COMMISSION RECOMMENDATION

of 20 July 1976

addressed to the Government of the Kingdom of Denmark on certain provisions of a draft law on road passenger transport operations

(76/678/EEC)

In its recommendation of 16 March 1976 (1) addressed to the Government of the Kingdom of Denmark, the Commission noted among other things that the draft law submitted to it for prior consultation, pursuant to the Council Decision of 21 March 1962 (2), as amended by the Council Decision of 22 November 1973 (3), also included measures intended to implement the Council Directive of 12 November 1974 on admission to the occupation of road passenger transport operator in national and international transport operations (4). The Commission stated that the Articles particularly concerned were Articles 12, 13, 14, 15 and 16 and that on these provisions, which were to be submitted to the Commission for purposes of consultation pursuant to Article 6 of the abovementioned Directive, it proposed to deliver its opinion at a later date.

In the meantime, the Permanent Representative of the Kingdom of Denmark to the European Communities has requested that the submission to the Commission of the abovementioned Articles of the draft law should be taken as constituting prior consultation with the Commission within the meaning of Article 6 of the Directive of 12 November 1974.

As regards the content of the abovementioned Articles of the Danish draft law, the Commission recommends as follows :

1. Just as in paragraph 1 of its recommendation of 16 March 1976 the Commission expressed the opinion that the other provisions of the draft law submitted to it for prior consultation pursuant to the aforesaid Council Decision concern the carriage of passengers by road in national transport operations, the Commission considers that Articles 12, 13, 14, 15 and 16 of the said draft law cover the carriage of passengers by road in national transport and aim particularly to lay down certain conditions for access to the occupation of transport operator.

In this connection, the Commission reminds the Danish Government that the provisions to be made by Member States to implement the Directive of 12 November 1974 should also cover the conditions of access to the occupation of road passenger transport operator in international transport operations.

2. The Commission observes that, under Article 12 (1) of the Danish draft law, the Ministry of Public Works will lay down the conditions regarding qualifications which an applicant must fulfil in order to obtain a licence. In this connection the Commission would remind the Danish Government that pursuant to Article 2 (1) of the said Council Directive these conditions must relate to the good repute, financial standing and professional competence of the applicant and that, pursuant to the provisions of Article 6 (1) of that Directive, the relevant measures must be adopted after consulting the Commission and before 1 January 1977.

The Commission would draw the attention of the Danish Government to the fact that, in view of the foregoing, provision should be made for refusal of a licence — to which Article 12 (2) of the draft law refers — not merely where the condition as to good repute is not fulfilled but also where any one of the three conditions listed above is not fulfilled.

The Commission also observes that the same provision of the draft law providing for the refusal of a licence to an applicant not fulfilling the condition as to good repute does not mention the obligation of the competent authority to state the reasons for its decision, as required by Article 5 (1) of the Directive of 22 November 1974.

The Commission therefore recommends that the Danish Government add to its draft law what is necessary to make good this deficiency.

3. The Commission notes that Article 13 of the draft law makes provision for the withdrawal of a licence only where an operator no longer fulfils the condition as to good repute. Referring to the first subparagraph of paragraph 2 above, the Commission reminds the Danish Government that it is also necessary to make provision for the withdrawal of licences where operators no longer fulfil the conditions as to financial standing and/or professional competence.

4. The Commission notes that Article 14 of the draft sets out the remedies available to an operator if he has been served with a decision withdrawing his licence in a specific case.

(1) OJ No L 84, 31. 3. 1976, p. 57.
(2) OJ No 23, 3. 4. 1962, p. 720/62.
(3) OJ No L 347, 17. 12. 1973, p. 48.
(4) OJ No L 308, 19. 11. 1974, p. 23.

The Commission reminds the Danish Government that, under Article 5 (3) of the Directive of 12 November 1974, Member States must provide the parties concerned with the opportunity to defend their interests in all cases where a licence is withdrawn or an application for access to the occupation of road passenger transport operator is rejected. The Commission therefore recommends that the Danish Government supplement accordingly Article 14 of its draft law.

5. The Commission notes that Article 15 of the draft law regulates only the conditions under which an undertaking may continue to operate provisionally after the death of the operator. In this connection the Commission points out that under Article 3 (1) of the Directive of 12 November 1974, the Member States must also determine the circumstances in which an undertaking may be operated on a temporary basis in the event of the 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 2 (1) (a) (c) of the said Directive.

The Commission therefore recommends that the Danish Government supplement accordingly Article 15 of its draft law.

6. The Commission observes that the draft law does not include any provisions for checking compliance with the Articles concerned and accordingly recommends that the Danish Government, after consulting the Commission, make good this deficiency.

Done at Brussels, 20 July 1976.

For the Commission

Carlo SCARASCIA MUGNOZZA

Vice-President