

to annual accounts, approval of auditors etc. apply also to single member companies.

3.5. The maximum degree of transparency in relation to the activities of such companies is desirable.

Done at Brussels, 28 September 1988.

The Chairman
of the Economic and Social Committee
Alfons MARGOT

Opinion on the proposal for a Council Directive 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⁽¹⁾

(88/C 318/05)

On 24 March 1988 the Council decided to consult the Economic and Social Committee, under Article 75 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The section for transport and communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 20 July 1988 (rapporteur: Mr René Bleser).

At its 258th plenary session (meeting of 29 September 1988), the Economic and Social Committee adopted the following Opinion by a large majority, with 3 dissenting votes and 9 abstentions.

1. General comments

1.1. Organization of the transport market is a prerequisite for introducing a transport policy. Coordination and harmonization of criteria for admission to the occupation of carrier will enable operators to exercise their right of establishment and freedom to provide services.

Common rules need to be introduced for national and international transport, in order to upgrade transporters' qualifications.

⁽¹⁾ OJ No C 102, 16. 4. 1988, p. 6.

This will make for a healthier market and improve the quality of services to the benefit of road safety, users, transporters and the economy as a whole.

1.2. The ESC reaffirms its support for Council measures to secure progressive harmonization and improvement of the terms of competition. In view of the uneven implementation of Directives in this field, the Committee endorses the thrust of the proposed amendments but would stress that harmonization must be brought about by raising, and not lowering, standards.

1.3. The draft Directive makes a number of qualitative changes to Community rules on admission to the occupation of road passenger and haulage operator. Existing legislation covers the general criteria for setting up a transport firm.

With the prospect of a single road transport market from 1992, the Commission has felt it necessary to provide a more precise definition of some of the measures set out in Directives 74/561/EEC, 74/562/EEC and 77/796/EEC.

1.4. The draft Directive is significant in that it sets out to specify the criteria for assessing good repute, financial standing and professional competence.

1.5. It is regretted that the Commission did not consult the joint transport committee when drawing up the draft Directive. Referral to the ESC is no substitute for preliminary consultations with the two sides of the transport industry, which would have introduced new ideas into discussions.

1.6. The ESC regrets that there is no impact statement. Given that the declared aim of the draft Directive is to clarify some of the vaguer provisions of current legislation, it would have been useful to assess the effect of the new definitions on transport firms.

1.7. To avoid distortions in competition, the Commission should ensure that qualitative criteria applicable to EEC carriers are equivalent to those applied to non-EEC transport firms operating in the Member States.

2. Specific comments on the Articles of the proposal

AMENDMENTS TO DIRECTIVE 74/561/EEC

2.1. Article 1 (1)

2.1.1. The Directive has not so far been applicable to undertakings which use vehicles with a payload not exceeding 3,5 t or a total permissible laden weight not exceeding 6 t. In its specific considerations, the Commission notes that 'since 3,5 t maximum permissible weight is a minimum weight for applying other Community legislation, it seems appropriate to include it in this Directive too'.

2.1.2. In the Committee's view, the proposed decrease is a step in the right direction. The Committee feels that the proposed weight limit safeguards the legitimate interests of firms whilst guaranteeing a certain degree of transport safety and environmental protection.

2.1.3. However, the Commission intends to scrap the option that Member States have at present of reducing the weight threshold.

The Committee would strongly argue that the option should be retained to prevent the proliferation of small firms which specialize in different services, and are thus potentially immune to the quality criteria.

2.2. Article 1 (2)

2.2.1. The proposal seeks to obtain a certain uniformity in the criteria of good repute, which are at present defined by each individual Member State. A dual condition is therefore laid down:

'Good repute shall consist of not only satisfying the general conditions required to exercise any commercial profession but also of not having been convicted over the last three years of any offences which would bar such persons from exercising their profession under national, Community and international transport and traffic laws.'

With regard to the latter, the proposal specifies infringements of rules on:

- drivers' driving and rest periods,
- road safety,
- vehicle safety,
- the obligations of company management.

2.2.2. As most offences contravene labour and social law in the widest sense, the terms 'labour law and social law' should be added to the list contained in Article 3 (2) of Directive 74/561/EEC, after 'national, Community and international transport and traffic laws'.

2.2.3. The Committee feels that the term 'infringement', out of context, is too vague and would allow the Directive to be applied in an arbitrary fashion. The instrument should specify that it is referring to serious, repeated offences which have attracted convictions. This would have the added advantage of introducing objective criteria.

2.3. Article 1 (3)

2.3.1. This lays down the minimum financial requirements to be met by carriers.

Generally speaking, financial standing consists of having sufficient financial resources to guarantee the setting up and efficient management of a firm. To this end the Commission proposes introducing a financial guarantee equal to 10% of the purchase price of each vehicle used by the firm.

