



COMMISSION OF THE EUROPEAN COMMUNITIES

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97/0029 (SYN)

Proposal for a

COUNCIL DIRECTIVE

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

A. HISTORY

1. With Directives 74/561/EEC¹ on the admission to the occupation of road haulage operator and 74/562/EEC² on the admission to the occupation of road passenger transport operator and Council Directive 77/796/EEC³ on the mutual recognition of diplomas, certificates and other evidence of formal qualifications, the Council adopted measures aimed at harmonizing the conditions of admission to the occupation and facilitating the freedom of establishment of the operators concerned. On 29 April 1996 the Council adopted Directive 96/26/EC⁴ 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, codifying and abrogating the above-mentioned Directives and their successive modifications. Since it concerns an official codification, Directive 96/26/EC is limited to consolidate into one single text said Directives without modifying their substance.

Since the Acts on Accession of Austria, Finland and Sweden have not foreseen any transitional provisions for the entry into force of the above-mentioned Directives for these new Member States, no such period could be provided for in the codification Directive. It is, therefore, opportune to arrange for such provisions when amending Directive 96/26/EC.

2. However, despite the requirements foreseen in Directive 96/26/EC it has been found that divergences still exist between Member States which create imbalances and could distort competition; moreover the levels of professional skills reached so far are not adequate to fulfil the role for which they were intended.

¹ OJ No L 308, 19.11.1974

² OJ No L 308, 19.11.1974

³ OJ No L 334, 24.12.1977

⁴ OJ No L 124, 23.5.1996

3. For these reasons the Commission suggested in its White Paper on the future development of the common transport policy (1992), to introduce further harmonization in this field.⁵

In 1994 the Committee of Enquiry appointed by the Commissioner responsible for transport, published its report, which included *inter alia* recommendations to improve the provisions of financial standing and professional competence.

4. Following detailed discussions with representatives of the industry and experts of the Member States, the Commission has deemed it necessary to amend Directive 96/26/EC and thereby take into consideration the situation in the new Member States as indicated under point 1, and has adopted this proposal.

⁵ COM (92) 494 final, 2.12.1992: The future development of the common transport policy; a global approach to the construction of Community framework for sustainable mobility, p. 122.

B. JUSTIFICATION FOR ACTION AT COMMUNITY LEVEL

I. Subsidiarity

- a) What are the objectives of the proposed action in relation to the Community's obligations?

The Commission's proposal aims at pursuing the harmonization process concerning access to the profession of road transport operator. Thereby, it reflects the progress achieved in establishing a common market for road transport.

- b) Does competence for the planned activity lie solely with the Community or is it shared with the Member States?

The action falls under the exclusive competence of the Community (Article 75.1 of the Treaty of the European Union).

- c) What is the Community dimension of the problem (for example, how many Member States are involved and what solution has been used up to now)?

The subject affects all Member States and the transport operators in all Member States, since market access has been opened up throughout the European Union. Existing Community Directives have already achieved a certain degree of harmonization, but differences remain between the legislation of the Member States.

- d) What is the most effective solution taking into account the means available to the Community and those of the Member States?

Only joint action at Community level can further strengthen, improve and harmonize financial standing and professional competence of the operators.

- e) What real added value will the activity proposed by the Commission provide and what would be the cost of inaction?

The Directive will remove elements of distortion of competition, thereby creating fairer conditions for road transport operators in their business activities. The increased level of knowledge of the operators is in the interest of the operators themselves and in the interest of road safety, the environment, the shippers and ultimately, society at large.

Inaction would maintain the factors of inequalities and possible distortion of competition, thereby maintaining barriers dissuasive to the aims of completing the internal transport market.

- f) What forms of action are available to the Community (recommendation, financial support, regulation, mutual recognition etc....)?

The proposal is drafted as a Directive following previous legislative practice in this field. No other action would be appropriate to achieve the goal of Community harmonization and increased levels of professional skills.

- g) Is it necessary to have a uniform Regulation or is a Directive setting out the general objectives sufficient, leaving the implementation at the level of the Member States?

For this field, a uniform Regulation is not necessary; a Directive is the adequate legal instrument providing the general means for a limited harmonization to be achieved at Community level.

