2. Article 4 (2) of Directive No 74/561 allows definitive exemption from the condition of professional competence to operate a transport undertaking to be granted in exceptional cases, but this is only within the limits laid down and in the situations referred to in Article 4 (1), that is to say in duly justified special cases in the event of the death of the physical or legal incapacity of the natural person engaged in the occupation of transport operator.
3. The provision in Article 5 (2) of Directive No 74/561 that those persons who, after 31 December 1974 and before 1 January 1978 were authorized to engage in the occupation of haulage operator without having to furnish proof of their professional competence must do so before 1 January 1980, may not be invoked against persons entitled under Article 4 (2) of that directive to the definitive exemption from the condition of professional competence 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 Directive No 74/561 may not be taken to mean the attainment of an age at which a person is decreed no longer to be capable of working.

In Case 146/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Raad van State, Afdeling Rechtspraak (Council of State, Administrative Appeals Section) for a preliminary ruling in the proceedings pending before that court between

A. J. WATTENBERG

and

STAATSSECRETARIS VAN VERKEER EN WATERSTAAT (Secretary of State for Transport, Water Control and Construction)

on the interpretation of Council Directive No 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations (Official Journal L 308, p. 18),

THE COURT (First Chamber)

composed of: J. Mertens de Wilmars, President of the First Chamber, A. M. Donner and A. O'Keeffe, Judges,

Advocate General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

A — The Council Directive

In order to harmonize the Member States' transport legislation, the Council adopted on 12 November 1974 Directive No 74/561/EEC on admission to the occupation of road haulage operator in national and international transport operations.

Article 3 (1) of the Council Directive provides that natural persons or undertakings wishing to engage in the occupation of road haulage operator shall *inter alia* satisfy the condition as to professional competence.

The knowledge required to satisfy that condition is specified in the Annex to the directive; the way in which that knowledge is to be acquired is laid down in Article 3 (4):

"... by attending courses, by practical experience in a transport undertaking or by a combination of both".

According to Article 4 (1) of the Directive, exemption from the condition as to professional competence may be granted "on a temporary basis for a maximum period of one year, with extension for a maximum period of six months, in ... special cases in the event of the death or physical or legal incapacity of the natural person engaged in the occupation of transport operator or of the natural person who satisfies" the condition as to professional competence.

According to Article 4 (2), exemption from the condition of professional competence may, "by way of exception and in certain special cases", be

definitively granted by the competent authorities in the Member States to a person wishing to operate a transport undertaking if such person possesses "at least three years' practical experience in the day-to-day management of the undertaking".

Article 5 (2) of the Directive provides that:

"... those natural persons who, after 31 December 1974 and before 1 January 1978, were:

— authorized to engage in the occupation of road haulage operator without having furnished proof, under national regulations, of their professional competence, or

— designated continuously and effectively to manage the transport operations of the undertaking,

must satisfy, before 1 January 1980, the condition of professional competence...".

B — The national legislation applicable

Article 56 (1) of the Wet Autovervoer Goederen (Law on the carriage of goods by motor vehicle, hereinafter referred to as the WAG) provides that authorization to engage in the occupation of transport operator shall be granted only if *inter alia* the condition of professional competence is satisfied, but that in special cases the minister is empowered to grant exemptions. Article 128 of the Decision implementing the WAG provides that in order to satisfy that condition operators must be in possession of a technical diploma recognized by the minister and submit a declaration by the Rijksinspecteur van het Verkeer (National Traffic Inspector) certifying two years' paid employment with an undertaking engaged in the carriage of goods.

C — The facts

A. J. Wattenberg (born in 1936) has worked for several years in a transport undertaking managed first by his father (born in 1903) in the form of a one-man business and then by himself as from a date which is not specified but is at least prior to 1968.

In order to be able to act as the operator of an undertaking, A. J. Wattenberg by a letter of 1 February 1977 applied for exemption from the condition of professional competence referred to in the last sentence of Article 56 (1) of the WAG.

