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Report

drawn up on behalf of the Committee on Regional Policy, Regional Planning and Transport

on the proposal from the Commission of the European Communities to the Council (Doc. 324/75/IV) for a directive aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for road or waterway passenger transport and goods haulage operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment

Rapporteur: Mr W. ALBERS

1.2.2

PE 44.165/fin.

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By letter of 21 October 1975 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 57 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for road or waterway passenger transport and goods haulage operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment.

The President of the European Parliament referred this proposal to the then Committee on Regional Policy and Transport as the committee responsible and to the Committee on Economic and Monetary Affairs for its opinion.

On 10 December 1975 the then Committee on Regional Policy and Transport appointed Mr Albers rapporteur. The newly constituted Committee on Regional Policy, Regional Planning and Transport considered this proposal at its meeting of 28 April 1976.

At the same meeting the motion for a resolution and the explanatory statement were adopted unanimously, with two abstentions.

Present: Mr Evans, chairman; Mr Nyborg and Mr McDonald, vice-chairmen; Mr Albers, rapporteur; Mr De Clerq, Mr Ellis, Mr Giraud, Mrs Kellett-Bowman, Mr Mursch, Mr Knud Nielsen, Mr Osborn and Mr Seefeld.

The opinion of the Committee on Economic and Monetary Affairs is attached.

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A

The Committee on Regional Policy, Regional Planning and Transport hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for road or waterway passenger transport and goods haulage operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹,
 - having been consulted by the Council pursuant to Article 57 of the EEC Treaty (Doc. 324/75/IV),
 - having regard to the report of the Committee on Regional Policy, Regional Planning and Transport and the opinion of the Committee on Economic and Monetary Affairs (Doc. 91/76),
1. Welcomes the fact that this proposal aims at an increase in the professional qualifications of operators of passenger and goods transport by road and inland waterway and in the quality of transport services;
 2. Considers it desirable, given the close connection between the present proposal and the Commission's proposal for a directive on admission to the occupation of carrier of goods or of passengers by inland waterway in national and international transport for both proposals to be adopted simultaneously by the Council;
 3. Hopes also that greater attention will be given to the question of capacity, particularly of inland waterway transport, and therefore urges the Council to take the necessary supplementary measures without delay, on the basis of the Commission's 1967 proposals;
 4. Fears that widely divergent statutory provisions in the Member States may lead to a distortion of competition and disturb the transport market equilibrium;
 5. Is of the opinion that the requirements placed on operators to provide proof of their financial standing offer insufficient guarantees;

¹OJ No. C 1, 5.1.1976, p.35

6. Requests the Commission of the European Communities to incorporate the following amendments in its proposal pursuant to the second paragraph of Article 149 of the EEC Treaty.

Proposal on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for transport operators and their right to freedom of establishment

Preamble and first nine recitals unchanged

Tenth Recital

Whereas it would therefore also be appropriate to apply the provisions on proof of good repute and financial standing to employees;

Tenth Recital

Whereas it would therefore also be appropriate to apply the provisions on proof of good repute to employees; (three words omitted)

Eleventh recital and Articles 1, 2 and 3 unchanged

Article 4

A host Member State shall accept certificates from banks of the country of origin of the applicant, or the country from which he has come, as sufficient proof of his financial standing.

Article 4

The host Member State shall accept certificates from chambers of commerce or any authority designated for this purpose in the country of origin of the applicant, or the country from which he has come, as sufficient proof of his financial standing.

Articles 5 to 9 unchanged

¹ For complete text, see OJ C 1, 5.1.1976, p.35

EXPLANATORY STATEMENT

1. The purpose of this proposal from the Commission of the European Communities is to ensure equal legal validity in all Member States of the Community for diplomas, certificates and other evidence of formal qualifications for operators of road or waterway passenger and goods transport granted by the authorities of one Member State to its nationals.

This mutual recognition of certificates will also contribute to the achievement of freedom of establishment for transport operators.

Moreover, the proposal aims at increasing the professional qualifications of transport operators and the quality of transport services and consequently at a better organization of the transport market.

