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COUNCIL DIRECTIVE 96/26/EC

of 29 April 1996

on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations

(OJ L 124, 23.5.1996, p. 1)

Amended by:

	Official Journal		
	No	page	date
► <u>M1</u> Council Directive 98/76/EC of 1 October 1998	L 277	17	14.10.1998
► <u>M2</u> Council Directive 2004/66/EC of 26 April 2004	L 168	35	1.5.2004

Amended by:

► <u>A1</u> Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003
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COUNCIL DIRECTIVE 96/26/EC
of 29 April 1996

on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Acting in accordance with the procedure referred to in Article 189c of the Treaty ⁽³⁾,

Whereas Council Directive 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations ⁽⁴⁾, Council Directive 74/562/EEC of 12 November 1974 on admission to the occupation of road passenger transport operator in national and international transport operations ⁽⁵⁾ and Council Directive 77/796/EEC 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 ⁽⁶⁾ have been substantially amended on a number of occasions; whereas, for reasons of rationality and clarity, the said Directives should be consolidated in a single text;

Whereas the organization of the transport market is one of the essential factors in the implementation of the common transport policy provided for in the Treaty;

Whereas the adoption of measures aimed at coordinating the conditions of admission to the occupations of road haulage or road passenger transport operators (hereinafter both referred to as 'road transport operator') is likely to favour effective exercise of the right of establishment of those operators;

Whereas it is necessary to provide for the introduction of common rules for admission to the occupation of road transport operator in national and international transport operations in order to ensure that such operators are better qualified, thus contributing to rationalization of the market, improvement in the quality of the service provided, in the interests of users, operators and the economy as a whole, and to greater road safety;

Whereas, therefore, the rules for admission to the occupation of road transport operator should cover the good repute, financial standing and professional competence of operators;

⁽¹⁾ OJ No C 286, 14. 11. 1990, p. 4 and amendment forwarded on 16 December 1993.

⁽²⁾ OJ No C 339, 31. 12. 1991, p. 5 and OJ No C 295, 22. 10. 1994, p. 30.

⁽³⁾ Opinion of the European Parliament of 13 December 1991 (OJ No C 13, 20. 1. 1992, p. 443) and of 20 April 1994 (OJ No C 128, 9. 5. 1994, p. 136), common position of the Council of 8 December 1995 (OJ No C 356, 30. 12. 1995) and Decision of the European Parliament of 28 March 1996 (not yet published in the Official Journal).

⁽⁴⁾ OJ No L 308, 19. 11. 1974, p. 18. Directive as last amended by Regulation (EEC) No 3572/90 (OJ No L 353, 17. 12. 1990, p. 12).

⁽⁵⁾ OJ No L 308, 19. 11. 1974, p. 23. Directive as last amended by Regulation (EEC) No 3572/90 (OJ No L 353, 17. 12. 1990, p. 12).

⁽⁶⁾ OJ No L 334, 24. 12. 1977, p. 37. Directive as last amended by Directive 89/438/EEC (OJ No L 212, 22. 7. 1989, p. 101) and corrigendum (OJ No L 298, 17. 10. 1989, p. 31).

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Whereas, however, it is not necessary to include in these common rules certain kinds of transport which are of limited economic importance;

Whereas, since 1 January 1993, access to the market of transfrontier road haulage transport operations has been 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 road 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 road 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 road transport operators must satisfy;

Whereas, in respect of good repute and financial standing, it would be appropriate to acknowledge relevant documents issued by a competent authority in the road 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, as regards the requirement of professional competence, it is advisable to stipulate that the applicant road 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, in respect of professional competence, the certificates issued pursuant to the Community provisions on admission to the occupation of road transport operator must be recognized as sufficient proof by the host Member State;

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

Whereas this Directive must not affect the obligations of the Member States concerning the deadlines for implementation or application of the Directives set out in Annex II, part B,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

Admission to the occupation of road transport operator*Article 1*

1. Admission to the occupations of road haulage operator or road passenger transport operator shall be governed by the provisions adopted by the Member States in accordance with the common rules contained in this Directive.

2. For the purposes of this Directive:

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— ‘the occupation of road haulage operator’ shall mean the activity of any undertaking transporting goods for hire or reward by means of either a motor vehicle or a combination of vehicles,

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— ‘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,

▼B

- ‘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,

▼M1

- ‘normal residence’ shall mean the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. This last condition shall not be required where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.

▼B*Article 2***▼M1**

1. This Directive shall not apply to undertakings engaged in the occupation of road haulage operator by means of motor vehicles or combinations of vehicles the maximum authorised weight of which does not exceed 3,5 tonnes. Member States may, however, lower this limit for all or some categories of transport operations.