By a decision of 4 May 1977 the Staatssecretaris van Verkeer en Waterstaat (Secretary of State for Transport, Water Control and Construction) granted the exemption applied for, but restricted the duration of its validity to 1 January 1980. The reasons given for this restriction included the provisions of the aforementioned Council Directive.

D — The questions referred for a preliminary ruling

By an interlocutory judgment of 13 June 1978 the Raad van State (Council of State) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling pursuant to Article 177 of the EEC Treaty:

1. Under Article 3 (4) of Council Directive No 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations are the Member States at liberty to adopt rules whereby apart from the acquisition of a technical diploma the condition as to professional competence is also satisfied

if the competent authority or body determines the professional competence on the basis of thorough and extensive practical experience of at least six years in a senior managerial position in an undertaking engaged in the carriage of goods?

2. Does an authorization granted after 31 December 1974 and before 1 January 1978 by the competent authorities of a Member State to a natural person to engage in the occupation of road haulage operator without having furnished proof of his professional competence under national regulations cease to be valid if, pursuant to Article 5 (2) of the Directive, that person does not fulfil the condition of professional competence referred to in Article 3 (4) before 1 January 1980 even if the aforesaid authorities gave such authorization because they held that there existed a special case within the meaning of Article 4 (2)?
3. Is Article 4 (2) of Directive No 74/561/EEC applicable only in the case referred to in the first paragraph of that article of the death of physical or legal incapacity of the natural person who satisfies the provision of Article 3 (1) (a) and (c) may that provision also be applicable to other cases?
4. If the answer to the last question is in the affirmative should "physical incapacity" in Article 4 (1) of that Directive also to be understood as including the attainment of an age at which a person is deemed no longer to be capable of working?

The Raad van State holds that an answer to the question whether the respondent in the main action interpreted Article 4 (2) of the Directive correctly by restricting the period of validity of the exemption granted pursuant to the provisions of Article 5 (2) is essential to its judgment. It is further of the opinion that it is not clear from the wording of Article 4 to what extent it is possible to grant an exemption within the meaning of Article 4 (2) apart from the case referred to in Article 4 (1).

The judgment of the Raad van State was received at the Court on 19 June 1978.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry and to assign the case to the First Chamber if the Netherlands Government, which submitted written observations, had no objection. The Netherlands Government gave its agreement to such assignment.

II — Summary of the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — Question 1

The *Netherlands Government* points out that, although the question raised may be answered in the affirmative, such an answer would leave intact the obligation which the Netherlands impose upon the operator to prove his professional

competence in the manner laid down by Netherlands law, which is a combination of the two systems for establishing professional knowledge provided for in the directive: passing an examination and practical experience.

The *Commission* also states that pending subsequent co-ordination of the national rules on the acquisition of professional knowledge, the Council Directive leaves it to the Member States to decide whether professional competence is to be acquired by education, practical experience or a combination of both.

B — Question 2

The *Netherlands Government* is of the opinion that Article 5 (2) of the directive relates to persons who between 31 December 1974 and 1 January 1978 were considered as a special case and for that reason were authorized to engage in the occupation of road haulage operator. Authorization to engage in the occupation without having furnished proof of one's competence naturally implies the existence of a special case. Moreover, an operator who obtained an exemption during the stated period must prove before 1 January 1980 that he satisfies the condition of professional competence; should he fail to do so, he can still avail himself of the exemption provisions under national law.

The *Commission* emphasizes that Article 5 (2) of the Directive contains a transitional provision as regards the condition of professional competence. The exceptional, derogative provisions in Article 4 (2) are permanent, and consequently fall outside the ambit of the above-mentioned transitional provision.

C — Questions 3 and 4

The *Netherlands Government* thinks that the very wording of Article 4 of the Directive pleads in favour of a broad interpretation of Article 4 (2). On the one hand the granting of definitive exemption is dealt with in a separate paragraph, and on the other there is no express reference to paragraph (1).

An interpretation whereby Article 4 (2) applied only to the cases mentioned in Article 4 (1) would greatly restrict the power conferred on the Member States to grant exemptions from the condition of professional competence in a special case or in certain other justified cases not mentioned in Article 4 (1). Moreover, such an interpretation could result in the strange fiction that an operator who has reached pensionable age must be regarded as suffering from a physical incapacity.