II. Reasons for consolidation
not applicable.

III. Economic Advantages of Further Harmonization

The economic arguments in favour of harmonization are the further removal of barriers creating economic imbalances and distortion of competition. In a common transport market, it is essential both in the interest of the operators themselves and in the interest of the public in general, that operators carry out their activities on the basis of adequate and sufficiently approximated levels concerning the requirements on admission to the occupation.

C. CURRENT SITUATION AND AIM OF THE PROPOSAL

The present situation shows great variance particularly concerning the requirements for financial standing and professional competence. Although there is a general tendency towards deregulation, rules on the occupation of road transport operator are still deemed necessary and following recommendations of the Committee of Enquiry, the aim of the proposal is to harmonize and to bring the requirements up to a more appropriate level.

In view of market developments and the ongoing liberalization of cabotage in the transport sector, the scope of the Directive is enlarged. All road transport operators are required to have knowledge for the pursuit of both national and international transport. Concerning the haulage sector in particular, the new requirements will include also road transport operators who carry out transport for hire or reward with motor vehicles with a permissible payload of less than 3,5 tonnes or with a total laden capacity of less than 6 tonnes to take account of the growth in courier services. On the other hand, with regard to road passenger transport, the new requirements will not apply to operators carrying out transport for hire or reward with vehicles suitable and equipped to carry up to nine persons including the driver. This follows because these operators are mainly carrying out taxi services primarily with local nature, which fall under national competences.

D. THE ARTICLES

1. In Article 2 of directive 96/26/CE, paragraph 1 is reformulated in order to indicate the scope of application of the Directive for the professional carriage of goods and passengers by road.

The new requirements will apply to all professional road haulage operators, irrespective of the size of the vehicles used, in view of the widespread use of smaller vehicles in transport for hire and reward and the influence these vehicles have on other forms of road transport.

Concerning professional road passenger transport, there are no changes in the definition of vehicles falling within the scope of the Directive. Following article 1, paragraph 2, second indent of Directive 96/26/EC, the new requirements do not include operators using vehicles constructed and equipped as to be suitable for carrying not more than nine persons - including the driver -, nor do they include the taxi sector.

2. In Article 3 paragraph 2 the text of subparagraphs a) and c) concerning the good repute requirements of the operator, is modified to underline that the requirements are not satisfied if there are convictions of one serious criminal offence or of certain repeated minor offences.

Infringements of the rules relating to the protection of the environment and professional liability are added as transport related infringements.

3. Article 3 paragraph 3 subparagraph c) concerns the requirements of financial standing.

The amounts on financial standing differ considerably between the Member States and range from 3,000 Ecus to 20,000 Ecus, with some Member States also asking for additional lump sums. The amount of available capital and reserves is increased to at least 9,000 Ecus when only one vehicle is used and 5,000 Ecus for each additional vehicle.

Road haulage undertakings operating vehicles with a permissible payload of which does not exceed 3,5 tonnes or the permissible total laden weight of which does not exceed 6 tonnes, need to have, for these vehicles, a financial standing of at least 9,000 Ecus when only one vehicle is used and 700 Ecus per 500 kg of the maximum authorized weight for each additional vehicle.

Road passenger transport undertakings operating vehicles suitable and equipped to carry more than nine but less than twenty persons, including the driver, need to have, for these vehicles, a financial standing of at least 9,000 Ecus when only one vehicle is used and 250 Ecus per seat for each additional vehicle.

With "first vehicle" and "additional vehicles" is meant that when an undertaking carries out its business with only one vehicle it should have an amount of 9,000 Ecus available for capital and reserves. When an undertaking carries out its business with 2 or more vehicles in its fleet, this initial amount of 9,000 Ecus will increase with 5,000 Ecus per vehicle to e.g. 14,000 (2 vehicles), 19,000 (3 vehicles), 24,000 Ecus (4 vehicles) etc.

In order to take account of currency fluctuations, an additional paragraph is added to Article 3 paragraph 3 subparagraph c) as to the value of the ECU in national currencies which is to be fixed every five years.

4. Article 3 paragraph 4 on professional competence is amended to take account of the Single Market. National markets are no longer separated. Consequently the distinction between a national and an international transport operator has lost its significance and road transport operators must have knowledge of both national and international transport operations.
5. Article 3 paragraph 4, sub-paragraph 2 is deleted. The deletion of the provision to exempt from the examination road transport operators who provide proof of at least five years practical experience, is to ensure that transport operators are subject, from the entry into force of the Directive, to the same tests (harmonization of knowledge at an appropriate level).
6. In Article 5 transitional arrangements are introduced for Austria, Finland and Sweden regarding the implementation of the requirements laid down under Article 3.

