COMMISSION RECOMMENDATION

of 16 March 1977

addressed to the Government of the Kingdom of the Netherlands in respect of a draft law implementing certain provisions of Council Directive 74/561/EEC

(77/243/EEC)

By letter dated 22 October 1976, the Office of the Permanent Representative of the Netherlands to the European Communities notified to the Commission, for consultation, the text of a draft law on the application of the 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 notification was made in accordance with Article 7 (1) of the Directive, which states : 'Member States shall, after consulting the Commission and before 1 January 1977, adopt the measures necessary for the implementation of this Directive, in particular Article 3 (4) thereof.'

As regards the draft law in question, the Commission makes the following recommendation :

1. The Commission finds that, in principle, the draft law of the Netherlands Government — subject to approval of the implementing measures still to be taken — complies with the stipulations of Article 7 (1) as regards :

(a) the principle of good repute (Article 3 (1)) ;

(b) the determination of those persons who, depending on the case, must comply with the conditions laid down in Article 3 (1) (Article 3 (1), second and third subparagraphs) ;

(c) withdrawal by the appropriate authorities, under Article 6 (2), of the authorization to pursue the occupation of road haulage operator if they establish that the provisions of Article 3 (1) (a) (b) or (c) are no longer satisfied.

2. Similarly, the Commission notes that the conditions of financial standing and professional competence as provided for in Article 3 of the Directive, and the procedures whereby the applicant must satisfy them, are already the subject of provisions of law applied in the Netherlands.

However, the Commission would remind the Netherlands Government that under Article 3 (4) the skills and knowledge to be taken into consideration for establishing professional competence must cover at least the subjects listed in the Annex to the Directive.

As the Commission has not been informed of the curricula at present laid down in the Netherlands, it recommends to the Netherlands Government that it communicate them to the Commission for consultation.

3. The Commission also notes that the new Article 56 (1) empowers the Minister to grant, in particular cases to be defined by means of public administrative regulation, dispensations regarding professional competence alone. It appears from the explanatory memorandum to the draft law that the sole purpose of this provision is to implement Article 4 (2) of the Directive. However, the Commission would draw the attention of the Netherlands Government to Article 4 (1), which reads as follows :

'Member States shall determine the circumstances in which a road haulage undertaking may, by way of derogation from 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 transport operator or of the natural person who satisfies the provisions of Article 3 (1) (a) and (c).'

The Commission therefore recommends to the Netherlands Government that it broaden the wording of the last sentence of Article 56 (1) to take account of the cases referred to in Article 4 (1) of the Directive. Furthermore, the Commission would remind the Netherlands Government that subsequent implementing orders, in so far as they constitute implementing measures required for putting the Directive into effect, must also be notified to the Commission for consultation, in accordance with Article 7 (1) of the Directive.

4. The Commission notes that current regulations in the Netherlands on the carriage of goods by road comply with the stipulations of Article 6 (1) and (3), as regards both the obligation to state the grounds for decisions to reject an application for authorization, and the possibility for the persons concerned to defend their interests by appropriate means in respect of the decisions referred to in Article 6 (1) and (2).

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

5. Finally, the transitional provisions provided for in Article II of the Netherlands draft law broadly comply with Article 5 of the Directive. However, the Commission would draw the attention of the Netherlands Government to the fact that Article 5 (1) and (2), first subparagraph, stipulate that 1 January 1978 is the date of expiry of the period of application of the transitional provisions.

Since Article II of the draft law refers only to the date of entry into force of the law, the Commission recommends to the Netherlands Government that it take steps to ensure that the time limit laid down by Article 5 of the Directive (1 January 1978) is respected.

Done at Brussels, 16 March 1977.

For the Commission

Richard BURKE

Member of the Commission