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2. ►**M1** a) ◀ Member States may, after consulting the Commission, exempt from the application of all or some of the provisions of this Directive road haulage undertakings engaged exclusively in national transport operations having only a minor impact on the transport market because of:
 - the nature of the goods carried, or
 - the short distance involved.

In the event of unforeseen circumstances, Member States may grant a temporary exemption pending completion of the consultations with the Commission.

▼M1

- (b) In the case of undertakings engaged in the occupation of road haulage operator using vehicles the maximum authorised weights of which are between 3,5 and 6 tonnes the Member States may, after informing the Commission, exempt from the application of all or part of this Directive undertakings engaged exclusively in local transport and having only a minor impact on the transport market because of the short distances involved.

▼B

3. Member States may, after consulting the Commission, exempt from the application of all or some of the provisions of this Directive undertakings engaged exclusively in certain road passenger transport services for non-commercial purposes or having a main occupation other than that of road passenger transport operator, in so far as their transport operations have only a minor impact on the transport market.

Article 3

1. Undertakings wishing to engage in the occupation of road transport operator shall:

- (a) be of good repute;
- (b) be of appropriate financial standing;

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(c) satisfy the condition as to professional competence.

Where the applicant is a natural person and does not satisfy requirement (c), the competent authorities may nevertheless permit him to engage in the occupation of road transport operator provided that he designates to the said authorities another person, satisfying requirements (a) and (c), who shall continuously and effectively manage the transport operations of the undertaking.

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.

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 paragraph 1:

- (a) have been convicted of serious criminal offences, including offences of a commercial nature,
- (b) have been declared unfit to pursue the occupation of road transport operator under any rules in force,

▼M1

- (c) have been convicted of serious offences against the rules in force concerning:
 - the pay and employment conditions in the profession, or
 - road haulage or road passenger transport, as appropriate, in particular the rules relating to drivers' driving and rest periods, the weights and dimensions of commercial vehicles, road safety and vehicle safety, the protection of the environment and the other rules concerning professional liability.

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In the cases referred to under (a), (b) and (c), the good-repute requirement shall remain unsatisfied until rehabilitation or any other measure having an equivalent effect has taken place, pursuant to the existing relevant national provisions.

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.

▼M1

- (c) The undertaking must have available capital and reserves of at least EUR 9 000 when only one vehicle is used and at least EUR 5 000 for each additional vehicle.

For the purposes of this Directive, the value of the euro in those national currencies which are non-participants in the third stage of monetary union shall be fixed every five years. The rates to be applied shall be those obtained on the first working day of October and published in the *Official Journal of the European Communities*. They shall have effect from 1 January of the following calendar year.

▼ M1

- (d) For the purposes of subparagraphs (a), (b) and (c) the competent authority may accept or require, by way of proof, the confirmation or assurance provided by a bank or other properly qualified institution. Such confirmation or assurance may be given by a bank guarantee, possibly in the form of a pledge or security, or by any other similar means.

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

▼ M1

4. (a) The condition relating to professional competence shall consist in the possession of knowledge corresponding to the level of training provided for in Annex I in the subjects listed therein. It shall be established by means of a compulsory written examination which may be supplemented by an oral examination organised in the form set out in Annex I by the authority or body designated for that purpose by the Member State.
- (b) Member States may exempt from examination applicants who provide proof of at least five years' practical experience in a transport undertaking at management level, provided such applicants sit a test, the arrangements for which shall be determined by the Member States in accordance with Annex I.
- (c) 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 Annex I to be defined by them, from sitting an examination in the subjects covered by the diplomas.
- (d) A certificate issued by the authority or body referred to in (a) shall be produced as proof of professional competence. This certificate shall be drawn up in accordance with the form of certificate set out in Annex Ia.
- (e) With regard to applicants intending to perform the effective and continuous management of undertakings engaging solely in national transport operations, Member States may stipulate that the knowledge to be taken into consideration in order to establish professional competence shall cover only subjects relating to national transport. In that case, the certificate of professional competence, a model of which is contained in Annex Ia hereto, shall state that the holder is qualified to perform the effective and continuous management of undertakings engaging solely in transport operations within the Member State that issued the certificate.
- (f) After consulting the Commission a Member State may require that any natural person who holds a certificate of professional competence issued by a competent authority in another Member State after 1 October 1999 when that person was normally resident in the first Member State sit an additional examination organised by the authority or body designated for that purpose by the first Member State. The additional examination shall cover the specific knowledge relating to the national aspects of the occupation of road haulage operator in the first Member State.

