

II

(Preparatory Acts)

COMMISSION

Proposal for a Council 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

*COM(83) 720 final**(Submitted by the Commission to the Council on 7 December 1983)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 49, 57 and 75 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas the organization of the transport market is one of the necessary preconditions for the implementation of the common transport policy which is provided for in the Treaty;

Whereas the adoption of measures designed to coordinate the conditions for access to the occupation of carrier is likely to promote the actual exercise of the right of establishment;

Whereas provision must be made for the introduction of common rules governing access to the occupation of carrier of goods by waterway in national and international transport in order to improve the standard of carriers; whereas such improvement is likely to help to set the market on a sounder footing and improve the quality of the service performed, in the interest of users, carriers and the economy as a whole;

Whereas the rules governing access to the occupation of carrier of goods by waterway must therefore cover at least the professional competence of the carrier, although Member States may also maintain or lay down rules governing probity and financial standing of the carrier;

Whereas, however, there is no need to include in the common rules laid down by this Directive certain

transport activities with minor economic implications, and transport for own account is by definition excluded from these rules;

Whereas there is a need for mutual recognition of diplomas, certificates and other evidence of formal qualifications for the activities covered by this Directive, in order to promote the actual exercise of the right of establishment;

Whereas, in respect of professional competence, the certificates issued pursuant to the provisions of this Directive regarding access to the occupation of carrier must be recognized as sufficient proof by the host Member State;

Whereas Member States which impose on their own nationals certain requirements as to probity and financial standing must accept as sufficient evidence in respect of nationals of other Member States documents issued by a competent authority in the country of origin of the carrier;

Whereas the provisions of this Directive concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications for carriers apply only to undertakings which can be considered as such within the meaning of Article 58 of the Treaty;

Whereas this Directive must also apply to employed persons covered by Council Regulation (EEC) No 1612/68 of 15 October 1968 on the free movement of workers within the Community⁽¹⁾, in so far as the Member States make access to the occupation covered by this Directive or the exercise thereof conditional on the possession of professional knowledge and skills,

⁽¹⁾ OJ No L 257, 19. 10. 1968, p. 2.

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Definitions and scope

Article 1

1. Access to the occupation of carrier of goods by waterway shall be governed by the provisions adopted by the Member States pursuant to the common rules laid down in this Directive.

2. For the purposes of this Directive:

- the expression 'occupation of carrier of goods by waterway' shall mean the activities engaged in by any natural person or any undertaking carrying goods by waterway for hire or reward, even if this occupation is not exercised on a regular basis,
- the term 'undertaking' shall mean companies or firms within the meaning of Article 58 of the Treaty and groups or cooperatives of owner-operators whose purpose is to obtain business from shipping agents for distribution among their members, irrespective of whether such groups or cooperatives possess legal personality,
- 'owner-operator' shall mean owner or operator of no more than three vessels, or an owner-operator undertaking as defined by the national legislation of a Member State.

Article 2

This Directive shall not apply to natural persons or undertakings pursuing the occupation of carrier of goods by waterway using vessels with a deadweight capacity at maximum draft not exceeding 200 tonnes.

The Member States may lower this limit for all or some categories of transport.

The Directive shall likewise not apply to natural persons and undertakings operating ferry services.

CHAPTER II

Access to the occupation

Article 3

1. Natural persons or undertakings wishing to pursue the occupation of carrier of goods by waterway must satisfy the conditions relating to professional competence, even if they are members of a group or cooperative of owner-operators, within the meaning of Article 1 (2), or exercise their occupation exclusively for a specific period of time as subcontractors to another waterway transport undertaking.

If the applicant is a natural person who does not meet this condition, the competent authorities may nevertheless authorize him to pursue the occupation of carrier provided that he designates another person meeting this condition who actually manages the transport operations on a permanent basis.

If the applicant is an undertaking within the meaning of Article 1 (2), one of the natural persons who actually manages the undertaking's transport operations on a permanent basis must meet the conditions relating to professional competence.

