

# Procedure file

Basic information		
SYN - Cooperation procedure (historic)	<a href="#">1997/0029(SYN)</a>	Procedure completed
Transport operator: mutual recognition of diplomas, free establishment		
Amending Directive 96/26/EC <a href="#">1990/0479(SYN)</a>		
Subject		
2.40.01 Right of establishment		
3.20.10 Transport undertakings, transport industry employees		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>JURI</b> Legal Affairs, Citizens' Rights		25/02/1997
		PSE <a href="#">BERGER Maria</a>	
	Former committee responsible		
	<b>JURI</b> Legal Affairs, Citizens' Rights		25/02/1997
		PSE <a href="#">BERGER Maria</a>	
	Former committee for opinion		
	<b>TRAN</b> Transport and Tourism	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2119</a>	01/10/1998
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2074</a>	17/03/1998
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2031</a>	09/10/1997

Key events			
16/06/1995	Additional information		Summary
04/02/1997	Legislative proposal published	COM(1997)0025	Summary
21/02/1997	Committee referral announced in Parliament		
01/07/1997	Vote in committee		Summary
01/07/1997	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A4-0238/1997</a>	
15/07/1997	Debate in Parliament		Summary
17/07/1997	Decision by Parliament	T4-0387/1997	Summary
06/10/1997	Modified legislative proposal published	COM(1997)0501	Summary

17/03/1998	Council position published	<a href="#">12435/1/1997</a>	Summary
02/04/1998	Committee referral announced in Parliament, 2nd reading		
02/06/1998	Vote in committee, 2nd reading		Summary
02/06/1998	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A4-0215/1998</a>	
16/06/1998	Debate in Parliament		Summary
17/06/1998	Decision by Parliament, 2nd reading	T4-0356/1998	Summary
29/07/1998	Modified legislative proposal published	COM(1998)0501	Summary
01/10/1998	Act adopted by Council after consultation of Parliament		
01/10/1998	End of procedure in Parliament		
14/10/1998	Final act published in Official Journal		

### Technical information

Procedure reference	1997/0029(SYN)
Procedure type	SYN - Cooperation procedure (historic)
Procedure subtype	Legislation
	Amending Directive 96/26/EC <a href="#">1990/0479(SYN)</a>
Legal basis	EC before Amsterdam E 075-p1
Stage reached in procedure	Procedure completed
Committee dossier	JURI/4/09903

### Documentation gateway

Legislative proposal	<a href="#">COM(1997)0025</a> <a href="#">OJ C 095 24.03.1997, p. 0066</a>	04/02/1997	EC	Summary
Economic and Social Committee: opinion, report	<a href="#">CES0592/1997</a> <a href="#">OJ C 287 22.09.1997, p. 0021</a>	28/05/1997	ESC	Summary
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A4-0238/1997</a> <a href="#">OJ C 286 22.09.1997, p. 0007</a>	01/07/1997	EP	
Text adopted by Parliament, 1st reading/single reading	T4-0387/1997 <a href="#">OJ C 286 22.09.1997, p. 0180-0224</a>	17/07/1997	EP	Summary
Modified legislative proposal	COM(1997)0501 <a href="#">OJ C 324 25.10.1997, p. 0006</a>	06/10/1997	EC	Summary
Council position	<a href="#">12435/1/1997</a> <a href="#">OJ C 161 27.05.1998, p. 0012</a>	17/03/1998	CSL	Summary
Commission communication on Council's position	SEC(1998)0533	30/03/1998	EC	Summary
Committee recommendation tabled for plenary, 2nd reading	<a href="#">A4-0215/1998</a> <a href="#">OJ C 210 06.07.1998, p. 0009</a>	02/06/1998	EP	
Text adopted by Parliament, 2nd reading	T4-0356/1998 <a href="#">OJ C 210 06.07.1998, p. 0103-0127</a>	17/06/1998	EP	Summary

Modified legislative proposal	COM(1998)0501	29/07/1998	EC	Summary
<b>Additional information</b>				
European Commission	<a href="#">EUR-Lex</a>			
<b>Final act</b>				
<a href="#">Directive 1998/76</a> <a href="#">OJ L 277 14.10.1998, p. 0017</a> Summary				

