

## EUROPEAN PARLIAMENT

# Working Documents

1984-1985

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9 April 1984

DOCUMENT 1-105/84

## Report

drawn up on behalf of the Legal Affairs Committee

on the proposal from the Commission of the European Communities to the Council (Doc. 1-1239/83 - COM(83) 720 final) for a directive 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

Rapporteur: Mrs S. VEIL

PE 89.461/fin.  
Or. Fr.



By letter of 21 December 1983 the President of the Council of the European Communities consulted Parliament on the proposal from the Commission of the European Communities to the Council for a directive 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.

At its sitting of 16 January 1984 the European Parliament referred this proposal to the Legal Affairs Committee, as the committee responsible, and to the Committee on Transport and the Committee on Social Affairs and Employment for their opinions.

On 26 January 1984 the Legal Affairs Committee appointed Mrs VEIL rapporteur.

The committee considered the draft report at its meeting of 21 and 22 March 1984 and adopted it unanimously.

Present: Mrs Veil, chairman and rapporteur; Mr Luster, vice-chairman; Mr D'Angelosante, Mr Geurtsen, Mr Tyrrell, Mr Vetter and Mr Vié.

The opinion of the Committee on Transport is attached.

The Committee on Social Affairs and Employment decided not to deliver an opinion.

The report was tabled on 27 March 1984.

The deadline for tabling amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated.

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The Legal Affairs Committee hereby submits to the European Parliament the following amendment to the Commission's proposal and the following motion for a resolution together with explanatory statement:

Proposal from the Commission of the European Communities to the Council for a directive 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

TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIES<sup>1</sup>

AMENDMENTS TABLED BY THE  
LEGAL AFFAIRS COMMITTEE

Preamble unchanged  
Recitals 1 to 3 unchanged

AMENDMENT No. 1

- whereas satisfactory results have been obtained with the implementation of the provisions of Directive 74/561/EEC, of 12 November 1974, on admission to the occupation of road haulage operator in national and international transport operations<sup>2</sup> and 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<sup>3</sup>;

Recitals 4 to 10 unchanged  
Articles 1 to 13 unchanged

<sup>1</sup> For complete text see OJ No. C 351 of 24 December 1983, page 5

<sup>2</sup> OJ No. L 308 of 19 November 1974, page 18

<sup>3</sup> OJ No. L 334 of 24 December 1977, page 37

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive 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.

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council<sup>1</sup>,
- having been consulted by the Council pursuant to Article 57 of the EEC Treaty (Doc. 1-1239/83),
- having regard to the proposals for directives<sup>2</sup> withdrawn by the Commission in 1982<sup>3</sup>,
- having regard to Directive 74/561/EEC on admission to the occupation of road haulage operator in national and international transport operations<sup>4</sup>,
- having regard to 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 to encourage these operators effectively to exercise their right to freedom of establishment<sup>5</sup>,
- having regard to the report of the Legal Affairs Committee and the opinion of the Committee on Transport (Doc. 1-105/84),
- having regard to the result of the vote on the Commission's proposal,

(a) whereas the provisions on waterway transport and those on road transport should be brought into line in order to obviate distortions of competition and differences in treatment as between these two types of goods transport,

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<sup>1</sup> OJ No. C 351 of 24 December 1983, page 5