This point shall apply for a period of three years from 1 October 1999. That period may be extended for a further maximum period of five years by the Council acting on a proposal from the Commission according to the rules of the Treaty. It shall apply only to natural persons who, when they obtained the certificate of professional competence under the conditions referred to in the first subparagraph, had not yet obtained the said certificate in a Member State.

▼B*Article 4*

Member States shall determine the circumstances in which a road transport undertaking may, notwithstanding Article 3 (1), be operated on a temporary basis for a maximum period of one year, with extension for a maximum period of six months, in duly justified special cases, in the event of the death or physical or legal incapacity of the natural person engaged in the occupation of road transport operator or of the natural person who satisfies the requirements of Article 3 (1) (a) and (c).

The competent authorities in the Member States may, by way of exception and in certain special cases, definitively authorize a person not fulfilling the requirement of professional competence referred to in Article 3 (1) (c) to operate the transport undertaking provided that such person possesses at least three years' practical experience in the day-to-day management of the undertaking.

Article 5

1. Undertakings furnishing proof that before:
 - 1 January 1978 for Belgium, Denmark, Germany, France, Ireland, Italy, Luxembourg, Netherlands and the United Kingdom,
 - 1 January 1984 for Greece,
 - 1 January 1986 for Spain and Portugal,
 - 3 October 1989 for the territory of the former German Democratic Republic,

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- 1 January 1995 for Austria, Finland and Sweden,

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they were authorized under national rules in a Member State to engage in the occupation of either road haulage or road passenger transport operator, as appropriate, in national and/or international road transport operations shall be exempt from the requirement to furnish proof that they satisfy the provisions of Article 3.

2. However, those natural persons who:
 - after 31 December 1974 and before 1 January 1978 for Belgium, Denmark, Germany, France, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom,
 - after 31 December 1980 and before 1 January 1984 for Greece,
 - after 31 December 1982 and before 1 January 1986 for Spain and Portugal,
 - after 2 October 1989 and before 1 January 1992 for the territory of the former German Democratic Republic,

▼M1

- after 31 December 1994 and before 1 January 1997 for Austria, Finland and Sweden,

▼B

were:

- authorized to engage in the occupation of either road haulage or road passenger transport operator, as appropriate, without having furnished proof, under national regulations, of their professional competence, or
- designated effectively and continuously to manage the transport operations of the undertaking,

must have satisfied the condition of professional competence referred to in Article 3 (4) before:

- 1 January 1980 for Belgium, Denmark, Germany, France, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom,

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- 1 January 1986 for Greece,
- 1 January 1988 for Spain and Portugal,
- 1 July 1992 for the territory of the former German Democratic Republic,

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- 1 January 1997 for Austria, Finland and Sweden.

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The same requirement shall apply in the case referred to in the third subparagraph of Article 3 (1).

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3. (a) All undertakings that are authorised to engage in the occupation of road transport operator before 1 October 1999 shall, as regards the fleets of vehicles they operate on that date, comply with Article 3(3) no later than 1 October 2001.

Such undertakings shall, however, fulfil the conditions imposed in Article 3(3) as regards any additions to their fleets after 1 October 1999.

- (b) Undertakings engaged in the occupation of road haulage operator before 1 October 1999 by means of vehicles for which the maximum authorised weights are between 3,5 and 6 tonnes shall comply with the conditions imposed in Article 3(3) no later than 1 October 2001.

▼B*Article 6*

1. Decisions taken by the competent authorities of the Member States pursuant to the measures adopted on the basis of this Directive and entailing the rejection of an application for admission to the occupation of road transport operator shall state the grounds on which they are based.

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Member States shall ensure that the competent authorities check regularly and at least every five years that undertakings still fulfil the requirements of good repute, financial standing and professional competence.

If the requirement of financial standing is not fulfilled at the time of checking the authorities may, where the undertaking's other economic circumstances give grounds for assuming that the requirements of financial standing will again be sustainably fulfilled within the foreseeable future on the basis of a financial plan, give further notice of not more than one year.

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2. Member States shall see to it that the competent authorities withdraw the authorization to pursue the occupation of road transport operator if they establish that the conditions of Article 3 (1) (a), (b) or (c) are no longer satisfied. In this case, however, they shall allow sufficient time for a substitute to be appointed.

3. With regard to the decisions referred to in paragraphs 1 and 2, Member States shall see to it that the undertakings covered by this Directive are able to defend their interests by appropriate means.