2. The Commission's draft directive is based on Article 57 of the EEC Treaty, which reads as follows :

'1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the Council shall, on a proposal from the Commission and after consulting the Assembly, acting unanimously during the first stage and by a qualified majority thereafter, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.

2. For the same purpose, the Council shall, before the end of the transitional period, acting on a proposal from the Commission and after consulting the Assembly, issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons. Unanimity shall be required on matters which are the subject of legislation in at least one Member State and measures concerned with the protection of savings, in particular the granting of credit and exercise of the banking profession, and with the conditions governing the exercise of the medical and allied, and pharmaceutical professions in the various Member States. In other cases, the Council shall act unanimously during the first stage and by a qualified majority thereafter.'

3. The 'General Programme for the Abolition of Restrictions on Freedom of Establishments' drawn up by the Council on 18 December 1961¹, stipulated that restrictions on freedom of establishment for self-employed persons in the field of goods and passenger transport by road or by inland waterway should be lifted by 31 December 1967.

Pursuant to this 'General Programme', the Commission - rather belatedly - submitted in 1970 three draft directives to the Council (Doc. 25/70). The European Parliament delivered a favourable opinion on the basis of Mr LAUTENSCHLAGER's report (Doc. 31/71) on behalf of the Legal Affairs Committee which also took account of Mr BOURDELLES' opinion on behalf of

¹ OJ No. 2, 15.1.1962

the Committee on Transport.

4. These proposals were still before the Council when a judgment of the Court of Justice on 21 June 1974 in Case 2/74¹ (Reyners versus the Belgian State) brought about a basic change in the situation.

As the Commission itself admitted in its 'Report on the Present Situation of the goods transport markets in the Community' (COM(75)491 final, page 31) Community activities for the achievement of freedom of establishment, which were in any case behind the schedule fixed in the 'General Programme', had now been entirely overtaken by events.

On the basis of this judgment, the Treaty provisions on the right of establishment are directly applicable and all restrictions in the national legislation of one Member State with regard to nationals of another are to be considered null and void.

5. The Court's judgment also meant that the 1970 Commission proposals on the right to freedom of establishment in passenger and goods transport by road and inland waterway must be regarded as immaterial; they are now replaced by the present proposal.

6. The recognition of diplomas, certificates and other evidence of formal qualifications is obviously closely linked with the criteria for admission to the occupation of transport operator.

In the road transport sector, the Council issued two Directives on 12 November 1974, one on admission to the occupation of road haulage operator in national and international transport operations (Directive 74/561/EEC) and the other on admission to the occupation of road passenger transport operator in national and international transport operations (Directive 74/562/EEC)². The European Parliament delivered its opinion on these proposals as to goods transport on the basis of Mr JOZEAU-MARIGNÉ's report (Doc. 25/68) and as to passenger transport on the basis of Mr BOERTIEN's report (Doc. 186/69).

7. In the case of inland waterway transport, the proposal for a directive on admission to the occupation of the operator of national and international passenger or goods transport by inland waterway - like the present draft directive - is part of a series of eight proposals for improved organization of the transport market. Mr DE CLERCQ was appointed rapporteur on this proposal (Doc. 324/75, part III) on 10 December 1975.

¹OJ No. C 114, 27.9.1974, p.26

²OJ No. L 308, 19.11.1974, pp. 18 and 23

8. The Committee on Regional Policy, Regional Planning and Transport naturally approves the principle of freedom of establishment by which individuals and companies may establish themselves in another Member State of the Community, under identical conditions and with identical rights and obligations as nationals of the host country. The achievement of a coherent common transport policy is impossible if nationals of a second Member State are discriminated against by the host country through deliberate administrative or statutory provisions or act such as the requirement to produce special evidence of qualification or a system of temporary permits for foreign operators.

9. The Committee on Regional Policy, Regional Planning and Transport also approves the right of an operator from a second Member State to affiliate with professional organizations of the host country, in so far as the professional activities of the person involved require the exercise of this right.

10. However, it must be regretted that the Council of the European Communities has so far paid too little attention to capacity in inland waterway transport, especially as in many countries it seems too easy to establish new capacity in a sector which for years has suffered from structural over-capacity. The over-capacity was one of the main reasons for the nine-week inland waterway strike in Belgium and for the problems which arose last autumn in the Netherlands.

