

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(90) 1864 final

Brussels, 9 October 1990

Proposal for a
COUNCIL DIRECTIVE
on admission to the occupation of road haulage and road passenger
transport operator in national and international transport
operations

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a People's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

In its resolution of 26 November 1974 concerning consolidation of its acts,¹ the Council recommended that those of its acts which have been amended several times be assembled into a single text. It stressed that, in the interests of legal certainty, a genuine legislative consolidation, involving the repeal of earlier acts, should wherever possible be effected (as is being done in this case). It consequently invited the Commission to let it have proposals for consolidation and undertook to examine them "as quickly as possible, without bringing into question, during that consolidation, the substantive solutions contained in the consolidated texts."

2. By its decision of 1 April 1987 the Commission instructed its departments to produce a formal consolidated version of legislative instruments no later than after their tenth amendment, but made it clear that this was a minimum requirement, and that in the interests of clarity and of the ready comprehension of Community law, an effort should be made by each department to consolidate the instruments for which it is responsible at more frequent intervals.
3. At Parliament's express request concerning the simplification and clarity of Community law and in view of the particular relevance of Directives 74/561/EEC and 74/562/EEC on admission to the occupations of road haulage operator and road passenger transport operator in national and international transport operations, the Commission has drawn up a consolidated version of these Directives after their third amendment.

Since they contain parallel provisions, the two Directives have been united in a single text, which called for slight reworking of the annexes, *inter alia*.

The text supplied here is collated from the original Directives as published in the Official Journal; the use of photocopies means that any improvements to the wording are immediately identifiable. The old numbering of the Articles has been retained for ease of reference and is given in the margin, the new numbering being given above the Articles; Annex III provides a concordance table relating the old system of numbering to the new. In order to preserve the dates for transposal of all the Directives concerned a new Annex II lists the deadline for implementation of each of the Directives now being repealed.

1 OJ No C 20 of 28.1.1975, p. 1.

COUNCIL DIRECTIVE 74/561/EEC

of 12 November 1974

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

(OJ No L 308 of 19.11.1974, p. 18)

amended by the Directives

80/1178/EEC (OJ No L 350 of 23.12.80, p. 41)

85/578/EEC (OJ No L 372 of 31.12.85, p. 34)

89/438/EEC (OJ No L 212 of 22.07.89, p. 101)

COUNCIL DIRECTIVE 74/562/EEC

of 12 November 1974

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

(OJ No L 308 of 19.11.1974, p. 23)

amended by the Directives

80/1179/EEC (OJ No L 350 of 23.12.80, p. 42)

85/579/EEC (OJ No L 372 of 31.12.85, p. 35)

89/438/EEC (OJ No L 212 of 22.07.89, p. 101)

Proposal for a

COUNCIL DIRECTIVE

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

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 Council Directive 74/561/EEC of 12 November 1974, on admission to the occupation of road haulage operator in national and international transport operations (3), and Council Directive 74/562/EEC of 12 November 1974 on admission to the occupation of road passenger operator in national and international transport operations (4), as last amended by Directive 89/438/EEC (5), have been substantially amended; _____ whereas, for reasons of clarity and rationality, the said Directives should be consolidated in a single text;

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 occupations of road haulage and road passenger transport operators hereinafter both referred to as "road transport operator" _____ is likely to favour effective exercise of the right of establishment as provided for in Council Directive 77/796/EEC (6), as last amended by Directive 89/438/EEC;

Whereas it is necessary to provide for the introduction of common rules for admission to the occupation of road transport operator in national and international transport operations in order to ensure that such operators are better qualified, thus contributing to rationalization of the market, improvement

1. 74/561/EEC

2. 74/561/EEC
(adapted)

3. 74/561/EEC

(1) OJ No C

(2) OJ No C

(3) OJ No L 308, 19.11.1974, p. 18.

(4) OJ No L 308, 19.11.1974, p. 23.

(5) OJ No L 212, 22.7.1989, p. 101.

(6) OJ No L 334, 24.12.1977, p. 37.