## Transport operator: mutual recognition of diplomas, free establishment

PREVIOUS COMMUNITY LEGISLATION: there are several Directives governing this subject; the principal texts are mentioned in the lengthy title of Directive 89/438/EEC OJ L 212, 22.7.1989 of 21 June 1989 amending Directive 74/651/EEC OJ L 308, 19.11.1974 on admission to the occupation of road haulage operator in national and international transport operations, Directive 74/562/EEC on admission to the occupation of road passenger transport operator in national and international transport operations and Directive 77/796/EEC OJ L 334, 24.12.1977 aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for goods haulage operators and road passenger transport operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment. These Directives make admission to the occupation of haulage operator subject to three conditions, namely good repute, appropriate financial standing, and professional competence. In December 1993 the Commission submitted a proposal for a Directive to codify the above provisions. PREVIOUS POSITION OF EP: when it considered the proposal corresponding to Directive 89/438/EEC, the EP adopted three amendments aimed at tightening up the three conditions specified in the preceding paragraph: it accordingly called for penalties imposed on employees for breaches of good repute in the exercise of their occupation to be deemed to apply to the firm for which those employees worked, for financial guarantees to be extended to cover hired vehicles, and for licence-holders whose professional competence has been established by the proper public authority to be employed on the permanent staff of the firms for which they work. The EP has endorsed the codifying proposal. SITUATION IN THE MEMBER STATES: according to Celex, Directive 74/561/EEC is enforced in all the Member States, Directive 74/562/EEC is enforced in all the Member States except Greece and Italy, and Directive 89/438/EEC is enforced in all the Member States except France and Ireland. Celex does not yet contain data relating to Austria, Finland, and Sweden; 'exceptions' as regards enforcement of a Directive must be taken to mean that no information is available in Celex on the countries concerned.

## Transport operator: mutual recognition of diplomas, free establishment

OBJECTIVE: to pursue the harmonization process concerning access to the profession of road transport operator by removing elements of distortion of competition. SUBSTANCE: the Commission proposes amending directive 96/26/EC in order to: - indicate the scope of application of the directive for the professional carriage of goods and passengers by road: the new requirements will apply to all professional road haulage operators, irrespective of the size of the vehicles used; - stress that the good repute requirements of the operator are not satisfied if there are convictions of one serious criminal offence or of certain repeated minor offences; infringements of the rules relating to the protection of the environment and professional liability are added as transport related infringements. Another significant amendment concerns the requirements of financial standing: - the amount of available capital and reserves is increased to at least ECU 9 000 when only one vehicle is used and ECU 5 000 for each additional vehicle; - road haulage undertakings operating vehicles with a permissible payload which does not exceed 3.5 tonnes or the permissible total laden weight of which does not exceed 6 tonnes need to have for these vehicles a financial standing of at least ECU 9 000 when only one vehicle is used and ECU 700 per 500 kg of the maximum authorized weight for each additional vehicle. - undertakings using vehicles able to transport more than nine but less than 20 people must have a financial standing of at least ECU 9 000 when only one vehicle is used and ECU 250 for each seat for each additional vehicle; The proposal for a directive also makes provision for: - the obligation for road transport operators to have the necessary knowledge for both national and international transport operations; - deletion of the provision to exempt from the examination road transport operators who provide proof of at least five years practical experience in order to ensure that transport operators are subject from the entry into force of the directive to the same tests; - the introduction of transitional arrangements for Austria, Finland and Sweden; - the requirement for all road transport undertakings to satisfy all the requirements of good repute and financial standing not later than 1 January 2000; - a check every five years on observance of the provisions of the directive by road transport operators; - the up-dating of the list of subjects required and the detailed definition of the system of the examination in order to ensure that knowledge is assessed in a uniform manner.?

## Transport operator: mutual recognition of diplomas, free establishment

The Committee welcomes the Commission proposal and supports its main objectives. With regard to the proposed amendments to Article 3, sub-paragraph (c), the Committee takes the view that the financial thresholds set out which are intended as a test of financial standing should be further increased. It also proposes that these requirements should in future be subjected to regular review, certainly not less than every 5 years, in order to ensure at least that the real value of these thresholds can be maintained. The Committee welcomes the fact that the Commission is giving greater emphasis to commercial competence and knowledge in the proposed written test as set out in Annexes (parts I and II). The Committee finally would draw attention to the increasing involvement of transport operators in bilateral trade involving goods and/or passengers between Member States and countries from central and eastern Europe. In the spirit of harmonization which is still being pursued within the European Union and with the intention of avoiding competition distorting practices and promoting a "level playing field", the Committee calls upon the Commission and Council to give urgent consideration to the extension of the influence of the proposed amended directive to transport operators located in countries of central and eastern Europe who are involved in bilateral trade with Member States. ?