<sup>2</sup> OJ No. C 1 of 5 January 1976, pages 31 and 35

<sup>3</sup> OJ No. C 23 of 30 January 1982, page 3

<sup>4</sup> OJ No. L 308 of 19 November 1974, page 18

<sup>5</sup> OJ No. L 334 of 24 December 1977, page 37

- (b) whereas all the necessary measures should be adopted at Community level to improve the situation in the inland waterway sector in view of the serious crisis caused by structural overcapacity in that sector,
- (c) whereas the proposed directive will make for a more effective organization of the market in the field of goods transport by waterway,
1. Welcomes the submission of this proposal for a directive, which forms part of a comprehensive set of Community measures designed to improve the situation and organize the market in the waterway transport sector;
  2. Notes that the Commission proposes that the Member States should be entirely free to decide on whether to maintain or lay down rules governing probity and financial standing and that the field of application of the directive should be restricted exclusively to goods transport;
  3. Notes that in all other respects the proposed text is consistent with the directives on the occupation of road transport operator and does not differ substantially from the proposals submitted by the Commission in 1976 and approved by Parliament<sup>1</sup>;
  4. Approves the proposal for a directive subject to the amendment it has adopted;
  5. Calls on the Commission to incorporate this amendment in its proposal pursuant to the second paragraph of Article 149 of the EEC Treaty;
  6. Calls on the Council to take steps, as soon as possible and in accordance with the Commission's wishes, to adopt this directive, the implementation of which will help to improve the situation as regards the professional competence of transport operators, which in turn will lead to a better quality of service in this field;
  7. Instructs its President to forward to the Council and Commission, as Parliament's opinion, the Commission's proposal as voted by Parliament and the corresponding resolution.

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<sup>1</sup>Resolutions of 14 May 1975, OJ No. C 125 of 8 June 1976, pages 53 and 54

EXPLANATORY STATEMENT

Since the Council failed to reach any decision on the 1976 proposals (I), the Commission has now submitted a new proposal which, although its field of application is more limited (II), nevertheless preserves a measure of uniformity between the rules relating to the waterway transport sector and those relating to the road transport sector (III).

## I.

1. Because of lack of progress on the common transport policy Parliament recently instituted proceedings against the Council for failure to act. This measure was taken as a result of the adoption, on 16 September 1982, of a resolution<sup>1</sup> drawn up by the Committee on Transport and based on the opinion delivered on 24 June 1982 by the Legal Affairs Committee.

Waterway transport operators have fallen behind road transport operators where access to the occupation and the recognition of diplomas are concerned.

The framework of Community legislation for road transport operators has been complete since 1977:

- in 1974 the Council adopted a directive on access to the occupation of road haulage operator in national and international transport operations on the basis of a Commission proposal submitted in 1968;
- in November 1977, acting on a proposal from the Commission (published in the Official Journal of 5 January 1976), it adopted a directive on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for road transport operators.

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OJ No. C 267 of 11 October 1982, page 62



2. As for waterway transport, the Commission several years ago forwarded to the Council two proposals for directives (published in Official Journal No. C 1 of 5 January 1976), one relating to access to the occupation of carrier and the other to the recognition of diplomas, certificates and other evidence of formal qualifications.

It should be noted that the latter proposal concerned diplomas relating both to the occupation of carrier by waterway and to the occupation of carrier by road transport; however, the Council's 1977 decision applied only to diplomas for road transport operators.

3. The Council did not succeed in reaching agreement on the Commission's 1976 proposals on waterway transport operations. As a result, the Commission withdrew the two proposals on this sector in 1982.

## II.

4. The aim of the proposal now under consideration is to lay down provisions, in a single text, on access to the occupation of carrier of goods by inland waterway and on the recognition of diplomas, certificates and other evidence of formal qualifications.

This proposal differs from the one approved by Parliament in 1976 inasmuch as the directive would be applicable only to goods transport in view of the minor economic significance of inland waterway passenger transport 'in terms of a common transport policy' (see subparagraph 2 of paragraph 5 of the Commission's explanatory memorandum - COM (83) 720 final).

The narrower scope of the directive has been approved by the Committee on Transport<sup>1</sup> and should not therefore give rise to any objections from the Legal Affairs Committee.

5. It should also be pointed out that the Commission's proposal no longer requires Member States to impose on waterway transport operators conditions relating to good repute and financial standing.

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<sup>1</sup> See paragraph 7 of the Committee on Transport's opinion.

In this respect, then, the Commission has decided, in view of the reservations expressed by the various national delegations, not to make this category of transport operator subject to the same rules as road transport operators.

The Commission explains the reasons behind this policy in the third subparagraph of paragraph 5 of its explanatory memorandum and its arguments have been accepted by the Committee on Transport<sup>1</sup>. The conditions applied to the two categories of transport operator will therefore still be different but this is something which will probably have to be accepted inasmuch as it could help to secure agreement in the Council on a matter which, over the years, has been the subject of so much fruitless effort.

### III.

6. In all other respects the proposed measures are based on those applicable to road transport and, with the exception of the points mentioned below, are the same as those contained in the Commission's 1976 proposal.