2. Professional competence shall mean possessing the standard of knowledge accepted by the authority or body appointed for this purpose by each Member State in the subjects listed in the Annex. The required knowledge shall be acquired either by attendance at courses or by practical experience in a waterway transport undertaking, or by a combination of the two. Member States may exempt from the application of these provisions the holders of certain higher education or technical education diplomas which testify to a sound knowledge of the subjects listed in the Annex.

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

Article 4

1. Member States shall lay down the terms on which a transport undertaking may, by way of derogation from Article 3 (1), operate on a provisional basis for a maximum of one year, which period may be extended by no more than six months in exceptional duly justified cases, in the event of death or physical or legal incapacity of the natural person pursuing the occupation of carrier or of the natural person satisfying the conditions set out in Article 3.

2. However, the competent authorities in the Member States may, by way of exception, in certain special cases, permanently authorize the operation of an undertaking by a person who does not meet the condition relating to professional competence laid down in Article 3, but who has had at least three years practical experience in the everyday management of the undertaking concerned.

Article 5

Natural persons and undertakings who provide proof that before 1 July 1984 they were authorized in a

Member State, pursuant to national rules, to pursue the occupation of carrier of goods by waterway in national and/or international transport, shall be exempt from the obligation to prove that they meet the conditions laid down in Article 3.

Article 6

1. Reasons must be given for any decision taken by the competent authorities of the Member States, pursuant to the measures adopted on the basis of this Directive, by which an application for access to the occupation of carrier of goods by waterway is rejected.

2. Member States shall ensure that the competent authorities withdraw an authorization to pursue the occupation of carrier of goods by waterway if they find that the conditions laid down in Article 3 are no longer met, subject to allowing, where appropriate, sufficient time for the recruitment of a substitute.

3. Member States shall ensure that the natural persons and undertakings referred to in this Directive have the opportunity to defend their interests by appropriate means with regard to the decisions referred to in paragraphs 1 and 2.

CHAPTER III

Mutual recognition of diplomas, certificates and other evidence of formal qualifications

Article 7

1. Member States shall recognize the certificates referred to in the second subparagraph of Article 3 (2) and issued by another Member State as sufficient proof of professional competence where they are based on an examination passed by the applicant or on three year's practical experience.

2. With regard to natural persons and undertakings authorized before 1 July 1984 under national rules in a Member State to engage in the occupation of carrier of goods by waterway in national and/or international transport and in so far as the undertakings concerned are companies or firms within the meaning of Article 58 of the Treaty, Member States shall accept as sufficient proof of professional competence certificates stating that the activity in question has actually been carried on in a Member State for a period of three years. This activity must not have ceased more than five years before the date of submission of the certificate.

In the case of an undertaking, the certificate stating that the activity has actually been carried on shall be issued in respect of one of the natural persons actually in charge of the transport activities of the undertaking.

Article 8

1. Where the host Member State imposes on its own nationals certain requirements as to good repute or absence of previous bankruptcy, that State shall accept as sufficient evidence in respect of nationals of other Member States, without prejudice to paragraphs 2 and 3, an extract from a judicial record or, failing that, an equivalent document issued by a competent judicial or administrative authority in the carrier's country of origin or prior establishment, showing that these requirements have been met.

2. Where the host Member State imposes on its own nationals certain requirements as to good repute and proof that such requirements are met cannot be furnished by means of the document referred to in paragraph 1, the State shall accept as sufficient evidence in respect of nationals of other Member States a certificate issued by a competent judicial or administrative authority in the country of origin or prior establishment, stating that the requirements in question have been met. Such certificates shall relate to the specific facts regarded as relevant by the host country.

3. Where the country of origin or prior establishment does not issue the document required in accordance with paragraphs 1 and 2, such document may be replaced by a declaration on oath or by a solemn declaration made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary in that person's country of origin or prior establishment; such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration. The declaration in respect of bankruptcy may likewise be made before a competent professional body in the same country.

4. Documents issued in accordance with paragraphs 1 and 2 shall not be accepted if submitted more than three months after the date of issue. This condition shall also apply to declarations made in accordance with paragraph 3.

Article 9

1. Where the host Member State imposes on its own nationals certain requirements as to financial standing and where a certificate is required as proof, that State shall regard corresponding certificates issued by banks in the country of origin or of prior establishment, or by other bodies designated by that country, as equivalent to certificates issued within its own territory.

