or persons who will continuously and effectively manage the transport operations of the undertaking. Member States may require that other persons in the undertaking also satisfy this requirement,
- requirement (c) must be satisfied by the person or persons referred to in the first indent.'

3. Article 2 (2) is replaced by the following:

'2. Member States shall determine the conditions which must be fulfilled by undertakings established within their territory in order to satisfy the good-repute requirement.

They shall provide that this requirement is not satisfied, or is no longer satisfied, if the natural person or persons who are deemed to satisfy this condition under Article 2 (1):

- have been convicted of serious criminal offences, including offences of a commercial nature,
- have been declared unfit to pursue the occupation of transport operator under any regulations in force,
- have been convicted of serious, repeated offences against the regulation in force concerning:
 - the pay and employment conditions in the profession, or
 - road haulage, in particular the rules relating to drivers' driving and rest periods, the weights and dimensions of commercial vehicles, road safety and vehicle safety.

In the cases referred to in the above three indents, the good-repute requirement shall continue to be unsatisfied until rehabilitation or other measure having an equivalent effect has taken place, pursuant to the existing relevant national provisions.'

4. Article 2 (3) is replaced by the following:

- '3. (a) Appropriate financial standing shall consist in having available sufficient resources to ensure proper launching and proper administration of the undertaking.
- (b) For the purposes of assessing financial standing, the competent authority shall have regard to: annual accounts of the undertaking, if any; funds available, including cash at bank, overdraft and loan facilities; any assets, including property, which are available to provide security for the undertaking; costs, including purchase cost or initial payment

for vehicles, premises, plant and equipment, and working capital.

- (c) The undertaking must have available capital and reserves of at least ECU 3 000 per vehicle or ECU 150 per seat of the vehicles used by it, whichever is the lower.

Member States may derogate from the first subparagraph in the case of transport undertakings which pursue their activities exclusively on the national market.

- (d) For the purposes of points (a), (b) and (c), the competent authority may accept as evidence of financial standing confirmation or assurance given by a bank or other suitably qualified establishment. Such confirmation or assurance may be given in the form of a bank guarantee or by any other similar means.

- (e) Points (b), (c) and (d) shall apply only to undertakings authorized as from 1 January 1990 in a Member State under national regulations to engage in the activities of a road passenger transport operator.'

5. Article 2 (4) is replaced by the following:

'4. The condition relating to professional competence shall consist in the possession of skills demonstrated by passing a written examination which may take the form of a multiple-choice examination organized by the authority or body designated for this purpose for each Member State in the subjects listed in the Annex.

Member States may exempt from examination applicant transport operators who provide proof of at least five years' practical experience in a transport undertaking at management level.

Member States may exempt the holders of certain advanced diplomas or technical diplomas which provide proof of a sound knowledge of the subjects listed in the Annex to be defined by them from sitting an examination in the subjects covered by the diplomas.

A certificate issued by the authority or body referred to in the first subparagraph must be produced as proof of professional competence.'

6. In Article 4 (1), 'natural persons and undertakings' is replaced by 'undertakings'.

7. In Article 5 (3), 'natural persons or undertakings' is replaced by 'undertakings'.

8. The following Article is inserted:

Article 5a

1. Where serious offences or minor, repeated offences against the rules governing transport have been committed by non-resident transport operators and might lead to withdrawal of the authorization to practise as a passenger transport operator, the Member States shall provide the Member State in which such a transport operator is established with all the information in their possession concerning those offences and the penalties they have imposed.

2. If a Member State withdraws the authorization to practise as a passenger transport operator in international transport operations, it shall inform the Commission, which shall pass the necessary information to the Member States concerned.

3. Member States shall afford each other mutual assistance for the purpose of applying this Directive.'

9. In paragraph A of the Annex,

— the following indents are added at the end of point 2:

- management techniques for a road transport undertaking,
- marketing.'

— the following indent is added at the end of point 4:

- the relevant environmental protection concepts with reference to the use and maintenance of motor vehicles.'

Article 3

Article 5 (1) of Directive 77/796/EEC is replaced by the following:

'1. As from 1 January 1990 Member States shall recognize as sufficient proof of professional competence certificates as referred to in the second subparagraph of Article 3 (4) of Directive 74/561/EEC and in the second

subparagraph of Article 2 (4) of Directive 74/562/EEC which are issued by another Member State.'

Article 4

The certificates issued to transport operators before 1 January 1990 as proof of their professional competence pursuant to the Directives 74/561/EEC and 74/562/EEC in force until that date shall be deemed equivalent to the certificates issued pursuant to the provisions amended by this Directive.

Article 5

1. Member States shall take the measures necessary to implement the provisions amended by this Directive after consulting the Commission. These provisions shall apply from 1 January 1990, without prejudice to Article 5 of Directive 74/561/EEC and Article 4 of Directive 74/562/EEC.

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

3. The Commission shall, before 1 January 1992, submit to the Council a well-founded report on the implementation of this Directive.

Article 6

This Directive is addressed to the Member States.

Done at Luxembourg, 21 June 1989.

For the Council
The President
 C. ARANZADI