2.3.2. The Committee attaches importance to this criterion as it could do much to put the market on a healthy footing. However, it finds fault with the wording '10% of the purchase price of each vehicle used', as it is too vague. Does this mean 10% of the cost of replacement or of the non-adjusted purchase price? In any event the purchase value of each vehicle does not necessarily reflect the financial state of the business in cases, for example, where the operator leases vehicles. Nor does the instrument specify how guarantees are to be established. The Member States will be free to decide ways and means for themselves. The danger of this kind of *laissez-faire* approach is that wide discrepancies in application could emasculate the proposed measure.

2.3.3. The Committee feels it is not sufficient to fix a financial guarantee, no matter what form it takes. A healthy balance should be established between the financial guarantee required and the firm's obligations (especially commitments to banks). Apart from financial guarantees, then, provision should be made for monitoring a firm's financial situation in general.

2.3.4. The 10% limit may be reduced by Member States, to take account of a firm's size. This measure, designed to protect small firms, will doubtless unleash a barrage of requests for exemption, which will pose administrative difficulties for Member States.

The Committee also wonders why the Commission has seen fit to introduce such a loophole. Financial guarantees are not needed for major undertakings, but to prevent a large number of small, financially precarious, firms from swamping the market or remaining in business when they are not economically viable. The Committee is therefore opposed to exemptions.

2.4. Article 1 (4)

2.4.1. Adequate and equivalent minimum professional standards amongst those wishing to become carriers will henceforth be guaranteed through attending courses, gaining practical experience and passing a written examination.

2.4.2. The Committee endorses the idea of a written examination, but feels that it is not enough for knowledge to be acquired through a course and relevant work in a transport undertaking for at least five months. Other professions require a certificate of ability or even a professional diploma as evidence of professional competence. Surely this should also be the case for transport operators?

2.4.3. The text should prescribe refresher courses. Changes in legislation and in goods for transport are so rapid that professional knowledge needs to be regularly updated.

2.4.4. 'Member States may exempt holders of certain advanced or technical diplomas which offer proof of a sound knowledge of the subjects listed in the Annex to be defined by them from sitting an examination in the subjects covered by these diplomas.' The Committee would urge the Commission to carry out close checks to ensure that such exemptions are granted only to candidates who have followed courses of training which included national and Community transport legislation.

2.5. Article 1 (5)

2.5.1. The Commission intends to oblige Member States to inform each other of any offences committed by non-resident carriers.

If a Member State revokes a firm's right to practise as a road haulage operator in international transport operations, it is to inform the other Member States.

2.5.2. The Committee endorses the obligation concerning mutual information, and agrees with the explanatory memorandum that this will be especially important in the future with the open Community transport market and should help maintain professional standards.

2.5.3. A policy of mutual information will be difficult to enforce, however. Sentences for serious offences do not usually come to the attention of the national monitoring authorities.

The Committee would like to know by what right a Member State's monitoring authorities will be informed of sentencing.

2.6. *Article 1 (6)*

The term 'logistics' should be clarified. Also it should be made clear that 'environmental protection' refers to the maintenance and use of vehicles (i.e. noise, fumes etc.).'

AMENDMENTS TO DIRECTIVE 74/562/EEC

2.7. *Article 2*

2.7.1. The amendments to this Article are identical to those proposed for Article 1, and the Committee would therefore make the same comments.

AMENDMENTS TO DIRECTIVE 77/796/EEC

2.8. *Article 3*

2.8.1. The amendment stems from the fact that carriers will from now on be required to pass an examination.

AMENDMENTS TO DIRECTIVE 74/561/EEC, 74/562/EEC and 77/796/EEC

2.9. *Article 5*

2.9.1. This Article stipulates that the Commission proposals will be applicable as of 1 January 1990. The present proposal should come into effect on 1 January 1989, to give the Member States time to adopt any national laws necessary to implement the new provisions.

Done at Brussels, 29 September 1988.

*The Chairman
of the Economic and Social Committee*

Alfons MARGOT

APPENDIX

to the Economic and Social Committee Opinion

The following amendment to the Draft Opinion, tabled in accordance with the Rules of procedure, was rejected during the debate:

Paragraph 2.3.4

Delete and replace by:

'The 10% limit may be reduced by Member States, to take account of the firm's size.

The Committee agrees with the Commission that it is desirable not to place undue burden on small companies serving local markets and not affected by intra-Community trade. It proposes that the Member States should in conjunction with the Commission establish appropriate criteria for reductions for small firms.'

Result of vote

For: 24, against: 53, abstentions: 4.
