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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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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 – Analysis of the final compromise text with a view to agreement

1. The second and final informal trilogue on the proposal indicated in the subject was held on 26 October 2021. A provisional political agreement was reached with the European Parliament based on the text set out in the Annex.
2. Subject to confirmation of the political agreement, a formal adoption in second reading by the European Parliament might be possible in May or early June 2022. The transposition timeline in Article 2 of the amending Directive is calculated on that assumption, meaning that a date for entry into force would fall between ca. mid of June and beginning of July 2022.
3. The Permanent Representatives' Committee is invited to analyse the final compromise text with a view to agreement, as set out in the Annex to the present note.

4. The European Parliament's Committee on Transport and Tourism (TRAN) is expected to vote on the political agreement soon, following which, the TRAN Chair will address a letter to the Presidency confirming that, should the Council approve the text in first reading, after legal-linguistic revision, the European Parliament would approve the Council's position in its second reading.
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**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**

2017/0113(COD)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2006/1/EC of the European Parliament and of the Council³ provides for a minimum
level of the market opening for the use of vehicles hired without drivers for the carriage of
goods by road.

¹ OJ C , , p. .

² OJ C , , p. .

³ Directive 2006/1/EC of the European Parliament and of the Council of 18 January 2006 on
the use of vehicles hired without drivers for the carriage of goods by road (codified version)
(OJ L 33, 4.2.2006, p. 82).

- (2) The use of hired vehicles can reduce the costs of undertakings carrying goods on their own account or for hire and reward and at the same time increase their operational flexibility. It can therefore contribute to an increase in the productivity and competitiveness of the undertakings concerned. Moreover, as hired vehicles tend to be younger than the average fleet, they are *on average* also safer and less polluting.
- (3) Directive 2006/1/EC does not enable undertakings to fully benefit from the advantages of using hired vehicles. That Directive allows Member States to restrict the use by undertakings *established on their respective territories* of hired vehicles with a maximum permissible laden weight of more than six tonnes for own account operations. Moreover, Member States are not required to allow the use of a hired vehicle on their respective territories if the vehicle has been registered or put into circulation in compliance with the laws in a Member State other than the one of establishment of the undertaking hiring it.
- (4) In order to enable undertakings to benefit to a greater extent from the advantages of using hired vehicles, it should be possible for them to use vehicles hired in any Member State, not only the one of their establishment. That would make it easier for them to meet in particular short-term, seasonal or temporary demand peaks or to replace defective or damaged vehicles, *while ensuring compliance with the necessary safety requirements and ensuring adequate working conditions for drivers.*
- (4a) Member States should not be allowed to restrict the use on their respective territories of a vehicle hired by an undertaking established on the territory of another Member State, if the vehicle has been registered or put into circulation in accordance with the applicable laws, safety requirements and other mandatory standards of a Member State and, if it is a vehicle requiring a certified true copy of the Community licence in accordance with Regulation (EC) No 1072/2009, has been authorised to be used by the Member State of establishment of the undertaking by means of such certified true copy.*
- (4b) In order to simplify the provision of relevant evidence, documents in electronic form should be recognised as means of proving compliance with Directive 2006/1/EC.*

- (5) The level of road transport taxation still differs considerably within the Union. Therefore, certain restrictions, which also indirectly affect the freedom to provide vehicle hiring services, remain justified in order to avoid fiscal distortions. Consequently, Member States should have the option to limit the length of time *undertakings established on their respective territories may use a hired vehicle registered or put into circulation in another Member State. Given that this Directive does not harmonise national vehicle taxation and that vehicle registration rules are connected with vehicle taxation, Member States should have the option to require the vehicle's registration, provided that the vehicle can circulate for at least 30 days without such requirements. Member States should also be allowed to limit the number of such vehicles being hired by an undertaking established on their respective territories. That limit should not be lower than a certain share of the number of vehicles at the disposal of the undertaking calculated exclusive of vehicles hired in another Member State and not registered in the Member State of establishment of the undertaking.*
- (5a) *In order to improve the enforcement of a restriction on the use of a hired vehicle that is registered or put into circulation in compliance with the laws of a Member State other than the one where the undertaking hiring it is established, a Member State should be allowed to require that the duration of the contract of hire does not exceed the length of the time allowed for using the vehicle concerned. In addition, the validity of certified true copies of the Community licence issued in accordance with Regulation (EC) No 1072/2009 may be limited to the period corresponding to the length of the contract of hire. Moreover, the registration number of the hired vehicle may be indicated on these certified true copies.*

- (5b) The circulation of hired vehicles should not hamper the monitoring and control of the legality of operations carried out by operators in Member States other than their Member State of establishment. In accordance with Regulation (EC) No 1071/2009 of the European Parliament and of the Council⁴, national electronic registers have to contain the registration numbers of vehicles at the disposal of a transport undertaking. This information should also cover vehicles hired in a Member State other than the Member State of establishment of the undertaking. Regulation (EC) No 1071/2009 also provides for the accessibility of data contained in national registers by authorities of other Member States; the national electronic registers should allow for targeted search in respect of vehicles with a registration number other than those issued by the Member States of establishment.*
- (5c) In order to ensure that the obligation to provide information on a hired vehicle's registration number in the national electronic register is fulfilled in a uniform manner, implementing powers should be conferred on the Commission relating to the minimum requirements for the data to be entered in the national electronic register. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.⁵*

