COMMISSION OPINION

of 23 December 1977

addressed to the Government of the Italian Republic on the draft law implementing Directive 74/561/EEC on admission to the occupation of road haulage operator in national and international transport operations

(78/97/EEC)

Under cover of a letter of 9 September 1977, the office of the Italian Permanent Representative to the European Communities sent to the Commission, for consultation, the text of a draft law to implement Council Directive 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations [1].

This was in accordance with Article 7 (1) of that Directive.

The Commission hereby delivers the following opinion on the abovementioned draft law :

1. The Commission regrets that the Italian Government by delaying the communication of the implementing measures, has not satisfied by the appointed time its duties under Article 7 of the Directive and, furthermore, has prevented the Commission from delivering this opinion in due time.

2. Concerning admission to the occupation of road haulage operator, the Commission notes that the draft law amending Law No 298 of 6 June 1974, as amended by Law No 145 of 28 April 1975, satisfies the requirements of the abovementioned Directive with regard to the principle, definition and methods of implementation of the conditions of good repute, financial standing and professional competence (Article 3 of the Directive).

3. As regards Article 13 of the draft law, which sets out the conditions required for entry in the register of road haulage operators working for hire or reward, the Commission would make the general observation that, if the Directive is to be correctly implemented, a clear statement is required to the effect that these conditions are laid down in order to regulate admission to the occupation of road haulage operator, and that entry in the register is only a formality which confirms the decisions taken by the competent authorities.

To ensure legal certainty it is also considered necessary that the attention of the Italian Government should be drawn to the advisability of amending the text of Article 13 of the draft law so as to rearrange the conditions set out therein to make clear how far they are designed to satisfy the conditions for admission to the occupation laid down in the Community Directive.

4. The Commission also points out that the condition of entry on the register of small firms and craft industries at the Chamber of Commerce, as provided for in Article 13 (1) (3) may be allowed for the purpose of proving financial standing, on condition that such entry is not in turn made subject to other conditions which are not included in the Community Directive.

5. As regards the conditions set out in Article 13 (1), (2), (4), (5) and (6) of the draft law, namely :

— the availability of sufficient technical and economic resources,

— the holding of a civil liability insurance policy covering the use of the vehicles,

— meeting the legal obligations in respect of social provision for the personnel of the undertaking,

— registration for income tax purposes,

the Commission is of the opinion that these relate to the exercising of the occupation and not to the admission thereto, and therefore they should be requirements relating to the issue of a transport licence.

6. The Commission notes that Article 13 (8) of the draft law provides for provisional entry in a separate register where the applicant has not obtained the authorization required by law, or where he cannot provide proof that he meets all the requirements.

In so far as such registration would permit an applicant to exercise the occupation, the Commission is of the opinion that such provisional registration is incompatible with the Community Directive, which makes no provision for it.

7. The Commission also draws the attention of the Italian Government to Article 2 of the Directive. By virtue of this Article the Directive does not apply to

[1] OJ No L 308, 19. 11. 1974, p. 18.

natural persons or 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.

Article 13 (a) (7) of the draft law exempts natural and legal persons exercising the occupation of road haulage operator by means of vehicles whose total permissible laden weight does not exceed six tonnes from the condition of professional competence.

Consequently, in view of the general substance of Article 2, it is considered necessary that this exemption be extended to cover the conditions of good repute and financial standing.

Done at Brussels, 23 December 1977.

For the Commission

Richard BURKE

Member of the Commission