Council Directive of 9 November 1987 on access to the occupation of carrier of goods by waterway in national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation (87/540/EEC)

COUNCIL DIRECTIVE

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on access to the occupation of carrier of goods by waterway in national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation

(87/540/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 organization of the transport market is one of the necessary preconditions for the implementation of the common transport policy which is provided for in the Treaty;

Whereas the adoption of measures designed to coordinate the conditions for access to the occupation of carrier is likely to encourage the achievement of freedom to provide services and the effective exercise of the right of establishment;

Whereas provision must be made for the introduction of common rules governing access to the occupation of carrier of goods by waterway in national and international transport in order to improve the level of qualifications of carriers; whereas such improvement is likely to help towards putting the market on a sounder footing, eliminating structural excess capacities and improving the quality of the service provided, in the interests of users, carriers and the economy as a whole;

Whereas satisfactory results have been obtained through the implementation of 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)] 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[(5)];

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Whereas the rules governing access to the occupation of carrier of goods by waterway should therefore cover at least the professional competence of the carrier; whereas Member States may also maintain or lay down rules governing the good repute and financial standing of the carrier;

Whereas, however, there is no need to include in the common rules laid down by this Directive certain transport activities with a minor economic impact and whereas transport on own account is by definition excluded from these rules; whereas it also seems appropriate to provide for the possible exclusion from the scope of this Directive of carriers operating exclusively on navigable waterways within their territory not linked to the waterway network of another Member State;

Whereas there is a need for mutual recognition of diplomas, certificates and other evidence of formal qualifications for the activities covered by this Directive, in order to promote the effective exercise of the right of establishment;

Whereas the certificate of professional competence issued pursuant to the provisions of this Directive regarding access to the occupation of carrier must be recognized as sufficient proof by the host Member State;

Whereas Member States which impose on their own nationals certain requirements as to good repute and financial standing must recognize the productinon of appropriate documents issued by a competent authority in the carrier's State of origin or prior establishment as sufficient evidence in respect of nationals of other Member States;

Whereas, further, this Directive must also apply to employed persons covered by Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community[(6)], if the Member States make access to the occupation covered by this Directive or the exercise thereof by such persons conditional on the possession of professional knowledge and skills,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Definitions and scope

Article 1

1 Access to the occupation of carrier of goods by waterway in national and international transport shall be governed by the provisions adopted by the Member States pursuant to the common rules laid down in this Directive.

2 For the purposes of this Directive:

— ‘occupation of carrier of goods by waterway vessel’ means the activities engaged in by any natural person or any undertaking carrying goods by inland waterway for hire or reward, even if this occupation is not exercised on a regular basis,

— ‘undertaking’ means companies or firms within the meaning of Article 58 of the Treaty and groups or cooperatives of operators whose purpose is to obtain business from shipping agents for distribution among their members, irrespective of whether such groups or cooperatives possess legal personality.

Article 2

This Directive shall not apply to natural persons or undertakings pursuing the occupation of carrier of goods by waterway using vessels with a deadweight capacity at maximum draft not exceeding 200 tonnes.

Member States may lower this limit for all or some transport operations or certain categories of transport.

This Directive shall likewise not apply to natural persons or undertakings operating ferries.

CHAPTER II

Access to the occupation

Article 3

1 Natural persons or undertakings wishing to pursue the occupation of carrier of goods by waterway must satisfy the condition of professional competence, even if they are members of a group or cooperative of operators within the meaning of Article 1 (2) or exercise their occupation exclusively for a specific period of time as subcontractors to another waterway transport undertaking.

If the applicant is a natural person who does not satisfy that condition, the competent authorities may nevertheless authorize him to pursue the occupation of carrier of goods by waterway provided that he indicates to them another person satisfying the condition who in actual fact manages the transport operations on a permanent basis.

If the applicant is an undertaking within the meaning of Article 1 (2) one of the natural persons who in actual fact manage the undertaking's transport operations on a permanent basis must meet the condition of professional competence.

2 The condition of professional competence shall consist in the possession of the standard of competence accepted by the authority or body appointed for this purpose by each Member State in the subjects listed in the Annex. The necessary knowledge shall be acquired either by attending courses or by practical experience in a waterway transport undertaking, or by a combination of the two. Member States may exempt the holders of certain diplomas from providing evidence of their knowledge of the subjects listed in the Annex which are covered by the said diplomas.

After verifying possession of the knowledge concerned, the authority or body referred to in the first subparagraph shall issue a certificate.

3 A Member State may, after consulting the Commission, exempt from application of this Directive carriers operating exclusively on navigable waterways within their territory not linked to the waterway network of another Member State. Practical experience gained in a transport undertaking exempted from application of these conditions shall not give entitlement to the certificate referred to in paragraph 2.

Article 4

1 Member States shall lay down the terms on which a transport undertaking may, by way of derogation from Article 3 (1), operate on a provisional basis for a maximum of one year, which period may be extended by not more than six months in special duly justified cases, in the

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event of the death or physical or legal incapacity of the natural person pursuing the occupation of carrier or the natural person complying with the provisions of Article 3.

2 However, the competent authorities of the Member States may, by way of exception, permanently authorize in certain special cases the operation of an undertaking by a person who does not meet the condition of professional competence referred to in Article 3, but who has had at least three years' practical experience in the everyday management of the undertaking concerned.

Article 5

Natural persons who provide proof that before 1 July 1990 they legally pursued in a Member State the occupation of carrier of goods by waterway in national or international transport shall, for the purposes of obtaining the certificate referred to in Article 3 (2), be exempt from the obligation to prove that they meet the conditions laid down therein.

Article 6

1 Reasons must be given for any decision rejecting an application for access to the occupation of carrier of goods by waterway taken by the competent authorities of the Member States pursuant to the measures adopted on the basis of this Directive.

2 Member States shall ensure that the competent authorities withdraw an authorization to pursue the occupation of carrier of goods by waterway if they find that the conditions laid down in Article 3 are no longer met, subject to allowing, where appropriate, sufficient time for the recruitment of a replacement.

3 Member States shall ensure that the natural persons and undertakings referred to in this Directive have the opportunity to defend their interests by appropriate means with regard to the decisions referred to in paragraphs 1 and 2.

CHAPTER III

Mutual recognition of diplomas, certificates and other evidence of formal qualifications

Article 7

Member States shall recognize the certificates referred to in the second subparagraph of Article 3 (2) which have been issued by another Member State as sufficient proof of professional competence.

Article 8

1 Where a Member State imposes on its own nationals certain requirements as to good repute or absence of bankruptcy, that State shall accept as sufficient evidence in respect of nationals of other Member States, without-prejudice to paragraphs 2 and 3, an extract from a judicial record or, failing that, an equivalent document issued by a competent judicial or administrative authority in the carrier's country of origin or prior establishment showing that these conditions have been met.

2 Where a Member State imposes on its own nationals certain requirements as to good repute, and proof that such requirements are met cannot be furnished by means of the document referred to in paragraph 1, that State shall accept as sufficient evidence in respect of nationals of other Member States a certificate issued by a competent judicial or administrative authority in the State of origin or prior establishment stating that the requirements in question have been met. Such certificates shall relate to the specific facts regarded as relevant by the host State.