Article 7

- M1 1. Where offences against the rules ◀ governing either road haulage or road passenger transport, as appropriate, have been committed by non-resident road transport operators and might lead to withdrawal of the authorization to practise as a road transport operator, the Member States shall provide the Member State in which such a road transport operator is established with all the information in their possession concerning those offences and the penalties they have imposed.

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► M1 2. ◀ Member States shall afford each other mutual assistance for the purpose of applying this Directive.

TITLE II

Mutual recognition of diplomas, certificates and other evidence of formal qualifications*Article 8*

1. Member States shall, in respect of the activities referred to in this Directive, 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 ⁽¹⁾.

2. Without prejudice to paragraphs 3 and 4, a host Member State shall, for the purpose of admission to the occupation of road transport operator, accept as sufficient proof of good repute ► M1 ——— ◀ an extract from a judicial record, or failing that, an equivalent document issued by a competent judicial or administrative authority in the road transport operator's country of origin or the country whence he comes, showing that these requirements have been met.

3. 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 2, 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.

4. Where the country of origin or country whence the foreign national comes does not issue the document required in accordance with paragraphs 2 and 3, 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. ► M1 ——— ◀

5. Documents issued in accordance with paragraphs 2 and 3 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 4.

Article 9

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 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 certificate shall relate to the specific facts regarded as relevant by the host country.

⁽¹⁾ OJ No 2, 15. 1. 1962, p. 36/62.

▼B*Article 10*

1. As from 1 January 1990, Member States shall recognize as sufficient proof of professional competence certificates as referred to in the fourth subparagraph of Article 3 (4) which are issued by another Member State.

2. With regard to undertakings authorized in Greece, before 1 January 1981, or, in the other Member States, before 1 January 1975, under national rules, to engage in the occupation of road haulage operator or road 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 a legal person, 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.

3. The certificates issued to road transport operators before ►M1 1 October 1999 ◀ as proof of their professional competence pursuant to the provisions in force until that date shall be deemed equivalent to the certificates issued pursuant to the provisions of this Directive.

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4. By way of derogation from paragraph 3, certificates issued to road transport operators before the date of accession in the Czech Republic shall only be deemed equivalent to the certificates issued pursuant to the provisions of this Directive if they have been issued to:

- international road haulage and passenger transport operators under the Act on Road Transport No 111/1994 Sb., as amended by Act No 150/2000 Sb., since 1 July 2000;
- domestic road haulage and passenger transport operators under the Act on Road Transport No 111/1994 Sb., as amended by Act No 150/2000 Sb., since 1 January 2003.

5. By way of derogation from paragraph 3, certificates issued to road transport operators before the date of accession in Estonia shall only be deemed equivalent to the certificates issued pursuant to the provisions of this Directive if they have been issued to:

- international and domestic road haulage operators under the Road Transport Act of 7 June 2000 (RT I 2000, 54, 346) since 1 October 2000;
- international and domestic road passenger operators under the Public Transport Act of 26 January 2000 (RT I 2000, 10, 58) since 1 October 2000.

6. By way of derogation from paragraph 3, certificates issued to road transport operators before the date of accession in Latvia shall only be deemed equivalent to the certificates issued pursuant to the provisions of this Directive if they have been issued to:

- international and domestic road haulage and road passenger transport operators under the Law on Carriage by Road and Regulation of the Ministry of Transport No 9 of 6 February 2001 on the Examination Commission for the Award of Certificates of Professional Competence in National and International Road Haulage and Passenger Transport, since 1 April 2001.

7. By way of derogation from paragraph 3, certificates issued to road transport operators before the date of accession in Lithuania shall only be deemed equivalent to the certificates issued pursuant to the provisions of this Directive if they have been issued to:

- international and domestic road haulage and road passenger transport operators under Order of the Minister of Transport and Communica-

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tions No 3-20 on Examination of Persons Leading Licensed Activities in Road Transport on professional competence of 13 January 2003 since 17 January 2003.

8. By way of derogation from paragraph 3, certificates issued to road transport operators before the date of accession in Hungary shall only be deemed equivalent to the certificates issued pursuant to the provisions of this Directive if they have been issued to:

- international road haulage operators under Government Decree No 20/1991 (I. 29.) Korm. amending Decree No 89/1988 (XII. 20.) MT of the Council of Ministers since 1 February 1991;
- domestic road haulage operators under Government Decree No 31/1995 (III. 24.) Korm. amending Decree No 89/1988 (XII. 20.) MT of the Council of Ministers since 1 April 1995;
- road haulage operators under Government Decree No 68/2001 (IV.20.) Korm. amending Decree No 89/1988 (XII. 20.) MT of the Council of Ministers since 1 May 2001;
- road passenger operators under Decree No 49/2001 (XII. 22.) KöViM of the Minister of Transport and Water Management since 1 January 2002.

