COMMISSION RECOMMENDATION

of 6 May 1977

addressed to the Government of the Kingdom of the Netherlands regarding a draft law implementing the Council Directive of 12 November 1974 on admission to the occupation of road passenger transport operator in national and international transport operations

(77/354/EEC)

By letter of 5 January 1977, the Office of the Dutch Permanent Representative to the European Communities sent to the Commission, for consultation, the text of a draft law concerning the implementation of the Council Directive of 12 November 1974 on admission to the occupation of road passenger transport operator in national and international transport operations (1).

These texts were submitted in pursuance of Article 6 (1) of the Directive, under which 'the 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 2 (4) thereof,'

The Commission notes with regret that, owing to the delay in submitting details of its implementing measures, the Dutch Government was unable to fulfil by the due date its obligations under Article 6 of the Directive as aforesaid, and has made it impossible for the Commission to adopt this Recommendation within the proper time.

As regards the draft law itself, the Commission delivers the following Recommendation :

1. The Commission notes that the Dutch Government's draft law satisfies the conditions of the Directive in the following respects :

— the conditions of good repute, financial standing and professional competence (Article 2 (1) of the Directive) ;

— the determination of those natural persons who, where applicable, must fulfil the conditions laid down in Article 2 (1) in conjunction with the second and third subparagraphs of paragraph 1.

2. The Commission takes note of the fact that the first and fourth subparagraphs of draft Article 56a state that the procedure for defining and, in some respects, implementing these conditions will be laid down in subsequent administrative regulations. In this connection, the Commission would remind the Dutch Government that the Commission must be consulted on these measures, and that they must comply with the provisions of the Directive, in particular Article 2 (2), (3) and (4) and Article 3.

3. The Commission also notes that the fifth subparagraph of Article 56a lays down the principle of withdrawal of authorization where one or other of the conditions of admission referred to above are no longer satisfied. Provision is, however, also made for a transitional period of at least one year unless there is a risk of jeopardizing the interests of a third party.

The Commission would point out to the Dutch Government that Article 5 (2) of the Directive does allow time for the withdrawing of authorization, but only to enable a substitute to be appointed.

The Commission therefore recommends that the Dutch Government amend the last sentence of the fifth subparagraph of draft Article 56a to ensure compliance with Article 5 (2) in fine of the Directive.

4. The Commission notes, from the draft Article 56b and the explanatory memorandum accompanying the draft law, that some types of transport operation may be exempted from the provisions of Article 56a by or pursuant to an administrative regulation. The Commission also notes from the explanatory memorandum that these will be transport operations which are for non-commercial purposes or are a secondary activity, provided that they have only a minor impact on the transport market, as provided for in Article 1 (3) of the Directive.

5. The Commission notes that, although Article II of the draft law exempts persons who have been granted authorization by the date of entry into force of the law from the conditions laid down in Article 56a, this limited provision cannot, under any circumstances, be considered to implement Article 4 of the Directive concerning transitional measures.

The Commission therefore recommends that the Dutch Government amend Article II of the draft law so that it covers all the hypotheses provided for in Article 4 of the Directive.

(1) OJ No L 308, 19. 11. 1974, p. 23.

6. The Commission also draws the attention of the Dutch Government to the need to implement :

— Article 3 : continued operation of an undertaking on a temporary or permanent basis in the circumstances and according to the rules laid down in paragraphs (1) and (2) of this Article,

— Article 5 (1) : statement of grounds for rejection of an application for admission to the occupation of road passenger transport operator,

— Article 5 (3) : the parties concerned are given the possibility of defending their interests by appropriate means as regards decisions to reject or withdraw authorization.

The Commission advises the Dutch Government to take steps to remedy the deficiencies of the draft law in these respects.

7. Finally — in a more general context — the Commission urges the Dutch Government to adopt as soon as possible, after consulting the Commission, the implementing measures referred to in points 2, 4 and 6 of this Recommendation (which should have been adopted by 1 January 1977 under Article 6 (1) of the Directive).

Done at Brussels, 6 May 1977.

For the Commission

Richard BURKE

Member of the Commission