Furthermore, all the requirements of good repute and of financial standing laid down in the Directive should be fulfilled by all road transport undertakings irrespective of their date of entry into the occupation of either road haulage or road passenger transport operator, not later than 1 January 2000.

7. In Article 6 after the first paragraph two new paragraphs are inserted to assess every five years whether an operator meets the requirement of the Directive. Financial standing, however, should also be checked between the second and the third year.
8. In Article 7 the words "serious offences" are replaced by "a serious offence" in conformity with article 3, paragraph 2 concerning the good repute requirements.

The requirements of Article 7 paragraph 2 have been found superfluous and are deleted in order to avoid unnecessary paperwork.

9. The references to bankruptcy in Article 8 are deleted, since bankruptcy in itself is not considered a sufficient reason to withhold an authorization. Article 3, paragraph 2 states already that an applicant is not considered of good repute, or that an operator will lose his good repute, when he has been convicted for serious infringements, including those of a commercial nature.
10. Article 10 is amended in order to preserve the rights of those transport operators who have obtained their certificate without the need for taking the written examination, as provided by article 3, paragraph 4, second subparagraph of Directive 96/26/EC.
11. Annex 1 is replaced in order to allow an extension of the list of subjects required to ensure that the knowledge for admission to the occupation of road transport operator is brought to an adequate and harmonized level.
At the same time the system of the examination is fixed in detail to ensure that the knowledge is also assessed in an uniform manner.

E. INTERESTS FOR EEA

In accordance with Article 99 of the EEA Agreement, EFTA countries were consulted on the proposal.

PROPOSAL FOR
COUNCIL DIRECTIVE 9/... /EC
of

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 Commission⁶,

Having regard to the opinion of the Economic and Social Committee⁷,

Acting in accordance with the procedure referred to in Article 189c of the Treaty and in co-operation with the European Parliament,⁸

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Whereas it is necessary to further strengthen the common rules provided for in 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 operations⁹;

Whereas it is necessary because of developments in the haulage market, changes in transport policies and the functioning of the internal market to extend the scope of application of this Directive to all road haulage operators for hire or reward with motor vehicles irrespective of their size;

Whereas with regard to the provisions of good repute, it is necessary to underline that this requirement is not satisfied if natural persons who are deemed to satisfy this condition have been convicted of one serious criminal offence or of certain repeated minor offences and to underline also the importance of the rules concerning the protection of the environment and professional liability;

Whereas with regard to the provisions of financial standing, it is necessary, in order to avoid imbalances in the market, to fix appropriate available capital and reserves at a higher and harmonized level; whereas it is necessary to examine the value of the ECU fixed in national currencies every five years;

⁹ O.J. No L 124, 23.5.1996

Whereas, with regard to the provisions of professional competence, it is advisable to stipulate that an applicant road transport operator demonstrates such competence by passing a compulsory written and an optional oral examination; whereas road transport operators must have the required knowledge for the pursuit of both national and international transport; whereas it is essential that all transport operators hold certificates certifying professional competence delivered at a harmonized level and on the basis of harmonized testing rules in all Member States; whereas it is also necessary, for this purpose, to harmonize certain aspects of the organisation of the examination;

Whereas it is necessary to introduce a transitional arrangement as to the implementation of the Directive for Austria, Finland and Sweden;

Whereas it is necessary every five years to assess whether authorized operators still fulfill the provisions on good repute and financial standing and that a person at managerial level is professionally competent; whereas it is necessary that financial standing is also checked between the second and the third year of the five-year period;

Whereas the functioning of the internal market requires Member States to impose penalties which are effective, proportionate and dissuasive;

Whereas the requirements of this Directive as far as good repute and financial standing are concerned should be fulfilled by all road transport operators not later than 1 January 2000 in order to achieve the level of quality and the level of harmonization which are needed in the internal market;

Whereas, in accordance with the principle of proportionality, it is necessary and appropriate, in order to implement the fundamental objective of the common transport policy, to regulate the conditions on admission to the occupation of road transport operator; whereas this directive shall not go beyond what is necessary to achieve this objective, in accordance with Article 3B, paragraph 3 of the Treaty.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 96/26/EC¹⁰ is hereby amended as follows:

Article 2 is modified as follows:

- Paragraph 1 is replaced by the following :

"The Directive shall apply to undertakings engaged in the occupation of road haulage operator and to those engaged in the occupation of road passenger transport operator as defined in Article 1."

