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Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/1/EC on the use of vehicles hired without drivers for the carriage of goods by road – Presidency paper

In preparation of the informal meeting of the members of the Working Party on Land Transport on 4 October 2021, delegations find attached an outline by the Presidency on the possible way forward concerning the main political issues in the negotiations on the above proposal.

The Presidency would like to outline a possible way forward on the political items in lines 43, 44, 45, 46, 51 and 52 of the four column document (ST 10252/1/21 REV 1) as follows:

A. Possibility to limit the use of hired vehicles registered in another MS (line 43)

I. Minimum period of use guaranteed

As this is where the positions are considerably apart and where the Parliament insists on a guaranteed period that covers also seasonal needs, the Presidency considers that options for developing a compromise should be explored. Any option must reflect on the need of a considerable number of Member States to be able to react to a behaviour of vehicle tax avoidance that might evolve among road haulage undertakings established on their territory.

a) first option

One option for compromise could be based on referring explicitly to the Member States' discretion of requiring vehicle registration after the vehicle has circulated in operation by the resident haulage company for a certain amount of time.

Member States are competent to establish vehicle registration requirements. However, it is understood that when a guaranteed minimum period for the circulation of a hired vehicle for goods transport is introduced (30 days per calendar year in the general approach), this circulation must stay unhampered by any vehicle registration requirement during that period.

The compromise could consist of making a differentiation in the Directive's guaranteed minimum period of use according to the corresponding vehicle registration requirements, which the Member State has introduced or maintained. The vehicle registration requirements would have to be relevant for a vehicle hired by an undertaking established in the Member State and used on its territory.

In order not to become too complicated, such an approach could, for instance, make a distinction between two alternative guaranteed minimum periods of use; it would also have to ensure that Member States always maintain the option to keep the access to hired vehicles fully liberalised.

Making a distinction between Member States according to their (re-)registration rules would require a prior legal assessment in the light of the possible objective justification of such a difference in treatment.

A variant of this option could consist in making a distinction between the (longer) guaranteed period of use and a (shorter) period during which a Member State may not require re-registration of the vehicle. For instance, the compromise could state that in all cases of using the option, the minimum guaranteed period of use is [two] consecutive months in a calendar year, but the Directive would expressly allow a Member State, despite this guaranteed period, to require registration of the vehicle after its use on its territory for 30 days.

With such an approach, Member States would likewise retain flexibility in respect of requiring re-registration after a period of use shorter than [two] consecutive months (but not shorter than 30 days). This variant might appear less convincing for the user if the user intended to use the vehicle only on the territory of the Member State where the company has its seat, because it would split the lease contract into a period during which no registration is required, and a period during which the vehicle might have to be registered if further used on the territory. However, the user could still continue the hire contract, but use the vehicle outside of the Member State of establishment.

b) second option

A second option could be based on a two-step approach linked to the contract of hire: The minimum guaranteed use period could be set at 30 consecutive days, and the Member State may require that the contract of hire be limited to the minimum period. However, if the Member State chooses to guarantee only this minimum period, the undertaking would have the right to extend the contract of hire by at least another 30 consecutive days, subject to providing the competent authority with evidence that the extension of the period is needed exceptionally (seasonal demand, operational necessities). Such a measure would allow the Member State to monitor the use of foreign vehicles on a case-by-case basis, and it would make it easier to detect tax avoidance behaviour.

A variant to this approach could consist in

- a minimum period of hire of 30 days without further administrative requirements (except for the need of having a Community licence on board in case of international carriage), and
- an alternative minimum period of hire of [two] consecutive months per calendar year at the choice of the haulage company. However, in this latter case, the Member State would expressly have the right to require prior notification by the haulage company to the competent authority, meaning prior to making use of the vehicle on the territory of the Member State. This procedure could, similarly, require that the haulage company justifies the use of the vehicle for this period on exceptional grounds.

c) monitoring and control aspects

In all the cases, the Member State has an interest in knowing about the use of the foreign-registered vehicle on its territory. (Indeed, the Member State, for its part, will be required to keep updated information on the foreign vehicles in the fleet of the undertaking in the national electronic register.) There might be circumstances in which the Member States' authorities do not know about the use of the vehicle on the territory (for instance in case the copy of the Community licence does not carry a vehicle number, or the undertaking does not have a licence for international traffic, or it operates the vehicle under the weight limit for the Community licence). In order to have a complete picture, the Member State should be allowed to require the haulage company to notify any contract of hire of a foreign vehicle exceeding 30 days to a competent authority before using the vehicle on the territory of the Member State; the competent authority would then notify the control body (e.g. the transport inspectorate).

II. Secondary issue

- As requested by the EP, it could be made more clear that Member States are free to introduce a minimum guaranteed period going beyond 30 consecutive days of use of the same vehicle per calendar year, by adding "at least [minimum period]".

B. Possibility to limit the hired vehicles registered in another MS in comparison to the fleet (line 44)

I. Calculation of the fleet

The main difference in positions consists in the description of the fleet as being composed of the vehicles “owned” by the undertaking or “at the disposal pursuant to point (g) of Article 5 of Regulation (EC) No 1071/2009”.