2. Where a Member State imposes on its own nationals certain requirements as to financial standing and where proof that such requirements are satisfied

cannot be furnished by means of the document referred to in paragraph 1, that State shall accept as sufficient evidence, in respect of nationals of other Member States, a certificate issued by a competent administrative authority in the country of origin or prior establishment, stating that the requirements in question have been met. Such certificate shall relate to the specific factors regarded as relevant by the host country.

Article 10

Articles 7 and 9 of this Directive shall also apply to nationals of Member States who, pursuant to Regulation (EEC) No 1612/68, are engaged as employed persons in the activities referred to in Article 1.

Article 11

Member States shall, within the time limit laid down in the first subparagraph of Article 12 (1), designate the authorities and bodies competent to issue the certificates referred to in Article 7 (2). They shall immediately inform the other Member States and the Commission thereof.

CHAPTER IV

Final provisions

Article 12

1. Member States shall bring into force the measures necessary to comply with this Directive before 1 July 1984 and shall immediately inform the Commission thereof.

They shall ensure that the initial examination of the standards of competence referred to in Article 3 takes place before 1 January 1987.

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

Article 13

This Directive is addressed to the Member States.

ANNEX

LIST OF THE SUBJECTS REFERRED TO IN ARTICLE 3 (2)

The knowledge to be taken into consideration for recognition of professional competence must relate to at least the subjects listed below. These must be described in detail and be defined or approved by the competent national authorities. The knowledge required must be such that it can be assimilated by persons whose educational level is equivalent to that obtained at the end of compulsory schooling.

A. Subjects of which a satisfactory knowledge is required for carriers intending to engage solely in national transport operations

1. *Law*

Rudiments of civil law and commercial, social and tax legislation, knowledge of which is necessary for the pursuit of the occupation, particularly as regards:

- contracts in general,
- haulage contracts, in particular the liability of the carrier (nature and limits),
- commercial companies,
- business accounts,
- labour and social security regulations,
- the tax system.

2. *The commercial and financial management of an undertaking*

- methods of payment and financing,
- calculation of cost prices,
- system of prices and terms of carriage,
- commercial accounting,
- insurance,
- invoices,
- transport agents.

3. *Access to the market*

- the provisions relating to access to and the pursuit of the occupation,
- chartering systems,
- transport documents.

4. *Technical standards and technical aspects of operation*

- the technical features of vessels,
- the choice of vessels,
- registration,
- lay days and demurrage.

5. *Safety*

- the provisions laid down by law, regulation or administrative action concerning waterway traffic,
- accident prevention and measures to be taken in case of accident.

B. Subjects of which a satisfactory knowledge is required for carriers intending to engage in international transport operations

- subjects listed under A,
- the provisions applicable to waterway transport between the Member States and between the Community and non-member countries, laid down in national law, Community rules, and international conventions and agreements, particularly with respect to:
- customs practices and formalities,
- principal rules governing traffic in the Member States.

Amendment to the proposal for a Council Decision dealing with structures and procedures for the management and coordination of Community research, development and demonstration activities ⁽¹⁾

COM(83) 735 final

(Submitted by the Commission to the Council pursuant to Article 149 (2) of the EEC Treaty on 7 December 1983)

ORIGINAL PROPOSAL
(Doc. COM(83) 143 final)

AMENDED PROPOSAL
(changes in bold type)

Articles 1, 2, 4 and 6 unchanged

Article 3

CGCs shall be composed of, at most, three representatives of each Member State and the Commission. The representatives of Member States shall be nominated by the Commission in agreement with their Governments. Their term of office shall be four years, renewable.

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Article 5

The Commission shall ensure that all necessary liaison between the CGCs takes place. The opinions and reports emanating from CGCs shall be passed to the Council and the Parliament by the Commission as required.

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ANNEX

List of CGCs set up by this Decision:

- Industrial technology (except ECSC steel research),
- Information technology,
- Biotechnology,

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⁽¹⁾ OJ No C 113, 27. 4. 1983, p. 5.