9. By way of derogation from paragraph 3, certificates issued to road transport operators before the date of accession in Poland shall only be deemed equivalent to the certificates issued pursuant to the provisions of this Directive if they have been issued to international and domestic road haulage and passenger operators under the Law on Road Transport of 6 September 2001 since 1 January 2002.

10. By way of derogation from paragraph 3, certificates issued to road transport operators before the date of accession in Slovakia shall only be deemed equivalent to the certificates issued pursuant to the provisions of this Directive if they have been issued to international and domestic road haulage and road passenger transport operators under the Road Transport Act No 168/1996, as amended on 19 August 2002, since 1 September 2002.

▼ M1*Article 10a*

Member States shall provide for systems of penalties for infringements of the national provisions adopted in accordance with this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided for shall be effective, proportionate and dissuasive.

Article 10b

After 1 October 1999 Member States shall recognise as sufficient proof of professional competence certificates complying with the form of certificate set out in Annex Ia and issued by the authority or body designated for that purpose by each other Member State.

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The professional competence certificates referred to in paragraphs 4 to 10 of Article 10 may be reissued by the Member States concerned in the form of the certificate set out in Annex Ia.

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TITLE III

Final provisions*Article 11*

Member States shall designate the authorities and bodies competent to issue the documents referred to in Article 8 (2) and in Article 9 and the certificate referred to in Article 10 (2). They shall immediately inform the other Member States and the Commission thereof.

▼B*Article 12*

Articles 8 to 11 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 ⁽¹⁾, carry on the activities of road haulage or road passenger transport operator in the capacity of employees.

Article 13

1. Member States shall take the measures necessary to comply with the provisions of this Directive, no later than the dates listed in Annex II, part B, after consulting the Commission.
2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 14

The Directives listed in Annex II, part A, are hereby repealed, without prejudice to the obligations of the Member States regarding the time limits for implementation or application set out in Annex II, part B.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex III.

Article 15

This Directive is addressed to the Member States.

⁽¹⁾ OJ No L 257, 19. 10. 1968, p. 2. Regulation as last amended by Regulation (EEC) No 2434/92 (OJ No L 245, 26. 8. 1992, p. 1).

▼ **M1***ANNEX I***I. LIST OF SUBJECTS REFERRED TO IN ARTICLE 3(4)**

The knowledge to be taken into consideration for the official recognition of professional competence by the Member States must cover at least the subjects listed below for road haulage and road passenger transport respectively. In relation to these subjects, applicant road haulage and road passenger transport operators must have the levels of knowledge and practical aptitude necessary for the management of a transport undertaking.

The minimum level of knowledge, as indicated below, may not be below level 3 of the the training-level structure laid down in the Annex to Decision 85/368/EEC ⁽¹⁾, that is the level achieved in training acquired in the course of compulsory education supplemented either by vocational training and supplementary technical training or by secondary-level school technical training.

A. Civil law*Road haulage and passenger transport*

The applicant must, in particular:

1. be familiar with the main types of contract used in road transport and with the rights and obligations arising therefrom;
2. be capable of negotiating a legally valid transport contract, notably with regard to conditions of carriage;

Road haulage

3. be able to consider a claim by his principal regarding compensation for loss of or damage to goods during transportation or for their late delivery, and to understand how such a claim affects his contractual liability;
4. be familiar with the rules and obligations arising from the CMR Convention on the contract for the international carriage of goods by road;

Road passenger transport

5. be able to consider a claim by his principal regarding compensation for injury to passengers or damage to their baggage caused by an accident during transportation, or regarding compensation for delays, and to understand how such a claim affects his contractual liability.

B. Commercial law*Road haulage and passenger transport*

The applicant must, in particular:

1. be familiar with the conditions and formalities laid down for plying the trade, the general obligations incumbent upon transport operators (registration, keeping records, etc.) and the consequences of bankruptcy;
2. have appropriate knowledge of the various forms of commercial company and the rules governing their constitution and operation.

C. Social law*Road haulage and passenger transport*

The applicant must, in particular:

1. be familiar with the role and function of the various social institutions which are concerned with road transport (trade unions, works councils, shop stewards, labour inspectors, etc.);
2. be familiar with the employers' social security obligations;
3. be familiar with the rules governing work contracts for the various categories of worker employed by road transport undertakings (form of the contracts, obligations of the parties, working conditions and working hours, paid leave, remuneration, breach of contract, etc.);

⁽¹⁾ Council Decision 85/368/EEC of 16 July 1985 on the comparability of vocational training qualifications between the Member States of the European Community (OJ L 199, 31. 7. 1985, p. 56).