7. Chapter I of the proposal covers the definitions of the various terms used and the field of application of the directive.

In order to take account of the specific characteristics of the inland waterway market the proposal covers all transport activities in the sector, even if they are not exercised on a regular basis (Article 1, paragraph 2, first indent) and applies to 'owner-operators' as defined in the third indent of paragraph 2 of Article 1 and expressly referred to in the first subparagraph of paragraph 1 of Article 3.

It should also be noted that the field of application is broader than that proposed in 1976 inasmuch as it will cover all natural persons or undertakings pursuing the occupation concerned unless they are using 'vessels with a dead weight capacity at maximum draught not exceeding 200 metric tonnes'. The threshold proposed in 1976 was 400 metric tonnes.

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<sup>1</sup> See paragraph 8 of the Committee on Transport's opinion.

8. Chapter II (Articles 3 to 6) covers the conditions of access to the occupation and takes up the provisions of Articles 3 to 6 of the 1974 directive on access to the occupation of road haulage operator.

Article 3 sets out and defines the requirements as regards professional competence and Article 4 covers situations in which derogations may be made from the principles described in Article 3.

Article 5 specifies that transport operators authorized to pursue their occupation in a Member State before 1 July 1984 are exempt from the obligation to prove that they meet the conditions as regards professional competence. In essence, this provision is analogous to the one adopted in 1974 with respect to road transport operators (see Article 5, paragraph 1, of Directive 74/561/EEC).

Article 6 sets out the principles applicable to decisions to reject a request for access to the occupation or to withdraw the authorization to pursue the occupation. Such decisions must be open to appeal.

9. Chapter III covers the mutual recognition of diplomas, certificates and other evidence of formal qualifications (Articles 7 to 11).

Article 7 deals with the question of 'sufficient proof of professional competence' and corresponds to Article 5 of the 1977 directive on the mutual recognition of diplomas for road transport operators<sup>1</sup>.

Articles 8 and 9, which cover the requirements relating to good repute and financial standing respectively, are based on Articles 3 and 4 of the above directive with the proviso that the decision as to whether to impose such requirements is left to the discretion of the Member States and that these articles are consequently applicable only in cases where the host Member State imposes such requirements on its own nationals.

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<sup>1</sup> The subjects of which a knowledge is required are listed in the annex to the proposal for a directive. This list takes account of the specific nature of waterway transport activities.

10. It is interesting to note that as regards certificates relating to financial standing (see first paragraph of Article 9), the Commission's proposal takes account of the amendment adopted by Parliament in 1976 to the effect that such certificates should be issued not by the banks in the country of origin or of prior establishment but by chambers of commerce. The reference to banks admittedly still stands but the proposal lays down that certificates may also be issued by other bodies designated by the Member States concerned. This solution is the same as the one adopted in the 1977 directive on road transport.

11. As in the case of employees in the road transport sector (see paragraph 2 of Article 1 of the 1977 directive), the provisions on the mutual recognition of diplomas are applicable to employees in the waterway transport sector (see Article 10 of the proposal under consideration) engaged in the activities referred to in Article 1 of the proposal for a directive.

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12. The Commission submitted this proposal for a directive to the Council in December 1983; Article 12 provides that national implementing measures shall be brought into force before 1 July 1984.

This short deadline suggests that the Commission has good reason to suppose that the Council should have no difficulty in reaching agreement on the proposal and that the new rules can be implemented purely and simply by way of regulation since it would, of course, be impossible to amend existing legislation in such a short time.

If this is in fact the case the Legal Affairs Committee, while regretting the limited scope of the Commission's proposal, is justified in recommending to Parliament - like the Committee on Transport - that it should adopt the proposal. It is justified also in calling upon the Council to take a decision on the proposal without delay.

OPINION

of the Committee on Transport

Draftsman: Mr W. ALBERS

On 25 January 1984, the Committee on Transport appointed Mr W. ALBERS draftsman.

It considered the draft opinion at its meeting of 29 February 1984 and at that meeting adopted the conclusions by 7 votes for with 3 abstentions.