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 transport operator should cover the good repute, financial standing and professional competence of operators;

4. 74/561/EEC

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

5. 74/561/EEC

Whereas _____

3. 89/438/EEC
(adapted)

_____ from 1 January 1993
the 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 road transport operator;

4. 89/438/EEC

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;

5. 89/438/EEC

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;

6. 89/438/EEC
(adapted)

Whereas provision should be made for a system of mutual assistance between Member States for the purpose of applying this Directive;

7. 89/438/EEC

Whereas the Commission should submit, within an appropriate time limit, a report on the implementation of this Directive;

9. 89/438/EEC

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;

Whereas this Directive does not affect the time limits within which the Member States must comply with Directives 74/561/EEC and 74/562/EEC, and the successive amendments to them listed in Annex II,

HAS ADOPTED THIS DIRECTIVE:

7.

74/561/EEC

Article 1

1. Admission to the occupations of road haulage operator and road passenger transport operator shall be governed by the provisions adopted by the Member States in accordance with the common rules contained in this Directive.

74/561/EEC

2. For the purposes of this Directive,

89/438/EEC

- "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,
- "the occupation of road passenger transport operator" shall mean the activity of any undertaking operating, by means of motor vehicles so constructed and equipped as to be suitable for carrying more than nine persons — including the driver — and intended for that purpose, passenger transport services for the public or for specific categories of users against payment by the person transported or by the transport organizer.
- "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.

Article 2

1. This Directive shall not apply to undertakings engaging 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 six tonnes. Member States may, however, lower the said limits for all or some categories of transport operations. 74/561/EEC
89/438/EEC
2. Member States may, after consulting the Commission, exempt from the application of all or some of the provisions of this Directive road haulage 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.
- In the event of unforeseen circumstances, Member States may grant a temporary exemption pending completion of the consultations with the Commission. 89/438/EEC
3. Member States may, after consulting the Commission, exempt from the application of all or some of the provisions of this Directive ~~undertakings engaged exclusively in road passenger transport services for non-commercial purposes or having a main occupation other than that of road passenger transport operator, in so far as their transport operations have only a minor impact on the transport market~~ 74/562/EEC
89/438/EEC

Article 3

74/561/EEC

1. Undertakings wishing to
engage in the occupation of road transport operator shall:

89/438/EEC

- (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 transport 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 not a natural person:

89/438/EEC

- 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.

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 paragraph (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 and 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.

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.

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 or ECU 150 per seat, as appropriate, 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 financial standing, confirmation or assurance given by a bank or other suitably qualified establishment. Such confirmation or assurance may be given in the form of a bank guarantee or by any other similar means.
- (e) Points (b), (c) and (d) shall apply only to undertakings authorized in a Member State, as from 1 January 1990 under national regulations, to engage in the activities of a road transport operator.

4. The condition relating to professional competence shall consist in the possession of skills demonstrated by passing a written examination, which may take the form of a multiple-choice examination, organized by the authority or body designated for this purpose by each Member State in the subjects listed in the Annex I.

Member States may exempt from examination applicant road transport operators who provide proof of at least five years' practical experience in a transport undertaking at management level.

Member States may exempt the holders of certain advanced diplomas or technical diplomas which provide proof of a sound knowledge of the subjects listed in Annex I to be defined by them from sitting an examination in the subjects covered by the diplomas.

A certificate issued by the authority or body referred to in the first subparagraph must be produced as proof of professional competence.

5. Member States shall recognize as sufficient proof of professional competence certificates issued by other Member States.

Article 4

74/561/EEC

1. Member States shall determine the circumstances in which a transport undertaking may, notwithstanding 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 road 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 3

1. Undertakings furnishing proof that, before 1 January 1978 (1), they were authorized under national regulations in a Member State to engage in the occupation either of road haulage or passenger transport operator, as appropriate, 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 (2), were:

- authorized to engage in the occupation either of road haulage or passenger transport operator, as appropriate, without having furnished proof, under national regulations, of their professional competence, or
 - designated continuously and effectively to manage the transport operations of the undertaking,
- must satisfy, before 1 January 1980 (3) the condition of professional competence referred to in Article 3 (4).

The same requirement shall apply in the case referred to in the third subparagraph of Article 3 (1).