## Transport operator: mutual recognition of diplomas, free establishment

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The Committee unanimously adopted the report by Maria BERGER (PES, A) on admission to the occupations of road haulage operator and road passenger transport operator. Market access to the transport of goods and passengers in the EU has now been almost completely liberalised and unrestricted cabotage will come into effect on 1 July 1998. Greater harmonisation of the rules is thus needed in order to prevent distortions of competition. Among the main differences between Member States are the minimum financial requirements per vehicle (ranging from 3000 to 20 000 ECU) and the length of training courses needed to obtain the special driving licence (65 hours in the UK, 300 hours in the Netherlands). The Committee improved the Commission's text on a number of points. The requirements regarding the reliability of drivers are tightened up. Previously serious criminal offences constituted grounds for banning an individual from the profession; from now on convictions for minor offences, including infringements of the Community common transit procedure and of the rules on the transport of live animals, can have the same outcome. There are more detailed rules on the driving test (written and oral, as well as the precise knowledge required) and drivers must be re-tested every five years. When sitting the test, they must show thorough knowledge of the common transit procedure and the TIR Convention procedure. The Committee has thus put into effect one of the main recommendations of the Committee of Inquiry into Community Transit. ?

## Transport operator: mutual recognition of diplomas, free establishment

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Commissioner Kinnock said that he could accept Amendments Nos 4, 8, 9, 10 and 11. He was also sympathetic to certain elements of Amendments Nos 1 and 3. With regard to the Commission's stated intention to introduce 'blacklists' in areas other than agriculture, the Commissioner was prepared to accept the additional reference to combating fraud in the Community and common transit procedure. In particular he accepted the last part of Amendment No 1 and the corresponding part of Amendment No 3 calling for the number of journeys carried out by the undertaking concerned to be taken into consideration when assessing evidence of repeated minor offences. However, he could not accept the rest of Amendments Nos 1 and 3 on the transport of live animals nor Amendments Nos 2, 5 and 14 aiming to modify the transitional period for Austria, Finland and Sweden. Finally, Mr Kinnock said that the Commission could accept Amendment No 7 whereas Amendments Nos 6, 12, 13, 15, 16 and 17 could not be accepted as they were incompatible with the aims of the original proposal.

## Transport operator: mutual recognition of diplomas, free establishment

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In adopting the report by Mrs Maria BERGER (PSE, A), the European Parliament approved the Commission proposal with amendments. The amendments adopted stressed, in particular, with regard to the good repute of the persons concerned, the need to underline the importance of combating fraud in the Community transit procedure and the transport of live animals and, in assessing whether there was evidence of repeated minor offences, to take into account the number of journeys carried out by the undertaking concerned. Parliament also improved the text by rendering the good repute requirement for natural persons more stringent: under Parliament's amendment, this requirement would not be satisfied not only if natural persons had been convicted of one serious criminal offence (which prevents them from working as hauliers) but also if they had been convicted of certain repeated minor offences, including offences under the Community transit procedure and in connection with the transport of live animals. Another amendment specified the knowledge which the persons concerned must possess. (They must have a thorough knowledge of the Community and common transit procedure and the procedure under the TIR Convention in all their details; be familiar with computer systems relating to the transit procedure and, as soon as the transit procedure based on paper documentation is replaced by procedures based on new technologies, have a thorough knowledge of these in all their details; be familiar with anti-fraud measures in the field of the transit procedure; be familiar with all fraud-related provisions of the administrative, civil and criminal law of the Member State of origin; be familiar with the role and function of the UCLAF.)?

## Transport operator: mutual recognition of diplomas, free establishment

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The European Commission's amended proposal took account of the European Parliament's amendments concerning the following points: - including the combat of fraud and a criteria for assessing repeated minor offences in the provisions of good repute; - harmonising the concept of 'capital and reserves' for assessing financial standing in accordance with Directive 78/660/EEC; - allowing national authorities under certain conditions to delay assessment of an undertaking's financial standing for up to one year; - equating certain offences detected between resident and non-resident transport operators. The Commission could not accept the amendments that: - referred, in particular, to offences involving the transport of live animals in the provisions of good repute; - referred to an administrative conviction in the provisions of good repute; - changed the transitional period for Austria, Finland and Sweden to take account of the fact that they were members of the EEA; - required candidates for professional exams to have a detailed knowledge of a particular area of customs legislation. ?