Article 3 is modified as follows:

- Paragraph 2 subparagraph a) is replaced by the following:

"have been convicted of a serious criminal offence, including an offence of a commercial nature."

- Paragraph 2 subparagraph c) is replaced by the following :

"have been convicted of a serious offence, or repeated minor 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 rules concerning professional liability."

¹⁰

O.J. No L 124, 23.5.1996

- Paragraph 3 subparagraph c) is replaced by the following :
 - "The undertaking must have available capital and reserves of at least:
9,000 Ecus when only one vehicle is used and 5,000 Ecus for each additional vehicle with a permissible payload of more than 3,5 tonnes, or of a permissible total laden weight of more than 6 tonnes, or per vehicle so constructed and equipped as to be suitable for carrying more than twenty persons - including the driver.
 - Undertakings engaged in the occupation of road haulage operator by means of vehicles the permissible payload of which does not exceed 3,5 tonnes or the permissible total laden weight of which does not exceed 6 tonnes, must for these vehicles have an available capital and reserves of at least 9,000 Ecus when only one vehicle is used and 700 Ecus per 500 kg of the maximum authorized weight for each additional vehicle.
 - Undertakings engaged in the occupation of road passenger transport operator by means of vehicles so constructed and equipped as to be suitable for carrying more than nine but no more than twenty persons - including the driver, must for these vehicles have an available capital and reserves of at least 9,000 Ecus when only one vehicle is used and 250 Ecus per seat for each additional vehicle.
 - For the purposes of this Directive, the value of the ECU in national currencies 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 and shall have effect from 1 January of the following calendar year."

- Paragraph 4 subparagraph 1 is replaced by the following :
 "The condition relating to professional competence shall consist in the possession of skills in the subjects listed in the Annex and shall be demonstrated by passing a compulsory written and and optional oral examination, according to the form set out in the Annex, organized by the authority or body designated for this purpose by each Member State."
- Paragraph 4 subparagraph 2 is deleted.

Article 5 is modified as follows:

- In paragraph 1 the following new indent is added :
 "- 1 January 1995 for Austria, Finland and Sweden".
- In paragraph 2 subparagraph 1 the following new indent is added :
 "- after 31 December 1994 and before 31 December 1996 for Austria, Finland and Sweden."
- In paragraph 2 in the penultimate subparagraph the following new indent is added:
 "- 1 January 1997 for Austria, Finland and Sweden."

A new paragraph 3 is added:

"All road transport operators who are authorized to practise before 1 January 1998 shall as from 1 January 2000 meet the provisions laid down in Article 3, paragraphs 2 and 3."

In Article 6 two new subparagraphs are added to paragraph 1:

"Member States shall ensure that the competent authorities assess every five years whether or not the operator still fulfils the requirements of good repute and financial standing, and that the requirement of professional competence is still fulfilled by (a) person(s) continuously and effectively managing the transport operations of the undertaking."

"Member States shall ensure that the competent authorities assess between the second and the third year during the period of five years whether or not the operator still fulfils the requirements of financial standing."

Article 7 is modified as follows:

- In paragraph 1) the words "serious offences" are replaced by "a serious offence".
- Paragraph 2) is deleted.
- Paragraph 3) becomes paragraph 2).

Article 8 is modified as follows:

- In paragraph 2) the words "or of no previous bankruptcy" are deleted.
- In paragraph 4) the last sentence is deleted.

Article 10 is modified as follows:

To paragraph 3 the following subparagraph is added:

"The certificates issued to road transport operators before 1 January 2000 on basis of at least five years' practical experience in a transport undertaking at management level shall be deemed equivalent to the certificates issued pursuant to the provisions of this Directive."

Article 2

Annex I is replaced by the Annex to this proposal.

Article 3

Member States shall lay down the system of penalties for breaching the national provisions adopted pursuant to 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. Member States shall notify the relevant provisions to the Commission not later than 1 July 1998 and shall notify any subsequent changes as soon as possible.

