II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 12 November 1974

on admission to the occupation of road haulage operator in national and international transport operations

(74/561/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;

Having regard to the Opinion of the European Parliament (1);

Having regard to the Opinion of the Economic and Social Committee (2);

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 occupation of haulage operator is likely to favour effective exercise of the right of establishment;

Whereas it is necessary to provide for the introduction of common rules for admission to the occupation of road haulage operator in national and international transport operations in order to ensure that road haulage 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 haulage operator should cover the good repute, financial standing and professional competence of operators;

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

Whereas transitional measures must be introduced to enable Member States to adapt their national rules to those of the Community;

Whereas the harmonization of conditions for applying these common rules requires that provision be made for a Community consultation procedure as regards the appropriate national measures to be taken,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Admission to the occupation of road haulage 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, 'the occupation of road haulage operator' means the activity of any natural person or any undertaking transporting goods for hire or reward by means of either a self-contained motor vehicle or a combination of coupled vehicles.

(1) OJ No C 72, 19. 7. 1968, p. 53.
(2) OJ No C 49, 17. 5. 1968, p. 2.

For the purposes of this Directive, 'undertaking' means any association or group of persons with or 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.

Article 2

1. This Directive shall not apply to natural persons or undertakings engaging in the occupation of road haulage operator by means of vehicles the permissible payload of which does not exceed 3·5 metric tons or the permissible total laden weight of which does not exceed six metric tons. Member States may, however, lower the said limits for all or some categories of transport operations.

2. Member States may, after consulting the Commission, exempt from the application of all or some of the provisions of this Directive natural persons or 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.

Article 3

1. Natural persons or undertakings wishing to engage in the occupation of road haulage operator shall:

(a) be of good repute;

(b) be of appropriate financial standing;

(c) satisfy the condition as to professional competence.

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

Where the applicant is an undertaking, provisions (a) and (c) above must be satisfied by one of the natural persons who will continuously and effectively manage the transport operations of the undertaking. Member States may also require that other persons in the undertaking satisfy provision (a) above.

2. Pending coordination at a later date, each Member State shall determine the provisions relating to good repute which must be satisfied by the applicant and, where appropriate, by the natural persons referred to in paragraph 1.

3. Appropriate financial standing shall consist in having available sufficient resources to ensure the launching and proper administration of the undertaking. Pending coordination at a later date, each Member State shall determine what provisions and what methods of furnishing proof may be adopted for this purpose.

4. The condition as to professional competence shall consist in the possession of skills in the subjects listed in the Annex and recognized by the authority or body designated for that purpose by each Member State. The necessary knowledge shall be acquired by attending courses, by practical experience in a transport undertaking or by a combination of both. Member States may exempt from the application of these provisions the holders of certain advanced diplomas or technical diplomas implying sound knowledge of the subjects listed in the Annex.

The production of a certificate issued by the authority or body referred to in the preceding subparagraph shall constitute proof of professional competence.

Article 4

1. Member States shall determine the circumstances in which a road haulage undertaking may, by way of derogation from 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 transport operator or of the natural person who satisfies the provisions of Article 3 (1) (a) and (c).

2. However, the competent authorities in the Member States may, by way of exception and in certain special cases, definitively authorize a person not fulfilling the condition 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. Natural persons and undertakings furnishing proof that, before 1 January 1978, they were authorized under national regulations in a Member State to engage in the occupation of road haulage operator in national and/or international road transport operations shall be exempt from the requirement to furnish proof that they satisfy the provisions laid down in Article 3.

2. However, those natural persons who, after 31 December 1974 and before 1 January 1978, were:

— authorized to engage in the occupation of road haulage operator without having furnished proof, under national regulations, of their professional competence, or

— designated continuously and effectively to manage the transport operations of the undertaking,