74/561/EEC

89/438/EEC

(adapted)

- (1) 1 January 1984 for Greece (80/1178/EEC and 80/1179/EEC)
1 January 1986 for Spain and Portugal (85/578/EEC and 85/579/EEC)
- (2) 31 December 1980/1 January 1984 for Greece (80/1178/EEC and 80/1179/EEC)
31 December 1982/1 January 1986 for Spain and Portugal (85/578/EEC and 85/579/EEC)
- (3) 1 January 1986 for Greece (80/1178/EEC and 80/1179/EEC)
1 January 1988 for Spain and Portugal (85/578/EEC and 85/579/EEC)

Article 6

1. Decisions taken by the competent authorities of the Member States pursuant to the measures adopted on the basis of this Directive and entailing the rejection of an application for admission to the occupation of road transport operator shall state the grounds on which they are based.
2. Member States shall ensure that the competent authorities withdraw the authorization to pursue the occupation of road transport operator if they establish that the provisions of Article 3 (1) (a), (b) or (c) are no longer satisfied. In this case, however, they shall allow sufficient time for a substitute to be appointed.
3. With regard to the decisions referred to in paragraphs 1 and 2, Member States shall ensure that the undertakings covered by this Directive are able to defend their interests by appropriate means.

74/561/EEC

→ 89/438/EEC

Article 7

1. Where serious offences or minor, repeated offences against the rules governing either road haulage or road passenger transport, as appropriate, have been committed by non-resident transport operators and might lead to withdrawal of the authorization to practise as a road transport operator, the Member States shall provide the Member State in which such a transport operator is established with all the information in their possession concerning those offences and the penalties they have imposed.
2. If a Member State withdraws the authorization to practise as a road transport operator in international transport operations, it shall inform the Commission, which shall pass the necessary information to the Member States concerned.
3. Member States shall afford each other mutual assistance for the purpose of applying this Directive.

Article 6a

89/438/EEC
(adapted)

Article 8

1. The certificates issued to road transport operators before 1 January 1990 as proof of their professional competence pursuant to the provisions in force, and which are valid until that date, shall be deemed equivalent to the certificates issued pursuant to the provisions of this Directive.

2. Member States shall recognize as sufficient proof of professional competence certificates as referred to in the fourth subparagraph of Article 3(4) of Directive 74/561/EEC and the fourth subparagraph of Article 2(4) of Directive 74/562/EEC which are issued by another Member State.

Article 4

89/438/EEC

Article 9

1. Member States shall take the measures necessary to comply with the provisions of this Directive, not later than the dates listed in Annex II, after consulting the Commission.

2. Member States shall forward to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

3. The Commission shall, before 1 January 1992, submit to the Council a report on the implementation of this Directive.

Article 5

89/438/EEC
(adapted)

Article 10

Directives 74/561/EEC and 74/562/EEC are hereby repealed.

References to the repealed Directives shall be construed as references to this Directive and are to be read in accordance with the correlation table set out in Annex III.

Article 11

This Directive is addressed to the Member States.

Done at

For the Council
The President

ANNEX I

74/561/EEC

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. These must be described in full detail and have been worked out or approved by the competent national authorities. They must be so designed as to be within the grasp of those persons whose education corresponds to the level normally reached at school-leaving age.

A. SUBJECTS OF WHICH KNOWLEDGE IS REQUIRED FOR TRANSPORT OPERATORS INTENDING TO ENGAGE EXCLUSIVELY IN NATIONAL TRANSPORT OPERATIONS

1. Law

Elements of civil, commercial, social and fiscal law, as necessary for engaging in the occupation, with particular emphasis on :

- general contracts ;
- transport contracts, with particular reference to the responsibility of the haulage operator (nature and limits) ;
- commercial companies ;
- ledgers ;
- regulations governing labour, social security ;
- taxation systems.

2. Road haulage operator

a) Business and financial management of an undertaking

- methods of payment and financing ;
- costing ;
- pricing and haulage terms ;
- business accounts ;
- insurance ;
- invoicing ;
- transport agents.
- management techniques
- marketing.

89/438/EEC

b) Access to the market

- provisions relating to the taking up and pursuit of the occupation ;
- transport documents.