Article 4

1. Member States, after consulting the Commission, shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive at the latest 1 July 1998. Member States shall apply these provisions as from 1 July 1998.
2. Member States shall immediately communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive.

Article 5

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

Article 6

This Directive is addressed to the Member States.

Done at,

For the Council

the President

ANNEX

1. LIST OF SUBJECTS REFERRED TO IN ARTICLE 3(4)

The knowledge to be taken into consideration for the official recognition of professional competence must cover at least the subjects listed below. In relation to these subjects, applicant road haulage and road passenger transport operators must have the levels of knowledge and practical aptitude set out below.

A. Civil Law

The applicant must, in particular:

Road haulage and passenger transport

1. be familiar with the main types of contract used in road transport and with the rights and obligations arising therefrom;
2. show that he is 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 this claim affects his contractual responsibility;
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 this claim affects his contractual responsibility.

B. Commercial Law*Road haulage and passenger transport*

The applicant must, in particular:

1. demonstrate that he is familiar with the conditions and formalities laid down as necessary for engaging in the occupation, 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 enterprise 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. know the employers' social security obligations and the social benefits to which workers are entitled (retirement pension, unemployment benefit, sickness benefits, etc.);
3. know 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.);

4. be familiar with the provisions on driving periods and rest periods laid down in Regulation (EEC) No.3820/85, the provisions of Regulation (EEC) No.3821/85 on recording equipment in road transport 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. tolls and infrastructure user charges, and the taxes on certain road haulage vehicles;
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 methods 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 company's profitability and financial position, in particular on the basis of financial ratios;
6. be able to prepare a budget;

7. know his company'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 organization chart relating to the company's personnel as a whole and to organize work plans and training programmes for employees, drivers, etc.;
9. know 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. know 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.

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 organization of the occupation, admission to the occupation, authorizations for intra- and extra-Community road transport operations, inspections and sanctions;
2. know 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 and the goods or luggage, are kept both in the vehicle and on the premises of the undertaking;

Road haulage

4. know the rules on the organization 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. know the rules on the organization of the market in road passenger transport;
7. know the rules for introducing road passenger transport services, and be able to draw up transport plans.

G. Technical standards and aspects of operation.

The applicant must, in particular:

Road haulage and passenger transport

1. be familiar with the rules concerning the weights and dimensions of vehicles in the Member States of the European Union 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;
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 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road;
 - Directive 96/35/EC on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway;
 - Regulation (EEC) No.259/93 on the supervision and control of shipments of waste within, into and out of the European Community;
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

The applicant must, in particular:

Road haulage and passenger transport

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 the different Member States of the European Union (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. know the basic layout of the road network in the Member States of the European Union.

II. ORGANISATION OF THE EXAMINATION

The examination which shall ensure that road transport operators have achieved the level of knowledge in the subjects mentioned above, in particular, their capacity to use the instruments and techniques relating thereto and to fulfil executive and coordination duties, will consist of the following elements :

A. Compulsory written examination

1. Written questions on basis of a minimum of hundred multiple choice questions with four alternative answers, with a deduction of one full point for incorrect answers.

The written examination represents 30 % of the total points to be reached and the candidate must answer 60 % of the questions correctly to pass this part of the examination.

Duration : two hours

2. Written exercises/case studies representing 40 % of the total points to be reached. The candidate will have to do 60 % of the exercises/case studies in a correct manner to pass this part of the examination.

Duration : two hours

B. Non Compulsory Oral Examination

30 % of the total points have to be reached

- C. In case a Member States arranges for written examinations and exercises/case studies only, the percentage of total points under A.1. and A.2. above will be 40 % and 60 % respectively.

D. Result

70 % of the full examination must have been answered in a correct manner to pass the examination.

IMPACT ASSESSMENT FORM

The impact of the proposal on business with special reference to small and medium-sized enterprises

Title of the proposal:

Proposal for a Council Directive 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 proposal

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are the main aims?

The Community legislation is based on Article 75(1) a of the Treaty. 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. The adoption of measures aimed at coordinating the conditions of admission to the occupation of road haulage and road passenger transport operator is likely to favour effective exercise of the right of establishment of those operators. A further harmonization and strengthening of common rules for admission to the occupation in national and international transport operations is necessary to ensure that such operators are well qualified and thus contribute to the rationalization of the market and improvement in the quality of the service provided, in the interest of users, operators and the economy as a whole, and to a greater road safety.

