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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading with a view to the adoption of 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

DIRECTIVE (EU) .../...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

amending Directive 2006/1/EC
on the use of vehicles hired without drivers for the carriage of goods by road

(Text with EEA relevance)

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 procedure³,

¹ OJ C 129, 11.4.2018, p. 71.

² OJ C 176, 23.5.2018, p. 57.

³ Position of the European Parliament of 15 January 2019 (OJ C 411, 27.11.2020, p. 258) and position of the Council at first reading of ... [(OJ ...)/(not yet published in the Official Journal)]. Position of the European Parliament of ... [(OJ ...)/(not yet published in the Official Journal)].

Whereas:

- (1) Directive 2006/1/EC of the European Parliament and of the Council¹ provides for a minimum level of market opening as regards the use of vehicles hired without drivers for the carriage of goods by road.
- (2) The use of hired vehicles can reduce the costs of undertakings carrying goods on their own account or for hire or reward, and at the same time can 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 newer than the average fleet, they are on average also safer and less polluting.
- (3) Directive 2006/1/EC does not enable undertakings to benefit fully from the advantages of using hired vehicles. The Directive allows Member States to restrict the use by undertakings established on their respective territories of hired vehicles with a total permissible laden weight of more than six tonnes for own-account transport 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 of a Member State other than the Member State of establishment of the undertaking hiring it.

¹ 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 (OJ L 33, 4.2.2006, p. 82).

- (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 in the Member State of establishment. Such a possibility would, in particular, make it easier for them to meet short-term, seasonal or temporary peaks in demand or to replace defective or damaged vehicles, while ensuring compliance with the necessary safety requirements and ensuring adequate working conditions for drivers.
- (5) 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 of the European Parliament and of the Council¹, if it has been authorised to be used by the Member State of establishment of the undertaking by means of such certified true copy.
- (6) In order to simplify the provision of relevant evidence, Member States should also recognise documents in electronic form as a means of proving compliance with Directive 2006/1/EC.

¹ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).

- (7) The level of road transport taxation still differs considerably throughout the Union. Therefore, certain restrictions, which also indirectly affect the freedom to provide vehicle hire 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 registration of the hired vehicle, provided that the vehicle be allowed to circulate for at least 30 days before such a requirement becomes applicable. 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.

- (8) In order to improve the enforcement by a Member State of restrictions on the use by an undertaking established on its territory of hired vehicles that are registered or put into circulation in compliance with the laws of another Member State, the Member State of establishment 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. It is possible to limit the validity of certified true copies of the Community licence issued in accordance with Regulation (EC) No 1072/2009 to the period corresponding to the duration of the contract of hire. It is also possible to indicate the registration number of the hired vehicle on those certified true copies.

- (9) The circulation of hired vehicles should not hamper the monitoring and control of the legality of transport operations carried out by undertakings 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 Council¹, national electronic registers are to contain the registration numbers of vehicles at the disposal of a transport undertaking. That should also include any 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 electronic registers by the competent authorities of other Member States. The national electronic registers should allow for targeted searches in respect of vehicles with registration numbers issued by Member States other than the Member State of establishment.

¹ 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).

- (10) In order to ensure uniform compliance with the obligation to enter the registration number of a hired vehicle used by an undertaking which engages in the carriage of goods by road for hire or reward in the national electronic registers, implementing powers should be conferred on the Commission relating to the minimum requirements for the data to be entered in the national electronic registers. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹.
- (11) In order to allow own-account transport operations to be conducted more efficiently, Member States should no longer be allowed to restrict the possibility of using hired vehicles for such operations. However, to avoid potential fiscal issues, the possibility of restricting the use of hired vehicles for own-account transport operations should be maintained for vehicles registered outside the Member State of establishment of the undertaking using them.

¹ 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).

- (12) The Commission should monitor the implementation and effects of Directive 2006/1/EC and draw up a report at the latest four years after the date of transposition of this Directive. That report should take due account of the impact of this Directive on road safety, on the environment by reference to 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 the implementation of this Directive has entailed difficulties in relation to enforcement, including the enforcement of cabotage rules. The Commission should consider the need for future action in that area in light of that report.
- (13) 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 that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (14) 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:

"1. 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 Regulations (EC) No 1071/2009* and (EC) No 1072/2009** of the European Parliament and of the Council;

* 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).

** Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).";

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

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

(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 a 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 territory provided that the use of the hired vehicle by the same road transport undertaking is allowed for a period of at least two consecutive months in any given calendar year; in that case the Member State may require that the contract of hire last no longer than the time limit set by that Member State;
 - (b) require that the hired vehicle is registered in accordance with its national registration rules after a period of no less than 30 days; in that case the Member State may require that the contract of hire last no longer than the period of circulation prior to the registration requirement;

- (c) limit the number of hired vehicles that may be used by an undertaking provided that the minimum number of vehicles allowed shall be at least 25 % of the goods vehicle fleet which is at the disposal of the undertaking pursuant to Article 5(1), point (g), 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; however, in the case of an undertaking which has an overall fleet of more than one and less than four vehicles, it shall be allowed to use at least one such vehicle; the minimum number 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 laws of that Member State;
- (d) limit the use of such vehicles for own-account transport operations.";

(3) the following Article is inserted:

"Article 3a

1. Member States shall take the necessary measures to ensure that the number of a hired vehicle used by an undertaking which engages in the carriage of goods by road for hire or reward is entered in the national electronic register referred to in Article 16 of Regulation (EC) No 1071/2009.

2. The competent authorities of the Member States shall cooperate closely and shall swiftly provide one another with mutual assistance and with any relevant information in order to facilitate the implementation and enforcement of this Directive. To that end, each Member State shall designate a national contact point responsible for the exchange of information with the other Member States.
3. The exchange of the information referred to in paragraph 1 shall take place through the European Registers of Road Transport Undertakings (ERRU) as specified by Commission Implementing Regulation (EU) 2016/480*.
4. Member States shall ensure that the information provided 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 Directive and shall comply 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 accordance with the relevant Union and national 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 of this Article complies with the requirements for the information referred to in Article 16(2), point (g), of Regulation (EC) No 1071/2009 as specified in Article 16(2), third and fifth subparagraphs, and in Article 16(3) and (4) of that Regulation.

8. No later than 14 months after the adoption of an implementing act establishing a common formula for calculating the risk rating as referred to in Article 9(1), second subparagraph, of Directive 2006/22/EC of the European Parliament and of the Council^{***}, the Commission shall adopt implementing acts, laying down the minimum requirements concerning the data to be entered in the national electronic registers in order to enable the interconnection of registers, and specifying the functionalities necessary in order to make that information accessible to the competent authorities during roadside checks. Those minimum requirements and functionalities shall comply with the requirements and functionalities established pursuant to Article 16(6) of Regulation (EC) No 1071/2009. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 5b(2) of this Directive.

9. Member States shall ensure that the data referred to in paragraph 1 is accessible to the competent authorities during roadside checks.

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- * Commission Implementing Regulation (EU) 2016/480 of 1 April 2016 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings and repealing Regulation (EU) No 1213/2010 (OJ L 87, 2.4.2016, p. 4).
- ** Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).
- *** Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014 and Directive 2002/15/EC as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).";

(4) The following Articles are inserted:

"Article 5a

By ... [4 years after the date 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.

Article 5b

1. The Commission shall be assisted by the Committee established by Article 42(1) of Regulation (EU) No 165/2014 of the European Parliament and of the Council*. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council**.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

* 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).

** 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 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]. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

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.

Done at ...,

For the European Parliament

The President

For the Council

The President