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4. be familiar with the provisions of Regulation (EEC) No 3820/85 ⁽¹⁾ and Regulation (EEC) No 3821/85 ⁽²⁾, and the practical arrangements for implementing these Regulations.

D. Fiscal law*Road haulage and passenger transport*

The applicant must, in particular, be familiar with the rules governing:

1. VAT on transport services;
2. motor-vehicle tax;
3. the taxes on certain road haulage vehicles and tolls and infrastructure user charges;
4. income tax.

E. Business and financial management of the undertaking*Road haulage and passenger transport*

The applicant must, in particular:

1. be familiar with the laws and practices regarding the use of cheques, bills of exchange, promissory notes, credit cards and other means or method of payment;
2. be familiar with the various forms of credit (bank credit, documentary credit, guarantee deposits, mortgages, leasing, renting, factoring, etc.) and with the charges and obligations arising from them;
3. know what a balance sheet is, how it is set out and how to interpret it;
4. be able to read and interpret a profit and loss account;
5. be able to assess the undertakings's profitability and financial position, in particular on the basis of financial ratios;
6. be able to prepare a budget;
7. be familiar with his undertaking's cost elements (fixed costs, variable costs, working capital, depreciation, etc.), and be able to calculate costs per vehicle, per kilometre, per journey or per tonne;
8. be able to draw up an organisation chart relating to the undertaking's personnel as a whole and to organise work plans, etc.;
9. be familiar with the principles of marketing, publicity and public relations, including transport services sales promotion and the preparation of customer files, etc.;
10. be familiar with the different types of insurance relating to road transport (liability, accidental injury/life insurance, non-life and luggage insurance) and with the guarantees and obligations arising therefrom;
11. be familiar with the applications of electronic data transmission in road transport;

Road haulage

12. be able to apply the rules governing the invoicing of road haulage services and know the meaning and implications of Incoterms;
13. be familiar with the different categories of transport auxiliaries, their role, their functions and, where appropriate, their status;

Road passenger transport

14. be able to apply the rules governing fares and pricing in public and private passenger transport;
15. be able to apply the rules governing the invoicing of road passenger transport services.

⁽¹⁾ Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ L 370, 31. 12. 1985, p. 1).

⁽²⁾ Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ L 370, 31. 12. 1985, p. 8). Regulation as last amended by Commission Regulation (EC) No 1056/97 (OJ L 154, 12. 6. 1997, p. 21).

▼ **M1****F. Access to the market***Road haulage and passenger transport*

The applicant must, in particular:

1. be familiar with the occupational regulations governing road transport for hire or reward, industrial vehicle rental and sub-contracting, and in particular the rules governing the official organisation of the occupation, admission to the occupation, authorisations for intra- and extra-Community road transport operations, inspections and sanctions;
2. be familiar with the rules for setting up a road transport undertaking;
3. be familiar with the various documents required for operating road transport services and be able to introduce checking procedures for ensuring that the approved documents relating to each transport operation, and in particular those relating to the vehicle, the driver, the goods and luggage are kept both in the vehicle and on the premises of the undertaking;

Road haulage

4. be familiar with the rules on the organisation of the market in road haulage services, on freight handling and logistics;
5. be familiar with frontier formalities, the role and scope of T documents and TIR carnets, and the obligations and responsibilities arising from their use;

Road passenger transport

6. be familiar with the rules on the organisation of the market in road passenger transport;
7. be familiar with the rules for introducing road passenger transport services and be able to draw up transport plans.

G. Technical standards and aspects of operation*Road haulage and passenger transport*

The applicant must, in particular:

1. be familiar with the rules concerning the weights and dimensions of vehicles in the Member States and the procedures to be followed in the case of abnormal loads which constitute an exception to these rules;
2. be able to choose vehicles and their components (chassis, engine, transmission system, braking system, etc.) in accordance with the needs of the undertaking;
3. be familiar with the formalities relating to the type approval, registration and technical inspection of these vehicles;
4. understand what measures must be taken to reduce noise and to combat air pollution by motor vehicle exhaust emissions;
5. be able to draw up periodic maintenance plans for the vehicles and their equipment;

