competence is established either by the acquisition of a diploma or on the basis of appropriate practical experience for a period to be determined by the Member States, or by a combination of both.

2. Article 4 (2) of the Directive applies only in the event, referred to in paragraph (1), of the death or physical or legal incapacity of the natural person engaged in the occupation of transport operator or satisfying the condition as to professional competence.

3. The provision in Article 5 (2) may not be invoked against persons entitled under Article 4 (2) to definitive exemption on the ground that they possess at least three years' practical experience in the day-to-day management of the undertaking.

4. "Physical incapacity" within the meaning of Article 4 (1) of the directive must not be taken to mean the attainment of an age at which a person is deemed no longer to be capable of working.

Mertens de Wilmars Donner O'Keeffe

Delivered in open court in Luxembourg on 22 March 1979.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL MAYRAS
(see Case 145/78, p. 1033)