The *Commission* remarks that Article 4 of the Directive allows certain derogations authorized by reason of unforeseeable circumstances (death or incapacity) entailing insurmountable difficulties in particular for small businesses not organized on an industrial scale. In these same cases, Article 4 (2) by way of exception allows an exemption to be granted definitively, but only as regards the condition as to professional competence.

The word "however" alone proves that there is a close connexion between the two paragraphs.

A person's reaching pensionable age is in no way an unforeseen event like those to which Article 4 (1) refers.

The Commission of the European Communities, represented by its Legal

Adviser Raymond Baeyens, acting as Agent, presented oral argument at the hearing on 18 January 1979.

The Advocate General delivered his opinion at the hearing on 15 February 1979.

Decision

1 By an interlocutory judgment of 13 June 1978 which was received at the Court on 19 June 1978, the Raad van State, Afdeling Rechtspraak (Council of State, Administrative Appeals Section), referred several questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty on the interpretation of Council Directive No 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations (Official Journal 1974, L 308, p. 18).

2 These questions were raised in the context of a dispute over the decision of the Staatssecretaris van Verkeer en Waterstaat (Secretary of State for Transport, Water Control and Construction) dated 4 May 1977 granting the appellant in the main action exemption from the condition of professional competence referred to in the last sentence of Article 56 (1) of the Wet Autovervoer Goederen (Law on the carriage of goods by motor vehicle) but restricting the duration of that exemption to 1 January 1980.

3 It appears from the case file that the appellant has worked for a number of years in a transport undertaking managed first by his father in the form of a one-man business and then by himself from a date which is not specified but is in any event prior to 1968.

4 The Staatssecretaris applied Article 56 (1) of the Wet Autovervoer Goederen, according to which authorization to engage in the occupation of transport operator shall be granted only if *inter alia* the condition of professional competence is satisfied, although the minister is empowered to grant exemptions in special cases. The Decision implementing that law provides that in order to satisfy the condition of professional competence it is necessary to be in possession of a technical diploma recognized by the minister and in addition submit a declaration by the competent inspector

certifying two years' paid employment with an undertaking engaged in the carriage of goods.

5 Article 3 (1) of Council Directive No 74/561/EEC provides that natural persons or undertakings wishing to engage in the occupation of road haulage operator shall *inter alia* satisfy the condition as to professional competence. The knowledge required to satisfy that condition is specified in the Annex to the directive. As provided in Article 3 (4), that knowledge is acquired by attending courses, by practical experience in a transport undertaking or by a combination of both.

6 Article 4 (1) provides that temporary exemption from the condition of professional competence may be granted for a maximum period of one year, with extension for a maximum period of six months, in special cases in order to prevent the absence of a person who fulfils the conditions of professional competence leading to a transport undertaking's suspending its activities or going out of business following the death or physical or legal incapacity of the operator or manager who satisfied the said conditions. However, according to Article 4 (2) the authorities in the Member States may, by way of exception, definitively authorize a person not fulfilling the conditions of professional competence to operate a transport undertaking where such person possesses "at least three years' practical experience in the day-to-day management of the undertaking".

7 Finally, Article 5 (2) of the Directive provides that:

"... those natural persons who, after 31 December 1974 and before 1 January 1978, were:

— authorized to engage in the occupation of road haulage operator without having furnished proof, under national regulations, of their professional competence, or

— designated continuously and effectively to manage the transport operations of the undertaking,

must satisfy, before 1 January 1980, the condition of professional competence. . .".

8 The Raad van State asked the following questions:

1. Under Article 3 (4) of Council Directive No 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations are the Member States at liberty to adopt rules whereby apart from the acquisition of a technical diploma the condition as to professional competence is also satisfied if the competent authority or body determines the professional competence on the basis of thorough and extensive practical experience of at least six years in a senior managerial position in an undertaking engaged in the carriage of goods?