⁴ *Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).*

⁵ *Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).*

- (6) In order to allow own account transport operations to be conducted more efficiently, Member States should no longer be allowed to restrict the possibility to use hired vehicles for such operations. *However, to avoid potential fiscal issues, this possibility should be maintained if the vehicle is registered outside the Member State of establishment of the undertaking using it.*
- (7) The implementation and effects of [...] Directive **2006/1/EC** should be monitored by the Commission and be documented by it in a report *at the latest four years after the date of transposition of this Directive. The report should take due account of the impact of this Directive on road safety and on the environment through changes in the age and type composition of the vehicle fleets, and on tax revenues, with particular regard to the justification of restrictions provided for in this Directive. The report should also assess whether its implementation has entailed difficulties in relation to enforcement, including the enforcement of cabotage rules. The need for* future action in this area should be considered in light of that report.
- (8) Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of the cross-border nature of road transport and of the issues this Directive is intended to address, be better achieved at Union level, the Union may adopt measures, in *accordance* with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In *accordance* with the principle of proportionality *as set out in this Article*, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (9) Directive 2006/1/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/1/EC is amended as follows:

(1) Article 2 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory **part** is replaced by the following:

"Each Member State shall allow the use within its territory of vehicles hired by undertakings established on the territory of another Member State provided that:";

(ii) point (a) is replaced by the following:

"(a) the vehicle is registered or put into circulation in compliance with the laws of any Member State and, if applicable, used in compliance with the provisions of Regulations (EC) No 1071/2009 and (EC) No 1072/2009;"

(b) *in paragraph 2, the introductory part is replaced by the following:*

"Proof of compliance with the conditions referred to in paragraph 1, points (a) to (d) shall be provided by the following documents, which must be on board the vehicle and shall be presented in paper or electronic form:";

[...]

(2) Article 3 is replaced by the following:

"Article 3

1. Member States shall take the necessary measures to ensure that [...] undertakings ***established on their respective territories*** may use hired vehicles for the carriage of goods by road under the same conditions as vehicles owned by them, provided that the conditions laid down in Article 2 are satisfied.

2. *Where the hired vehicle is registered or put into circulation in compliance with the laws of another Member State, the Member State of establishment of the road transport undertaking may:*
- (a) *limit the time of use of the hired vehicle on its respective territory provided that it allows the use of the hired vehicle by the same road transport undertaking for a period of at least two consecutive months in any given calendar year; in that case the contract of hire may be required not to last longer than the time limit set by the Member State;*
 - (b) *require that such vehicles be registered in accordance with its national registration rules after a period of no less than 30 days; the contract of hire may in that case be required not to last longer than the period of circulation prior to the registration requirement;*
 - (c) *limit the number of hired vehicles that can be used by an undertaking provided that it allows the use of a minimum number of vehicles. This minimum number shall be at least 25% of the goods vehicle fleet which is at the disposal of the undertaking pursuant to point (g) of Article 5(1) of Regulation (EC) No 1071/2009 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. In case of an undertaking having an overall fleet of more than one and less than four vehicles, it shall be allowed to use at least one such hired vehicle. 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;*
 - (d) *limit the use of such vehicles for own account transport operations."*

(2a) the following Article 3a is inserted:

“Article 3a

1. *Member States shall take the necessary measures to ensure that the registration number of a hired vehicle used by an operator which engages in the carriage of goods by road for hire and reward is entered in the national electronic register referred to in Article 16 of Regulation (EC) 1071/2009.*

2. *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. For this purpose, Member States shall designate a national contact point responsible for the exchange of information with the other Member States.*
3. *The exchange of information referred to in paragraph 1 shall take place through the message exchange system, namely the European Registers of Road Transport Undertakings (ERRU) as specified by Commission Regulation (EU) 2016/480.*
4. *Member States shall ensure that the information transmitted to them pursuant to this Article is used only in respect of the matters 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.*
5. *Mutual administrative cooperation and assistance shall be provided free of charge.*
6. *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 rules resulting from the transposition of this Directive.*
7. *Member States shall take the necessary measures to ensure that the processing of the data referred to in paragraph 1 complies with the requirements for the information referred to in point (g) of Article 16(2) of Regulation (EC) No 1071/2009 as specified in subparagraphs 3 and 5 of Article 16(2), and in Article 16(3) and (4) of that Regulation.*

8. *No later than 14 months after the adoption of an implementing act on a common formula for calculating the risk rating as referred to in Article 9(1) subparagraph 2 of Directive 2006/22/EC of the European Parliament and the Council⁶, the Commission shall, by means of implementing acts, adopt the minimum requirements for the data to be entered in the national electronic register in order to facilitate the interconnection of registers, and specify the functionalities that allow for this information to be made available to the competent authorities during roadside checks. Those minimum requirements and functionalities shall conform with the requirements and functionalities established pursuant to Article 16(6) of Regulation (EC) 1071/2009.*

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 5b(2).

9. *Member States shall ensure that the data referred to in the first paragraph is available to the competent authorities during roadside checks."*

- (3) the following Articles *are* inserted:

"Article 5a

By... [4 years after the deadline for transposition of the Directive *referred to in Article 2(1) of this amending Directive*], the Commission shall submit a report to the European Parliament and the Council on the implementation and effects of this Directive. *That* report shall include information on the use of vehicles hired in a Member State other than the Member State of establishment of the undertaking hiring the vehicle. *The report shall pay particular attention to the impact on road safety, on the environment, on tax revenues and on the enforcement of the cabotage rules in accordance with Regulation (EC) No 1072/2009.* On the basis of *that* report, the Commission shall assess whether it is necessary to propose additional measures.

⁶ *Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).*

Article 5b

The Commission shall be assisted by the Committee set up by Article 42(1) of Regulation (EU) No 165/2014 of the European Parliament and of the Council.⁷

Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 of the European Parliament and of the Council⁸ shall apply.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... ***[14 months after the date of entry into force of this Directive]*** at the latest.

They shall communicate to the Commission the text of those provisions without delay.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

⁷ ***Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).***

⁸ ***Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).***

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.
