COUNCIL DIRECTIVE 98/76/EC

of 1 October 1998

amending Directive 96/26/EC 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(1) 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 laid down in Article 189c of the Treaty [3],

(1) Whereas the differences between national regulations on admission to the occupation of road transport operator and the mutual recognition of diplomas, certificates and other evidence of formal qualifications could lead to distortions of competition;

(2) Whereas it is therefore necessary to continue the process of harmonisation in this area, within the operational framework of the internal market, by further strengthening the common rules provided for in Directive 96/26/EC [4];

(3) Whereas it is necessary, because of developments in the road haulage market and the operational requirements of the internal market, to extend the scope of Directive 96/26/EC to certain categories of road haulage operators for hire or reward using low-tonnage vehicles, such as courier services, subject to a specific derogation for road haulage undertakings engaged in local short-distance transport operations and using vehicles of a maximum authorised weight of between 3,5 and 6 tonnes;

(4) Whereas with regard to good repute, provision should be made for more stringent requirements, including requirements concerning the protection of the environment and professional liability;

(5) Whereas with regard to financial standing, it is necessary, in order to avoid imbalances in the market, to fix appropriate available capital and reserves at a higher minimum level and to fix the value of the euro in those national currencies which are non-participants in the third stage of monetary union every five years;

(6) Whereas, with regard to professional competence, it is necessary that applicant road transport operators provide proof of a harmonised minimum level of training in the same subjects and that they hold certificates, drawn up in accordance with a comparable model, certifying professional competence, in the commercial field in particular, at a harmonised minimum level and on the basis of uniform testing methods in all the Member States; whereas it is also necessary, for this purpose, to harmonise certain aspects of the organisation of the examination;

(7) Whereas the right of Member States to organise compulsory courses of preparation for the examinations of professional competence for applicants taking them for the first time who are normally resident within their territories shall remain unaffected;

(8) Whereas, therefore, the levels of knowledge to be taken into consideration for the issue of a certificate of professional competence, without prejudice to Directive 92/26/EC, differ from one Member State to another; whereas, because of these differences, national measures are therefore likely to vary considerably within the framework defined in Annex I to the said Directive, particularly as regards the qualifications of transport operators, the quality of service and road safety;

(9) Whereas it should be accepted that, for a limited period and after consulting the Commission, Member States may require persons who have never previously obtained a certificate of professional competence in a Member State, but who have passed an examination of professional competence in one Member State when they were normally resident in another Member State where they intend to take up the occupation of road transport operator for the first time, to sit an additional examination; whereas such additional examination must cover areas in which national aspects of the profession differ from those of the

[1] OJ C 95, 24. 3. 1997, p. 66 and OJ C 324, 25. 10. 1997, p. 6.
[2] OJ C 287, 22. 9. 1997, p. 21.
[3] Opinion of the European Parliament of 17 July 1997 (OJ C 286, 22. 9. 1997, p. 224), Council common position of 17 March 1998 (OJ C 161, 27. 5. 1998, p. 12) and European Parliament Decision of 17 June 1998 (OJ C 210, 6. 7. 1998).
[4] OJ L 124, 23. 5. 1996, p. 1.

Member State where they passed the examination, in particular the specific national commercial, social, fiscal and technical aspects or aspects linked to the organisation of the market and to company law;

(10) Whereas it is necessary to introduce transitional measures for the implementation of Directive 96/26/EC in Austria, Finland and Sweden;

(11) Whereas it is necessary to check periodically whether authorised transport operators still fulfil the requirements of good repute, financial standing and professional competence;

(12) Whereas it is necessary for Member States to impose effective, proportionate and dissuasive penalties in the interests of the smooth operation of the internal market,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 96/26/EC is hereby amended as follows:

(1) in Article 1(2),

— the first indent shall be replaced by the following:

'— "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;'

— the following indent shall be added:

'— "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.'

(2) in Article 2:

— paragraph 1 shall be replaced by the following:

'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.'

— the present text of paragraph 2 shall become paragraph 2(a) and the following subparagraph shall be inserted:

'(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.'

(3) in Article 3:

— paragraph 2(c) shall be replaced by the following:

'(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.'

— paragraph 3(c) shall be replaced by the following:

'(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.'

— paragraph 3(d) shall be replaced by the following:

'(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.'

— paragraph 4 shall be replaced by the following:

'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.'

(4) in Article 5:

— in paragraph 1 the following indent shall be added:

'— 1 January 1995 for Austria, Finland and Sweden.'

— in paragraph 2, first subparagraph, the following indent shall be added after the indent commencing '— after 2 October 1989':

'— after 31 December 1994 and before 1 January 1997 for Austria, Finland and Sweden.'

— in paragraph 2 the following indent shall be added at the end of the first subparagraph after the indent commencing '— 1 July 1992':

'— 1 January 1997 for Austria, Finland and Sweden.'

— the following paragraph shall be added:

'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 befor 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.'

(5) in Article 6(1) the following subparagraphs shall be added:

'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.'

(6) in Article 7:

— the beginning of paragraph 1 shall be replaced by '1. Where offences against the rules . . .',

— the existing paragraph 2 shall be deleted and the existing paragraph 3 shall become new paragraph 2;

(7) in Article 8:

— in paragraph 2 the words 'or of no previous bankruptcy' shall be deleted,

— in paragraph 4 the last sentence shall be deleted;

(8) in Article 10(3) the date of 1 January 1990 shall be replaced by the date laid down in Article 2(1), first subparagraph, of this Directive;

(9) the following Articles shall be inserted after Article 10:

'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.'

(10) Annex I shall be replaced by Annex I to this Directive and Annex Ia as set out in Annex II to this Directive shall be added.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 1 October 1999. They shall forthwith inform the Commission thereof.

When the Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

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

Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 1 October 1998.

For the Council

The President

C. EINEM