2. Does an authorization granted after 31 December 1974 and before 1 January 1978 by the competent authorities of a Member State to a natural person to engage in the occupation of road haulage operator without having furnished proof of his professional competence under national regulations cease to be valid if, pursuant to Article 5 (2) of the Directive that person does not fulfil the condition of professional competence referred to in Article 3 (4) before 1 January 1980 even if the aforesaid authorities gave such authorization because they held that there existed a special case within the meaning of Article 4 (2)?

3. Is Article 4 (2) of Directive No 74/561/EEC applicable only in the case referred to in the first paragraph of that article of the death or physical or legal incapacity of the natural person who satisfies the provisions of Article 3 (1) (a) and (c) or may that provision also be applicable to other cases?

4. If the answer to the last question is in the affirmative should "physical incapacity" in Article 4 (1) of that directive also be understood as including the attainment of an age at which a person is deemed no longer to be capable of working?

Question 1

9 In the absence of any co-ordination of the national rules on the acquisition of professional knowledge, Article 3 (4) of the Council Directive leaves it to the Member States to establish that persons wishing to engage in the occupation of road haulage operator possess the necessary competence. The Member States are given a choice between the following systems for verifying that knowledge: assessment by examination, regard to practical experience in the sphere of transport or finally a combination of both.

10 The aforementioned Netherlands legislation provides that possession of the knowledge is assessed by an examination entitling successful candidates to a technical diploma, and by verification of two years' practical experience in a transport undertaking.

11 Therefore the answer to Question 1 should be that the provisions of Article 3 (4) of the Directive allow Member States to adopt regulations under which professional 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.

Question 3

12 Article 4 (1) of the Directive empowers Member States to grant temporary exemption from the condition of professional competence in duly justified special cases where the natural person engaged in the occupation of transport operator dies or suffers physical or legal incapacity. Article 4 (2) allows definitive exemption to be granted in exceptional cases, but this is only within the limits laid down and in the situations referred to in Article 4 (1), that is to say in duly justified special cases in the event of the death or physical or legal incapacity of the natural person engaged in the occupation of transport operator.

13 This conclusion must be reached because Article 4 (2) relates to a situation in which, unlike the situation in Article 4 (1), the person wishing to engage in the occupation of transport operator is in possession of additional qualifications (practical experience in the undertaking) to put forward in order to be exempted, no longer temporarily but definitively, from the condition as to professional competence referred to in Article 3 (1), although such exemption may be envisaged only because it is a matter of allowing an undertaking disorganized by the sudden departure of its head to carry on its activities. The use of the adverb "however" at the beginning of Article 4 (2) confirms that the two paragraphs must be read as being in combination with one another.

14 Therefore the answer to Question 3 should be that 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.

Question 2

15 Article 5 is a transitional provision applying to the case of persons furnishing proof that, before 1 January 1978, they were authorized under national regulations in a Member State to engage in the occupation of road haulage operator. The said persons are deemed to satisfy the condition of professional competence and are exempt from the requirement to furnish proof thereof.

16 However, Article 5 (2) restricts the scope of that rule by providing that those persons who, between 31 December 1974 and 1 January 1978, were authorized to engage in the occupation concerned without having to furnish proof of their competence must do so before 1 January 1980. That provision of the Directive was adopted in order to deal with situations prior to its implementation (1 January 1977) or situations in the course of being verified. It concerns situations different from those covered by Article 4.

17 Therefore the answer to the question should be that 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.

Question 4

18 Article 4 makes provision for cases in which the activity of an undertaking is unexpectedly stopped by the death or incapacity of the person who manages it. The reaching of retirement age cannot be regarded as an unexpected event, since it is foreseeable. Therefore the attainment of retirement age cannot be regarded as coming within the concept of physical incapacity.

19 Accordingly the question must be answered in the negative.

Costs

20 The costs incurred by the Netherlands Government and by the Commission of the European Communities, which submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties in the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Raad van State by an interlocutory judgment of 13 June 1978, hereby rules:

1. **The provisions of Article 3 (4) of Council Directive No 74/561/EEC allow Member States to adopt regulations under which professional**

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)