11. Both quantitatively and qualitatively the inland waterway sector is slow to adapt to changing circumstances. This obliges national authorities to intervene with regulations such as the rota system.

Over-capacity clearly has repercussions on price fixing and could lead to a collapse of inland waterway transport rates.

12. The draft directive requires would-be transport operators to meet three subjective criteria (subjective as distinct from the objective conditions relating to possible regulations on capacity). These criteria are good repute, financial standing and professional competence.

Articles 3 and 4 of this proposal stipulate that the proof of financial standing and of not being bankrupt may be furnished by:

- an extract from judicial record or an equivalent document issued by the competent judicial or administrative authority of the country of origin;
- a sworn statement or a solemn declaration made in the presence of a competent legal or administrative authority or a qualified professional body or, possibly, before a notary of the country of origin of the applicant or of the country from which he has come;
- certificates from banks of the country of origin of the applicant or of the country from which he has come.

13. The Committee on Regional Policy, Regional Planning and Transport would prefer a stipulation that only those bodies and organizations in existence in each Member State before 1 January 1978 (Articles 7 and 8) should be authorized to issue such proof. The national bodies and organizations should also be required to cooperate closely with the Commission.

As a transitional measure, authorization of the bodies indicated in Articles 3 and 4 would be acceptable, with the exception of banks.

14. Certificates issued by banks in the country of origin of the applicant, or the country from which he has come, concerning his financial standing may in practice give rise to a great many difficulties. For example, such a statement might be drawn up in vague terms, and the applicant might then have to contend with financial difficulties in his day-to-day operations soon after establishing his business. The Committee on Regional Policy, Regional Planning and Transport therefore proposes the deletion of this proof of financial standing (Article 4) in the text of the Commission's proposal and the substitution of a certificate from chambers of commerce or any authority specially designated for this purpose in the country of origin of the applicant or the country from which he has come.

15. Your committee similarly proposes to omit the provisions on proof of good repute and financial standing from the tenth recital, since in its opinion there is little point in applying them to employees.

16. Articles 5 and 6 stipulate that the conditions of professional competence are satisfied by possession of knowledge of the subjects listed in the Annex to the abovementioned Council Regulations on admission to the occupation of operator of goods and passenger transport by road and in the proposal (Doc. 324, part III) concerning inland waterways. Declarations issued by the authorized bodies are acceptable in the host country as sufficient evidence of professional competence.

A declaration, issued by the authorized bodies in the country of origin of the applicant, or of the country from which he has come, of actual pursuance of the relevant activities during a period of three years, is also regarded by the host country as sufficient proof of professional competence.

17. Article 7 requires Member States to designate by 1 January 1978 the authorities and bodies competent to issue the documents referred to above.

Finally Article 8 requires Member States to adopt the measures necessary to comply with this directive before 1 January 1978 and to immediately inform the Commission.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Letter of 19 March 1976 from Mr Paul De Keersmaeker, draftsman of an opinion, to Mr John Evans, chairman of the Committee on Regional Policy, Regional Planning and Transport

Dear Mr Chairman,

At its meeting of 18 and 19 March 1976 the Committee on Economic and Monetary Affairs considered the proposal contained in Document 324/75 for a Directive aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for road or waterway passenger transport and goods haulage operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment.

This proposal, the purpose of which is to facilitate freedom of establishment in this sector by the adoption of transitional measures concerning guarantees of good character and financial and professional reliability on the part of these operators, was approved by the Committee on Economic and Monetary Affairs.

I would ask you to consider this letter as the opinion for your committee, adopted unanimously,¹ on this proposal for a directive (Doc. 324/75).

(sgd.) Paul De KEERSMAEKER
(Draftsman of opinion)

¹ Present: Mr Van der Hek, chairman; Sir Brandon Rhys Williams, vice-chairman; Lord Ardwick, Mr Artzinger, Mr Burgbacher, Mr Clerfayt, Mr Deschamps, Mr Dykes, Lord Gordon Walker, Mr Lange, Mr Leonardi, Mr Van der Mei, Mr Mitterdorfer, Mr Nyborg, Mr Prescott and Mr Suck.