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The Council common position incorporates two amendments proposed by Parliament at first reading, in particular the amendment aiming to provide for a system of penalties for infringements of the Directive. The Council has also made significant changes to the Commission modified proposal. (a) the scope of the Directive is widened: the directive currently in force applies to operators using vehicles whose maximum authorized weight (MAW) exceeds 6 tons, while the common position also covers transport operators using vehicles whose MAWs exceed 3.5 tons. Member States can exempt from the application of the directive operators using vehicles whose MAWs are between 3.5 and 6 tons on condition that they are engaged exclusively in local transport and have only a minor impact on the transport market. (b) The provisions concerning the requirement of good repute provide that this condition is not or is no longer fulfilled if an operator has been convicted of serious offences against certain rules governing transport, including offences against rules concerning the protection of the environment and professional liability (the condition of repetition has been deleted). (c) The financial requirements have been simplified: the common position no

longer provides for different figures depending on the weight of an undertaking's haulage vehicles or the seating capacity of its passenger vehicles; the undertaking must have available capital and reserves of at least ECU 9000 when only one vehicle is used and at least ECU 5000 for each additional vehicle. (d) With regard to professional competence, the common position provides for: - a more detailed examination procedure, updating and extending the list of examination subjects and the introduction of a minimum harmonized level of the knowledge required for each subject; - the maintenance of different examinations depending on whether the applicant intends to operate national or international transport; - permanent exemption from the examination for applicants who supply proof of at least five years' practical experience, provided that they sit a test, the arrangements for which are determined by the Member States, in accordance with the subjects listed in Annex I to the directive; - the establishment of a form of Community certificate of professional competence, this document to provide sufficient proof for mutual recognition of professional competence; - a provision that Member States, for a limited period and having first consulted the Commission, may require transport operators who are normally resident in their territory and hold a certificate obtained for the first time in another country, to pass an additional examination covering the specific knowledge relating to the national aspects of the occupation of road haulage operator. (e) With regard to monitoring application of the directive, the common position provides that the Member States shall check regularly, at least every five years, that the conditions governing access to the occupation are still fulfilled; the Member States must inform the competent authorities of the country in which the haulage operator is established of any infringements of transport rules committed on their territory. The common position provides that the Member States are to transpose the directive within a year of its entry into force. All road transport operators covered by the directive and plying the trade before the directive becomes applicable must comply with the new requirements regarding financial standing within two years of it becoming applicable. ?

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## Transport operator: mutual recognition of diplomas, free establishment

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Discussion mainly centres on professional competence, the majority of Member States wishing to retain provisions for purely national operators and for those who already have five years' relevant experience. To limit the potential impact of 'diploma tourism' while at the same time minimizing any potential regression in the mutual recognition of certificates, a time-limit provision was inserted. The Commission hopes that implementation of the directive will lead to greater harmonization of the standards of professional competence throughout the Union, thus rendering the provision unnecessary. However, if the Commission considers that harmonization remains insufficient, it could propose an extension of the provision for a further five years. It considers that this is a workable compromise and will keep the situation under review. The establishment of regular checks on all three criteria (good repute, financial standing and professional competence) at least once every five years was the minimum which the Commission would accept. Moreover, the fact that application of the directive is combined with clear sanctions for enforcement will allow any significant variations between Member States to be highlighted. As the Member States have accepted the main thrust of the Commission proposal and the controversial element concerning 'diploma tourism' will be time-limited and subject to consultation and review, the Commission is in favour of the text of the common position. ?

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## Transport operator: mutual recognition of diplomas, free establishment

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The report by Maria BERGER (PES, A) on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of qualifications was unanimously adopted by the Legal Affairs Committee with some amendments. In the light of the findings of the Committee of Inquiry concerning fraud in the Community transit system, the rapporteur insisted that the conditions for access to the profession of road haulage operator should include a knowledge of the transit system. In addition, infringements of the rules of the transit system may constitute grounds for a ban from practising as a road haulage operator. Other amendments seek to ensure that the financial standing of operators is stronger and that account is taken of the arrival of the euro on 1st January 1999. ?

