# COMMISSION

## COMMISSION RECOMMENDATION

**of 26 May 1978**

**to Ireland regarding draft Regulations implementing Council Directive 74/562/EEC on admission to the occupation of road passenger transport operator in national and international transport operations**

(78/519/EEC)

Under cover of a letter dated 2 August 1977, the Office of the Irish Permanent Representative to the European Communities forwarded to the Commission, for consultation purposes, the text of draft Regulations implementing the Council Directive 74/562/EEC of 12 November 1974 on admission to the occupation of road passenger transport operator in national and international transport operations (1).

This notification was made pursuant to Article 6 (1) of the Directive.

The Commission regrets the tardy notification of the implementing measures: not only has the Irish Government thereby exceeded the time limit for fulfilling the obligations incumbent upon it under Article 6 of the Directive 74/562/EEC but also it has made it impossible for the Commission to deliver this recommendation in good time.

The Commission makes the following recommendation regarding the draft Regulations:

1. The Commission notes that the Irish Government's draft Regulations satisfy in principle the provisions of the Community Directive, as regards admission to the occupation of road passenger transport operator, subject to approval of the implementing measures which have yet to be taken and of the following amendments to be made to them.

2. Article 2 of the draft Regulations contains the following definition: ' "road passenger transport business" means any business conducted by a person while engaged in the occupation of road passenger transport operator but does not include the business of offering or organizing road passenger transport where the person carrying on the business is neither the owner of a vehicle used in the provision of such transport nor the holder of a public service vehicle licence granted in respect of such a vehicle.'

The Commission notes that this definition refers only to the professional activity of persons and not of undertakings. Furthermore the fact that the definition of the road passenger transport business excludes transport services provided by persons who do not own the vehicles whereby they provide such services or who are not holders of a public service vehicle licence is a substantial departure from the definition of the occupation of road passenger transport operator set out in Article 1 (2) of the Directive.

The Commission recommends that the wording of this definition in Article 2 of the draft Regulations be amended to bring it into line with the definition set out in the Directive.

3. Article 3 (1) of the draft Regulations prohibits, from 1 January 1978, any person engaged in the occupation of road passenger transport operator from carrying passengers, if such a person is not the holder of an international or national road passenger certificate. This Article thus refers only to 'persons' not otherwise defined and does not cover undertakings.

The Irish Government has explained that in its national legislation the term 'person' covers both natural and legal persons.

However, in view of the definition of the term 'undertakings' contained in the second subparagraph of Article 1 (2) of the Community Directive, which covers associations, groups and bodies, some of which may not fall within the categories of natural and legal persons, the Commission recommends that the Irish

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

Government state explicitly that the provisions of the proposed Regulations apply to the admission of both persons and undertakings to the occupation of road passenger transport operator.

4. The Commission also notes that Article 3 (2) of the draft Regulations exempts certain categories of transport operation from the application of Article 3 (1) of the draft Regulations (the possession of a road passenger certificate constituting proof of satisfaction of the conditions of good repute, financial standing and professional competence).

However, Article 1 (3) of the Directive provides for the possibility of exemption not for certain types of transport operation, but for natural persons or undertakings engaged exclusively in certain transport operations.

The Commission therefore recommends, in the interests of clarity, that Article 3 (2) of the draft Regulations be amended to ensure compliance with Article 1 (3) of the Directive.

5. The Commission also notes that the Article 3 (2) of the draft Regulations exempts certain categories of transport operation from the requirement of possession of a road passenger certificate. It has the following comments to make :

As regards the exemption provided for by subparagraph (a) of Article 3 (2) of the draft Regulations on the carriage of children, the Commission has no objections to this, since these transport operations are carried out by persons whose principal activity is not that of road passenger transport operator, as long as this activity complies with the condition set out in Article 1 (3) of the Directive that it should have only a minor impact on the transport market.

As regards the other exemptions provided for in subparagraphs (b), (c) and (d) of Article 3 (2) of the draft Regulations (carriage of passengers to or from work, carriage of persons to or from school and the carriage of passengers by voluntary organizations), the Commission has no objections to these in so far as these transport services are provided exclusively for non-commercial purposes, as laid down in Article 1 (3) of the Community Directive.