The discussions with the EP have shown that the overall intentions are very similar, namely to exclude from the calculation of the overall fleet those vehicles which are used by the undertaking for commercial carriage and are registered or put into circulation in another Member State. This is exactly the type of vehicle for which the Member State can foresee limitations. This is also expressed in a similar way in the last sentence of the general approach: “The minimum share in accordance with this point refers to the goods vehicle fleet at the disposal of the undertaking on the basis of the vehicles registered or put into circulation in conformity with the legislation of that Member State.”

It may be possible to find a solution in a simpler formulation, for instance by saying:

“...limit the number of hired vehicles that can be used by an undertaking engaged in the carriage of goods by road for hire or reward, provided that they allow the use of at least a number of vehicles corresponding to 25% of the undertaking’s vehicle fleet for transport of goods either on 31 December of the year preceding the use of the hired vehicle or on the day when the undertaking begins to use the hired vehicle, as determined by the Member State. For this purpose, the vehicle fleet for transport of goods corresponds only to vehicles registered or put into circulation in conformity with the legislation of that Member State.”

C. Possibility to limit the use of hired vehicles for own account operations (line 46)

Given the current advancement of the discussion, the Presidency considers that it is too early to discuss possible compromises. It is important to maintain the following principles:

- this option only concerns undertakings established in the Member State using the option,
- it allows restrictions only for vehicles registered in a Member State different from the one where the undertaking is established, and
- a differentiation according to vehicle weight should be avoided (monitoring problem).

The EP considers that the options in lines 43 and 44 should concern only road haulage companies established in the Member State drawing the option, while undertakings doing carriage of goods for own account are covered by the option in line 46. This has been the understanding also in Council, as the option in line 46 was considered to be a special provision for vehicles used in own account operations.

Provided that the EP agrees to the Council position in line 46, this understanding could be confirmed in the following way: The definition of ‘hired vehicles’ in the Directive contains in itself the intended use (Article 1 (b)), namely it is put “at the disposal of an undertaking which engages in the carriage of goods by road for hire or reward or for its own account”. For the options in lines 43 and 44, it could be added in the text that the options can be applied only to undertakings “which engage in the carriage of goods by road for hire or reward”.

D. Entering the registration numbers of hired vehicles into the national electronic register (line 50)

Although this is a “B”-item, the discussion with the EP showed that because of the wording (“*at the disposal of a road transport undertaking*”) in the general approach, the compromise depends on whether such a wording is kept in line 44.

A possible shorter wording (ST 10252/1/21 REV 1) was discussed in the working group meeting on 20 September 2021. Several delegations were concerned that the obligation to enter registration numbers of hired vehicles into the national electronic register might become too large, given that the purpose of that obligation was to complement the information on vehicles that have to be recorded in the national electronic register.

It should be recalled that Directive 2006/1 only applies to “the use of vehicles for the carriage of goods”, therefore a related monitoring obligation has a clear context. Nevertheless, the accessory nature of the obligation could be specified in the compromise text by saying, for instance: “*Member States shall take the necessary measures to ensure that the registration number of a hired vehicle used in the occupation of road haulage operator is entered in the national electronic register referred to in Article 16 of Regulation (EC) 1071/2009.*”

E. Administrative cooperation (lines 51 and 52)

The EP has accepted that the main information for exchange among Member States is the information on the registration numbers of hired vehicles (in particular those hired from abroad), and that this information will be available via the national electronic registers and ERRU.

Therefore, access to information will be ensured through use of that system by the authorities who require the information.

In view of this information-sharing environment, it will not be necessary and would, indeed, be too heavy an administrative burden to stipulate an obligation of contacting other authorities each time that a vehicle with a foreign registration is hired. Instead, a compromise could be developed which builds on the administrative cooperation established under Regulation No 1071/2009, Article 18. The relevant rules could be selected from Article 18 of Regulation 1071/2009 as follows, thus in the essence building on the ERRU system:

- Member States shall designate a national contact point responsible for the exchange of information with the other Member States (from Article 18 para 1).
- The competent authorities of the Member States shall cooperate closely and shall swiftly provide one another with mutual assistance and with any other relevant information in order to facilitate the implementation and enforcement of this Directive (from para 2).
- The exchange of information referred to in Article 3a shall take place through the message exchange system, namely the European Registers of Road Transport Undertakings (ERRU) established by Commission Regulation (EU) No 1213/2010 (from para 8) in line with Article 16 of Regulation 1071/2009.
- Member States shall ensure that the information transmitted to them pursuant to this Article is used only in respect of the matter(s) for which it was requested. Any processing of personal data shall be carried out solely for the purposes of complying with this Regulation and shall be in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council (from para 9).

- Mutual administrative cooperation and assistance shall be provided free of charge (from para 10).
- A request for information shall not preclude the competent authorities from taking measures in line with the relevant national and Union law to investigate and prevent alleged breaches of this Regulation (from para 11).