Road haulage

6. be familiar with the different types of cargo-handling and loading devices (tailboards, containers, pallets, etc.) and be able to introduce procedures and issue instructions for loading and unloading goods (load distribution, stacking, stowing, blocking and chocking, etc.);
7. be familiar with the various techniques of *piggy-back* and roll-on roll-off combined transport;

▼ **M1**

8. be able to implement procedures for complying with the rules on the carriage of dangerous goods and waste, notably those arising from Directive 94/55/EC ⁽¹⁾, Directive 96/35/EC ⁽²⁾, and Regulation (EEC) No 259/93 ⁽³⁾;
9. be able to implement procedures for complying with the rules on the carriage of perishable foodstuffs, notably those arising from the Agreement on the international carriage of perishable foodstuffs and on the special equipment to be used for such carriage (ATP);
10. be able to implement procedures for complying with the rules on the transport of live animals.

H. Road safety*Road haulage and passenger transport*

The applicant must, in particular:

1. know what qualifications are required for drivers (driving licence, medical certificates, certificates of fitness, etc.);
2. be able to take the necessary steps to ensure that drivers comply with the traffic rules, prohibitions and restrictions in force in different Member States (speed limits, priorities, waiting and parking restrictions, use of lights, road signs, etc.);
3. be able to draw up drivers' instructions for checking their compliance with the safety requirements concerning the condition of the vehicles, their equipment and cargo, and concerning preventive measures to be taken;
4. be able to lay down procedures to be followed in the event of an accident and to implement appropriate procedures for preventing the recurrence of accidents or serious traffic offences;

Road passenger transport

5. have elementary knowledge of the layout of the road network in the Member States.

II. ORGANISATION OF THE EXAMINATION

1. Member States shall organise a compulsory written examination which they may supplement by an optional oral examination to establish whether applicant road transport operators have achieved the required level of knowledge in the subjects listed in part I, in particular, their capacity to use the instruments and techniques relating thereto and to fulfil the corresponding executive and coordination duties.
 - (a) The compulsory written examination shall involve two tests, namely:
 - written questions consisting of either multiple choice questions (each with four possible answers), questions requiring direct answers or a combination of both systems,
 - written exercises/case studies.

The minimum duration of each test is two hours.
 - (b) Where an oral examination is organised, Member States may stipulate that participation is subject to successful completion of the written examination.
2. Where Member States also organise an oral examination, they must provide, in respect of each of the three tests, for a weighting of marks of a minimum of 25 % and a maximum of 40 % of the total number of marks to be given.

Where Member States organise only a written examination they must provide, in respect of each test, for a weighting of marks of a minimum of 40 % and a maximum of 60 % of the total number of marks to be given.

⁽¹⁾ Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road (OJ L 319, 12. 12. 1994, p. 7). Directive as last amended by Commission Directive 96/86/EC (OJ L 335, 24. 12. 1996, p. 43).

⁽²⁾ Council Directive 96/35/EC of 3 June 1996 on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway (OJ L 145, 19. 6. 1996, p. 10).

⁽³⁾ Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ L 30, 6. 12. 1993, p. 1). Regulation as last amended by Regulation (EC) No 120/97 (OJ L 22, 24. 1. 1997, p. 14).

▼ M1

3. With regard to all the tests, applicants must obtain an average of at least 60 % of the total number of marks to be given, achieving in any given test not less than 50 % of the total number of marks possible. In one test only, a Member State may reduce that mark from 50 % to 40 %.

▼ **M1**

ANNEX Ia

EUROPEAN COMMUNITY

(Stout fawn paper — Format: DIN A4)

(Text in the official language(s) or one of the official languages of the Member State issuing the certificate)

Distinctive symbol of the Member State concerned ⁽¹⁾Designation of the competent authority or body ⁽²⁾**CERTIFICATE OF PROFESSIONAL COMPETENCE IN NATIONAL
[AND INTERNATIONAL] ⁽³⁾ ROAD HAULAGE [PASSENGER TRANSPORT] ⁽³⁾**

No . . .

We ⁽²⁾, hereby certify:(a) that ⁽⁴⁾

born in on

has passed the tests of the examination (year:; session:) ⁽⁵⁾ organised for the award of the certificate of professional competence in national [and international] ⁽³⁾ road haulage [passenger transport] ⁽³⁾ in accordance with ⁽⁶⁾(b) that the person referred to in (a) is qualified to work in a professional capacity in an undertaking responsible for road haulage [road passenger transport] ⁽³⁾:

- engaging solely in national transport ⁽³⁾,
- engaging in international transport ⁽³⁾.

This certificate constitutes the sufficient proof of professional competence referred to in Article 10(1) of Council Directive 96/26/EC of 29 April 1996 on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations.