The proposal aims at pursuing the harmonization process and strengthening the road transport market. Therefore, and in order to avoid imbalances and situations which contain elements of distortion of competition and in order to improve quality, it is proposed that for the financial standing, the sum of available minimum capital and reserves be fixed at a higher level and that for professional competence, the requirements necessary to manage a transport undertaking are reinforced to ensure that the value of certificates certifying the professional competence of an operator, are as uniform as possible in all Member States.

In view of market developments - in particular the growth of courier services - the scope of application of the Directive is widened, to include also those vehicles which have a permissible payload of less than 3,5 tonnes or a permissible total laden weight of less than 6 tonnes.

The impact on business

2. Who will be affected by the proposal?

- which sectors of business ?

The proposal will affect all road haulage and road passenger transport operators with the exception of those who carry out passenger transport operations with vehicles suitable for up to nine persons. It will affect as well the specialized national bodies engaged in the training and/or examination of applicants to the occupation of road haulage or road passenger transport operator.

- which sizes of business (what is the concentration of small and medium-sized firms)?

Road transport operators in the Community have an average of about 4,4 vehicles in operation. In 1990, 78% of the undertakings in the profession in the Member States of which data are available had between 1 and 5 vehicles in operation, 11% between 6 and 10 and 11% had more than 11 vehicles. So, the concentration of SME's in the road transport sector is high.

- are there particular geographical areas in the Community where these businesses are found ?

The figures are more or less the same in all Member States, with the exception of Austria, Belgium and the Netherlands where the number of undertakings with more than 5 vehicles is somewhat higher, whereas in the Mediterranean countries as well as in Sweden and Finland, more than 90% of the operators own between 1 and 5 vehicles.

3. What will businesses have to do to comply with the proposal?

The transport operator will have to fulfill the new requirements on good repute and on increased financial standing in order to be allowed to continue his activities. He will, furthermore, have to make sure that the person in charge with the management of the undertaking is in possession of the necessary professional competence, proven by a certificate. Certificates issued prior to the date of entry into force of this Directive will remain valid.

Training and/or examination bodies will have to amend their educational material and teaching programme and will have to adapt their written examinations consequently.

4. What economic effects is the proposal likely to have?

- on employment

The proposal is not likely to have any effect on the overall level of employment. The strengthened requirements for access to the profession will make road operators more solid and, therefore, will limit the number of operators leaving and entering the sector. So, employment will be more stable because less operators will come and go in the sector.

- on investment and the creation of new businesses

Neither is the proposal likely to have any effect on investment, nor should it hinder the creation of new businesses, since the level of, in particular, financial standing is not so high that it will be prohibitive for new applicants to the profession or for those already admitted.

- on the competitive position of businesses

The proposal aims to harmonize the competitive positions of businesses by eliminating present factors of imbalances and of possible distortions of competition, because of different requirements in financial standing and professional competence.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?

The proposal does not contain specific measures to this effect. But the existing Directive provides already the possibility for Member States to exempt from all or some of the elements of the proposal those operators who only do national transport and whose operations have only a minor impact on the market because of the nature of the carriage operations concerned, or the short distances involved. In addition, the Directive contains a provision on the temporary or definitive replacement of the holder of professional competence (in the event of death or incapacity), a provision which is in particular geared to the needs of SME's.

Consultation

6. List of organizations which have been consulted concerning the proposal and herewith is the summary of their main views :

A consultation meeting was organized concerning the new proposal 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 following organizations were present : IRU (International Road Union), UNICE, EUROCHAMBRES and the EUROPEAN TRANSPORT WORKERS UNION.

Apart from the representative of EUROCHAMBRES, who questioned the convenience of maintaining the conditions on admission to the occupation of road transport operator as this occupation is the only one where - according to EUROCHAMBRES - such conditions exist, all the other organisations were in favour to harmonize further the conditions for the admission to the occupation of road transport operator.

In most cases the Commission has taken into account the opinion of the majority of the professional organizations consulted during the preparation of the new legal text, and has subsequently concentrated its proposal on the points on which the willingness to act existed, i.e. to increase the levels of financial standing and of professional competence and to extend the scope of application of the Directive to road haulage irrespective of the size of the vehicles.

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