The following took part in the vote: Mr Seefeld, chairman; Dame Shelagh Roberts and Mr Carossino, vice-chairmen; Mr Albers, draftsman; Lord Harmar-Nicholls, Mr Key, Mr Klinkenborg, Mr Moreland (deputizing for Mr Moorhouse), Mr Nikolaou (deputizing for Mr Lagakos) and Mr Veronesi (deputizing for Mr Cardia).

## I. INTRODUCTION

1. This draft directive is one of the many proposals for Community legislation in the field of transport that, because of the Council's inability to take decisions, was withdrawn by the Commission after a number of years and was then resubmitted to the Council, albeit in a watered-down form.

2. The Commission had, in fact, already submitted a proposal in October 1975 on access to the occupation of carrier of goods or of passengers by waterway in national and international transport (Doc. 324/75/III) and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for such transport operations (Doc. 324/75/IV). On the basis of reports by Mr De Clerq (Doc. 90/76) and Mr Albers (Doc. 91/76), drawn up on behalf of the then Committee on Regional Policy, Regional Planning and Transport, Parliament approved these proposals, subject to some amendments<sup>1</sup>.

## II. GENERAL OBSERVATIONS

3. The Committee on Transport considers that with a view to the implementation of a common transport policy, it would be useful if Community rules could be adopted as quickly as possible on access to the occupation of carrier by waterway in national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation.

This is particularly important in view of the current crisis in the inland waterway sector which is characterized by structural overcapacity; provisions along the lines of the proposed directive could help to create a more healthy waterway transport sector.

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<sup>1</sup>OJ No. C 125, 8.6.1976, pp.53 and 54

4. To avoid disparity in treatment of the various transport sectors it is desirable that the same provisions should apply to the inland waterway sector as apply to road transport, to which the Commission refers specifically in its explanatory memorandum, i.e. Directives 74/561, 74/562 and 77/796.

The Commission admits that the harmonization of requirements for professional competence has proved satisfactory<sup>1</sup> and therefore proposes similar requirements for professional competence for the inland waterway sector.

5. As the aim is to increase the professional competence of inland waterway operators and the quality of the transport service, the Committee on Transport considers that Community provisions on this subject should have been in force long ago.

### III. SPECIFIC OBSERVATIONS

6. By comparison with the 1975 proposals, the present proposal contains two important changes:

- the scope is restricted to the transport of goods by inland waterways and
- the applicant operator still has to meet requirements as regards professional competence but not as regards good repute and financial standing.

7. The Committee on Transport agrees with the first amendment as, according to the Commission, there is little need to include passenger transport in the rules proposed 'since it tends to have highly specific characteristics and is of so little economic significance in terms of a common transport policy that it can safely be exempted from the proposed measures'.<sup>2</sup>

8. The Committee on Transport also accepts the second amendment, as national legislation on good repute and financial standing offers adequate guarantees. However, care should be taken to ensure that this does not give rise in practice to distortions of competition.

The Member States can, moreover, either maintain or introduce requirements as regards good repute and financial standing.

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<sup>1</sup> See Explanatory Memorandum, paragraph 7

<sup>2</sup> See Explanatory Memorandum, second subparagraph of paragraph 5

#### IV. CONCLUSIONS

9. In the light of the above observations the Committee on Transport calls on the committee responsible to include in its report the following amendment to the draft directive:

- After the third recital insert the following new fourth recital:

Whereas Directive 77/796/EEC proved to be satisfactory as regards the mutual recognition of diplomas, certificates and other evidence of formal qualifications for carriers of goods and passengers by road

10. The Legal Affairs Committee is also asked to include the following paragraphs in its motion for a resolution:

The European Parliament,

- whereas it is vital that all appropriate steps should be taken at Community level to rationalize the inland waterways sector, which is now in a serious state of crisis as a result of structural overcapacity;
- is convinced that the proposed rules can make a real contribution to a more practical organization of the market in this transport sector;
- considers it desirable that the same provisions should apply to waterway transport as apply to road transport as soon as possible, in order to avoid disparity in the treatment of the various transport sectors and distortion of competition;
- considers that Community rules based on Article 75(1)(b) of the EEC Treaty should have been in force long ago;
- urges the Council to adopt the proposed rules without delay, as they would enhance the professional competence of operators and improve the quality of the transport service.