Issued at, on

. ⁽⁷⁾

►⁽¹⁾ (1) Distinctive symbol of the State: (B) Belgium, (CZ) Czech Republic, (DK) Denmark, (D) Germany, (EST) Estonia, (GR) Greece, (E) Spain, (F) France, (IRL) Ireland, (I) Italy, (CY) Cyprus, (LV) Latvia, (LT) Lithuania, (L) Luxembourg, (H) Hungary, (M) Malta, (NL) Netherlands, (A) Austria, (PL) Poland, (P) Portugal, (SLO) Slovenia, (SK) Slovakia, (FIN) Finland, (S) Sweden, (UK) United Kingdom. ◀

⁽²⁾ Authority or body designated in advance for this purpose by each Member State of the European Community to issue this certificate.

⁽³⁾ Delete as appropriate.

⁽⁴⁾ Surname and forenames; place and date of birth.

⁽⁵⁾ Identification of the examination.

⁽⁶⁾ Reference to the provisions of national law adopted in this field in accordance with the abovementioned Directive.

⁽⁷⁾ Signature and stamp of the competent authority or body issuing the certificate.



ANNEX II

PART A

REPEALED DIRECTIVES

(referred to in Article 14)

- Directive 74/561/EEC
 - Directive 74/562/EEC
 - Directive 77/796/EEC
- and their successive amendments:
- Directive 80/1178/EEC
 - Directive 80/1179/EEC
 - Directive 80/1180/EEC
 - Directive 85/578/EEC
 - Directive 85/579/EEC
 - Directive 89/438/EEC
 - Regulation (EEC) No 3572/90: only Articles 1 and 2

PART B

<i>Directive</i>	<i>Deadline for implementation or application</i>
74/561/EEC (OJ No L 308, 19. 11. 1974, p. 18)	1 January 1977
	1 January 1978
80/1178/EEC (OJ No L 350, 23. 12. 1980, p. 41)	1 January 1981
85/578/EEC (OJ No L 372, 31. 12. 1985, p. 34)	1 January 1986
89/438/EEC (OJ No L 212, 22. 7. 1989, p. 101)	1 January 1990
74/562/EEC (OJ No L 308, 19. 11. 1974, p. 23)	1 January 1977
	1 January 1978
80/1179/EEC (OJ No L 350, 23. 12. 1980, p. 42)	1 January 1981
85/579/EEC (OJ No L 372, 31. 12. 1985, p. 35)	1 January 1986
89/438/EEC (OJ No L 212, 22. 7. 1989, p. 101)	1 January 1990
77/796/EEC (OJ No L 334, 24. 12. 1977, p. 37)	1 January 1979
80/1180/EEC (OJ No L 350, 23. 12. 1980, p. 43)	1 January 1981
89/438/EEC (OJ No L 212, 22. 7. 1989, p. 101)	1 January 1990



ANNEX III

CORRELATION TABLE

Directive 74/561/EEC	Directive 74/562/EEC	Directive 89/438/EEC	Directive 77/796/EEC	This Directive
Article 1 (1)	Article 1 (1)			Article 1 (1)
Article 1 (2) first indent	—			Article 1 (2) first indent
—	Article 1 (2) first indent			Article 1 (2) second indent
Article 1 (2) second indent	Article 1 (2) second indent			Article 1 (2) third indent
Article 2 (1), (2)	—			Article 2 (1), (2)
—	Article 1 (3)			Article 2 (3)
Article 3	Article 2			Article 3
Article 4	Article 3			Article 4
Article 5	Article 4			Article 5
Article 6	Article 5			Article 6
Article 6a	Article 5a			Article 7
Article 7	Article 6			—
			Article 1 (1)	Article 8 (1)
			Article 3	Article 8 (2)
			Article 4	Article 9
			Article 5 (1)	Article 10 (1)
			Article 5 (2)	Article 10 (2)
—	—	Article 4		Article 10 (3)
			Article 6	Article 11
			Article 1 (2)	Article 12
—	—	Article 5		Article 13
—	—			Article 14
Article 8	Article 7			Article 15
Annex point A. 1	Annex point A. 1			Annex I point A (Law)
Annex point A. 2, 3, 4, 5	—			Annex I point A. 1 (a), (b), (c), (d)
—	Annex point A. 2, 3, 4, 5			Annex I point A. 2 (a), (b), (c), (d)
Annex point B	Annex point B			Annex I point B
—	—	—	—	Annex II Part A
—	—	—	—	Annex II Part B
—	—	—	—	Annex III