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