Finally, subparagraph (e) of Article 3 (2) of the draft Regulations also exempts the following category of transport from possession of a road passenger certificate :

'— carriage of passengers in a mechanically propelled vehicle which complies with the conditions specified in paragraphs (a) and (b) of section 6 (1) of the Road Transport Act, 1935 (No 23 of 1935), [i.e. a vehicle constructed or adapted for the carriage of passengers by road with sitting accommodation for more than six persons excluding the driver and owned by a person who, if an individual, resides outside Ireland or, if a partnership, has its principal place of business outside Ireland or, if a company, has its registered office outside Ireland] and is being used in the course of a passenger road service which is under a road passenger licence and is carried on only on one or more occasions specified in the licence or in the course of international transport.'

The Commission is of the opinion that the transport operations referred to above fall within the scope of the Directive as they do not fall within the category of transport operations exempted by Article 1 (3) of the Directive, i.e. certain passenger transport services carried out by natural persons or undertakings for exclusively non-commercial purposes or by natural persons or undertakings having a main occupation other than that of road passenger transport operator, in so far as their transport operations have only a minor impact on the transport market.

The Commission therefore recommends that Article 3 (2) of the draft Regulations be amended to take account of this.

6. As regards the principle of good repute, the Commission notes that Article 2 (2) of the Directive states that, pending coordination at a later date, each Member State shall determine the provisions relating to good repute which must be satisfied by the applicant.

The Commission, however, considers that the provisions of the draft Regulations, in particular paragraphs (5), (7) and (9) of Article 5, are unclear and incomplete.

In the interests of clarity, the Commission asks the Irish Government to incorporate new provisions in the draft Regulations defining the conditions regarding good repute which must be satisfied.

7. Paragraphs (1) and (2) of Article 8 of the draft Regulations grant temporary permission to carry on a road transport business in the event of the death or illness of the holder of a road passenger certificate.

The Commission considers that these provisions do not fully meet the requirements of Article 3 (1) of the Community Directive, in that :

— the draft Regulations do not define the conditions under which a business can continue to be run ;

— they refer only to death and incapacity caused by ill-health, but do not mention legal incapacity.

The Commission therefore recommends that the Irish Government amend paragraphs (1) and (2) of Article 8 of the draft Regulations to satisfy the requirements of Article 3 (1) of the Community Directive.

8. Article 13 (4) of the draft Regulations provides that a certificate of professional competence may be granted by the Minister to any applicant if he holds :

— a Chartered Institute of Transport Intermediate or Final examination pass, or

— a university degree or other third level qualification which has called for a study of transport, or

— any other qualification which the Minister is satisfied is equivalent to the qualifications referred to above.

The Commission notes that Article 2 (4) of the Community Directive allows Member States to exempt the applicant from having to furnish proof of professional competence if he holds certain advanced diplomas or technical diplomas implying sound knowledge of the subjects listed in the Annex to the Directive. This provision implies that Member States which decide to make use of this option must establish exactly which diplomas may justify the exemption in question.

It follows that the provision in the draft Regulation which leaves it to the Minister's discretion to decide whether a professional qualification is equivalent to that called for in the Community Directive is not compatible with Article 2 (4) of the Directive and should therefore be deleted.

9. Subparagraph (a) of Article 13 (5) of the draft Regulations states : 'Where a person satisfies the Minister that he holds a qualification and that the holding of such a qualification implies that the holder thereof has a knowledge sufficient for the purpose of these Regulations of one or more of the subjects listed in the Annex to the Directive, the Minister may grant to the person an exemption as regards that subject or subjects.'

This partial exemption from the requirement to furnish proof of knowledge of one or more subjects does not comply with Article 2 (4) of the Directive, which lays down : 'The Member States may exempt from the application of these provisions the holders of certain advanced diplomas or technical diplomas implying sound knowledge of the subjects listed in the Annex.'

The Commission therefore recommends that subparagraph (a) of Article 13 (5) of the draft Regulations be amended to ensure compliance with Article 2 (4) of the Directive.

Done at Brussels, 26 May 1978.

*For the Commission*

Richard BURKE

*Member of the Commission*