74/561/EEC

c) Technical standards and aspects of operation

- weight and dimensions of vehicles ;
- vehicle selection ;
- type-approval and registration ;
- vehicle maintenance standards ;
- loading and unloading of vehicles.
- carriage of dangerous goods,
- carriage of foodstuffs,
- the relevant environmental protection concepts with reference to the use and maintenance of motor vehicles.

89/438/EEC

d) Road safety

- laws, regulations and administrative provisions applicable to traffic ;
- traffic safety ;
- accident prevention and procedure in the event of an accident.

74/561/EEC

3. Road passenger transport operator

74/562/EEC

a) Business and financial management of an undertaking

- methods of payment and financing;
- costing;
- system of fares, prices and conditions of transport;
- business accounts;
- insurance;
- invoices;
- travel agencies.
- management techniques,
- marketing.

89/438/EEC

b) Regulation of road passenger services

- institution of transport services and transport plans;
- conditions of fulfilment of passenger services;
- provisions relating to admission to and pursuit of the occupation;
- transport documents.

74/562/EEC

c) Technical standards and aspects of operation

- vehicle selection;
- type-approval and registration;
- vehicle maintenance standards.
- the relevant environmental protection concepts with reference to the use and maintenance of motor vehicles.

89/438/EEC

d) Road safety

- laws, regulations and administrative provisions applicable to traffic;
- traffic safety;
- geographical knowledge of routes;
- accident prevention and procedure in the event of an accident.

74/562/EEC

B. SUBJECTS OF WHICH KNOWLEDGE IS REQUIRED FOR TRANSPORT OPERATORS INTENDING TO ENGAGE IN INTERNATIONAL TRANSPORT

74/551/EEC

(adapted)

- subjects listed under A 1, 2 or 3, as appropriate;
- provisions applicable either to the transport of goods or of passengers by road, as appropriate, between Member States and between the Community and non-member countries, arising out of national laws, Community standards, international conventions and agreements;
- customs practices and other formalities related to transport controls;
- main traffic regulations in the Member States.

ANNEX II

<u>Directive</u>	<u>Deadline for implementation</u>
74/561/EEC (OJ No L 308 of 19.11.1974, p. 18)	1 January 1977
	1 January 1978
80/1178/EEC (OJ No L 350 of 23.12.1980, p. 41)	1 January 1981
85/578/EEC (OJ No L 372 of 31.12.1985, p. 34)	1 January 1986
89/438/EEC (OJ No L 212 of 22.07.1989, p.101)	1 January 1990
74/562/EEC (OJ No L 308 of 19.11.1974, p. 23)	1 January 1977
	1 January 1978
80/1179/EEC (OJ No L 350 of 23.12.1980, p. 42)	1 January 1981
85/579/EEC (OJ No L 372 of 31.12.1985, p. 35)	1 January 1986
89/438/EEC (OJ No L 212 of 22.07.1989, p.101)	1 January 1990

ANNEX III

CORRELATION TABLE

Directive 74/561/EEC	Directive 74/562/EEC	Directive 89/438/EEC	This Directive
Article 1 (1)	Article 1 (1)		Article 1 (1)
Article 1 (2) 1st indent	--		Article 1 (2) 1st indent
--	Article 1 (2) 1st Indent		Article 1 (2) 2nd indent
Article 1 (2) 2nd indent	Article 1 (2) 2nd Indent		Article 1 (2) 3rd indent
Article 2 (1) (2)	--		Article 2 (1) (2)
--	Article 1 (3)		Article 2 (3)
Article 3	Article 2		Article 3
Article 4	Article 3		Article 4
Article 5	Article 4		Article 5
Article 6	Article 5		Article 6
Article 6a	Article 5a		Article 7
Article 7	Article 6		--
--	--	Article 4	Article 8
--	--	Article 5	Article 9
--	--		Article 10
Article 8	Article 7		Article 11
Annex point A.1	Annex point A.1		Annex I point A.1
Annex point A.2, 3, 4, 5	--		Annex I point A.2 a), b), c), d)
--	Annex point A.2, 3, 4, 5		Annex I point A.3 a), b), c), d)
Annex point B	Annex point B	Article 3	Annex I point B
			Annex II