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## Transport operator: mutual recognition of diplomas, free establishment

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The Commissioner said that Amendments Nos 2, 3, 8 and 11 could be accepted as they made the text clearer and the proposal more coherent. The Commission was also favourable to taking action with regard to combating fraud, in accordance with Amendments Nos 1 and 11 and the second part of Amendment No 7. Amendment No 10 could also be accepted as it provided for the possibility of flexibility in the control measures, particularly in the case of SMEs, with the aim of supporting job creation at European level. However, the Commissioner rejected Amendments Nos 4, 5, 6 and 9 whose aim was to remove factors relating to problems known as 'diploma tourism' from the common position. The Commission remained convinced that the temporary nature of the proposal was a sufficiently restrictive basis for its application.

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## Transport operator: mutual recognition of diplomas, free establishment

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The European Parliament adopted the draft recommendation for second reading by Mrs Maria BERGER (PSE, A) following the work carried out by the committee of inquiry into fraud in Community transit. Parliament insisted on including knowledge of the Community transit system, the common transit system, the procedure introduced under the TIR convention and measures to combat fraud in connection with these procedures in the conditions of admission to the occupation of road haulage operator. Similarly, infringements of the rules of the transit system could constitute grounds for a ban from practising as a road haulage operator. The amendments also seek to strengthen the entrepreneur's financial standing by taking account of the entry into force of the euro on 1 January 1999. ?

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## Transport operator: mutual recognition of diplomas, free establishment

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The Commission re-examined proposal has incorporated Parliament's amendments on: - including the combat of fraud within the provisions on good repute; - taking account of the introduction of the euro within the provisions on financial standing; - allowing national authorities under

certain conditions to delay assessment of an undertaking's financial standing for up to one year; - equating serious offences detected between resident and non-resident transport operators; - including the combat of fraud within the examination syllabus. The Commission has rejected the other amendments which aimed to delete the compromise provisions included in the common position concerning 'diploma tourism', ?

## Transport operator: mutual recognition of diplomas, free establishment

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**OBJECTIVE:** to continue the process of harmonisation concerning admission to the occupation of road haulage operator and mutual recognition of diplomas, certificates and other documents, by removing elements which distort competition. **COMMUNITY MEASURE:** Council Directive 98/76/EC amending Directive 96/26/EC **SUBSTANCE:** The main modifications to Directive 96/26/EC are as follows: (a) The Directive's field of application has been widened: the new Directive applies to enterprises using vehicles with a maximum authorised weight over 3.5 tonnes. The Member States may exempt enterprises using vehicles with an MAW between 3.5 and 6 tonnes from application of the directive, on condition that they are used only for local transport or have little impact on the transport market. (b) The provisions concerning the requirement of good repute provide that this condition is not or no longer satisfied if the operator has been convicted of serious offences against certain road transport regulations, pay and employment conditions in the profession, drivers' working and rest times, weight and dimensions of commercial vehicles, road safety and vehicle safety, environmental protection and professional liability. (c) The financial requirements have been simplified: the enterprise must have capital and reserves of at least EUR 9000 for one vehicle and EUR 5000 for each additional vehicle. (d) With regard to professional competence, the directive provides for: - a more detailed examination procedure, updating and extending the examination syllabus and introducing a harmonised minimum level of knowledge required for each subject; - maintaining different examinations for candidates wishing to carry out national or international transport; - permanent exemption from the examination for candidates with at least five years' practical experience, on condition that such candidates sit a test arranged by the Member States in accordance with the list of subjects at Annex 1 of the Directive; - establishment of a Community model attesting to professional competence, constituting sufficient proof for mutual recognition of professional competence; - the possibility of authorising the Member States, during a limited period and after consulting the Commission, to require people who hold a certificate of professional competence issued in a Member State other than the one where they are normally resident and intend to exercise the profession to undergo an additional examination, covering the specific areas in which the national aspects of the profession of road haulage operator differ from those of the Member State where they gained the certificate. (e) With regard to monitoring application of the directive, it provides for the Member States to carry out regular checks, at least every five years, on whether the conditions for access to the profession are being fulfilled. The Member States must impose penalties for infringements of the national provisions adopted pursuant to the directive. All road haulage operators covered by the field of application of the directive and engaged in the profession before 1 October 1999 will have to fulfil the new financial standing requirements by 1 October 2001. **ENTRY INTO FORCE:** 14/10/1998 **DEADLINE FOR TRANSPOSITION:** 1/10/1999 ?