COMMISSION RECOMMENDATION

of 30 June 1976

addressed to Ireland on a draft law amending and supplementing the 'Road Transport Act 1933' and the 'Road Transport Act 1971' including provisions relating to other problems connected with those covered by the abovementioned laws

(Only the English text is authentic)

(76/609EEC)

Pursuant to Article 1 of the Council Decision of 21 March 1962 instituing a procedure for prior examination and consultation in respect of certain laws, regulations and administrative provisions concerning transport proposed in the Member States (1), as amended by the Council Decision of 22 November 1973 (2), the Irish Government, in a letter of 12 April 1976 from the Office of the Permanent Representative of Ireland to the European Communities forwarded to the Commission the text of a draft law amending and supplementing the 'Road Transport Act 1933' and the 'Road Transport Act 1971' including provisions relating to other problems connected with those dealt with in the abovementioned laws.

The letter from the Office of the Permanent Representative of Ireland was received by the Commission on 13 April 1976 and, pursuant to Article 1 of the abovementioned Council Decision, was communicated to the other Member States.

The Commission did not consider it necessary to convene a briefing session with representaives of the Irish Government or to consult the other Member States pursuant to Article 2 (3) of the Council Decision.

Pursuant to Article 2 (1) of the Decision referred to above, the Commission makes the following recommendation :

1. The Commission notes that the Irish Government intends to take an important step in liberalizing access to the national market for the carriage of goods by road for reward and stresses that, so far, no Community measure has been taken with the aim of establishing common rules to govern access to the national market for the carriage of goods by road.

2. However as regards the methods envisaged by the Irish Government, the Commission notes that Article 3 of the draft law aims chiefly to permit all road haulage operators holding a transport licence to operate as many vehicles as they wish under that single licence. The Commission accepts the aim pursued by the Irish Government by means of this provision.

But the Commission wishes to point out that the methods envisaged are likely to raise the following problems :

— carriers already established in the market will be in a preferential position compared with newcomers since the latter will be able to obtain a licence only if the Ministry is satisfied that existing transport services are inadequate or by the purchase of a licence on the open market from an already established carrier. It is therefore to be feared that the intended measure is likely to favour the creation of monopoly positions or of an oligopoly and hence is likely in the last analysis to give rise to the abuse of dominant positions, in the absence of proper mangement by the public authorities ;

— in the absence of a monitoring mechanism for the transport market concerned, which would be capable of rapidly and effectively altering the competitive position (particularly the rates practised and the use of existing capacity), the planned system does not appear to be such as to ensure a satisfactory balance between supply and demand in transport ; this is particularly true where the granting of new licences to newcomers (where the transport supply situation is inadequate) and the slowing down, blocking or reducing of existing capacity (where there is excess capacity) is concerned ;

— the argument that it is in the general interst does not seem to justify the opportunity offered to carriers already established in the market to sell those licences which will become superfluous as a result of the planned measures and, whilst agreeing with the Irish Government on the need to avoid any sudden alteration of the present position (in which the market value of a licence represents an important part of an undertaking's assets), the Commission feels that in the long run the aim should be to abolish this trade in licences which threatens to produce 'monopoly rent' situations and level to an artificial increase in transport costs.

(1) OJ No 23, 3. 4. 1962, p. 720/62.
(2) OJ No L 347, 17. 12. 1973, p. 48.

The Commission feels that it would therefore be preferable to provide that licences which have become superfluous will be declared to have lapsed and that they should be returned to the competent authority for issuing to newcomers in the transport market.

3. The Commission also notes that the draft law maintains exemptions during a limited period, for the transport for reward of certain agricultural products and extends the exemption from the licensing system to all transport effected by means of vehicles whose total laden weight does not exceed 6 tons or whose maximum pay load is less than 3·5 tons (Article 2), but that, on the other hand, the Irish Government intends to subject all transport for reward effected within a certain radius of the principal seaports and exempted under the 'Road Transport Act' of 1933 to the licensing system (see Article 6 of the draft law).

   The Commission feels that, whilst carriers active in the said zones maintain their rights through the automatic granting of a licence to those who provide proof of the existence of their former undertaking, this is not the case for operators who wish to establish themselves in the market and who must then apply for a licence which will only be granted once it has been established that existing transport services are inadequate in the region concerned.

   Although the Commission apprecaites the reasons for making the licensing system generally applicable, the justification for restricting access to the markets concerned to carriers other than those already established in the relvant areas is not clear.

   The Commission considers that since this is a matter of traffic of an entirely local nature and since the aim is to ensure alignment with the principle of liberalization applied by the Irish Government, it would be better to maintain freedom of access to the market at those points where it has already been acquired and to ensure that the granting of transport licences in the areas concerned is not subject to any quantitative restrictions.

4. Finally, the Commission notes that the provisions Ireland plans to introduce in the field of road freight haulage are not likely to interfere with any specific provisions to be adopted at Community level in the near future and welcomes the intention of the Irish Government to extend the opportunities for access to the market. which are currently open to road haulage operators, without distinction as to nationality or country of origin. The Commission does, however, recommend the Government to take account of the suggestions made in points 2 and 3 above.

5. The Commission is communicating this recommendation to the other Member States.

Done at Brussels, 30 June 1976.

For the Commission

Carlo SCARASCIA MUGNOZZA

Vice-President