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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)/ Council
No. prev. doc.:	ST 8379/21 + COR 1
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Subject:	Preparation of the Council meeting (<u>Transport</u>, <u>Telecommunications and Energy</u>) on 3 June 2021 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 – General approach

I. INTRODUCTION

1. The Commission presented its proposal to amend Directive 2006/1/EC on the use of vehicles hired without drivers for the carriage of goods by road in May 2017 as part of the Mobility Package I.
2. Directive 2006/1/EC codifies earlier rules and provides for a minimum level of market opening for the use of vehicles hired without drivers for the carriage of goods by road between Member States, both for undertakings established in their territories and undertakings established in another Member State. However, the Directive:

- allows a Member State to restrict the use of hired vehicles by undertakings established on its territory to those which are registered in that Member State, and in addition allows to prohibit the use of hired vehicles with a total permissible laden mass above six tonnes for own-account operations;
 - is limited, in respect of undertakings established in another Member State, to hiring vehicles registered in that same Member State for the purpose of traffic between Member States.
3. The Commission proposes to amend Directive 2006/1/EC mainly to remove the existing restrictions and to establish a clear and uniform regulatory framework, giving transport operators across the EU equal access to the market for hired vehicles.
 4. The European Parliament's Committee on Transport and Tourism (TRAN) appointed Ms Cláudia Monteiro de Aguiar (EPP, PT) as rapporteur. The TRAN Committee voted on her report on 24 May 2018, and the European Parliament adopted its first reading position, containing 15 amendments, on 15 January 2019.¹
 5. The European Economic and Social Committee and the European Committee of the Regions adopted their opinions on 6 December 2017 and 1 February 2018, respectively.

II. WORK WITHIN THE COUNCIL

6. The Commission presented its proposal, together with the impact assessment, to the Working Party on Land Transport on 1 and 21 June 2017. The working group then met regularly under the Estonian, Romanian, Bulgarian and Croatian Presidencies. At several occasions, the file was presented to Council with the aim of a general approach, and in June 2020 to the Permanent Representatives Committee with the aim of a mandate for negotiations.

¹ See doc. ST 5386/19.

7. The members of the working party continued their work under the Portuguese Presidency in informal meetings on 9 and 24 February, 9 and 24 March, and 19 April 2021. The Presidency suggested some amendments to the compromise text, particularly in Article 3 (2) and recitals 5 and 6 of the amended Directive, which allow a Member State to limit the use of hired vehicles by undertakings established on its own territory, as well as in Article 3a (3) of the amended Directive and Article 2 of the amending Directive which concern the implementation of control tools and the transposition time for Member States.
8. Most delegations supported the proposed changes and can accept, as a compromise, the text as revised over time. Some of them continue to be concerned about possible negative impacts on state revenues. A few delegations do not support the proposal, some of them with the intention to abstain in the further process, in particular as they consider that the revised Directive would increase the risk of hidden unlawful cabotage operations.
9. On 28 April 2021, the Permanent Representatives Committee gave guidance for further work, acknowledging the broad support to the way forward proposed by the Presidency. Following this, the Presidency circulated a further adjusted compromise text², which is the same as set out in the annex to this report. No delegation made additional comments.

III. CONCLUSION

10. The Permanent Representatives Committee is invited to confirm the compromise reached at the level of the working party and to forward the revised text of the Commission proposal, as set out in the annex, to Council for its agreement on a general approach.

² See doc. 8379/21 + COR 1.

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

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 Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2006/1/EC of the European Parliament and of the Council⁵ provides for a minimum level of the market opening for the use of vehicles hired without drivers for the carriage of goods by road.

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ 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 increasing the productivity and competitiveness of the undertakings concerned. Moreover, as hired vehicles tend to be younger than the average fleet, they are 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.
 - (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, provided that the vehicle is registered or put into circulation in compliance with the laws of any 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, authorised to be used by the Member State of establishment of the undertaking by means of this 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 a another Member State. They should also be allowed to limit the number of such vehicles being hired by an undertaking. 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 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 Council⁶, national electronic registers have to contain the registration numbers of vehicles at the disposal of a road 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 electronic 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 State 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 into the national electronic register. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁷.
- (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.

⁶ 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). [Reference includes latest amendments by Regulation (EU) 2020/1055, Mobility Package I.]

⁷ 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).

- (7) The implementation and effects of ~~this~~ Directive 2006/1/EC should be monitored by the Commission and be documented by it in a report. That report should pay special attention to whether Directive 2006/1/EC as amended by this Directive has resulted in the increased usage of older vehicles or certain types of vehicles and thereby has had an effect on road safety, whether it has entailed difficulties in relation to enforcement, including the enforcement of cabotage rules, and to the effects on tax revenues of the Member States. The compilation of that report would be facilitated by Member States providing, on a voluntary basis, relevant information on tax revenues to the Commission. Any 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 ~~alone~~ 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.
- (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 a any Member State and used in compliance with the provisions of Regulations (EC) No 1071/2009 and (EC) No 1072/2009 in the Member State of establishment of the undertaking using it, if applicable.";

(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 undertaking may:
 - a) limit the time of use of such vehicles on its respective territory provided that it allows the use of the hired vehicle by the same undertaking for a period of 30 consecutive days 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) limit the number of such 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;
 - c) 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 at the disposal of a road transport undertaking to which Regulation (EC) No 1071/2009 applies, where this vehicle is registered or put in circulation in compliance with the laws of a Member State other than the Member State of establishment of the undertaking hiring the vehicle, is entered in the national electronic register referred to in Article 16 of Regulation (EC) No 1071/2009.

Member States shall take the necessary measures to ensure that the processing of the data referred to in the first subparagraph of this paragraph 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.

2. 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 of the Council*, the Commission shall, by means of implementing acts, adopt the minimum requirements for the data to be entered into 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).

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

* 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).";

- (3) the following Articles are inserted:

"Article 5a

By [5 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. That report shall also look into the impacts on road safety, on tax revenues and on the enforcement of the cabotage rules in accordance with Regulation (EC) No 1072/2009. On the basis of ~~this~~ that report, the Commission shall assess whether it is necessary to propose additional measures.

Article 5b

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*.

Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 of the European Parliament and of the Council** 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 21 August 2023⁸ 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.

⁸ [Note: Corresponds to 36 months after the entry into force of Regulation 2020/1055.]

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.

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 Brussels,

For the European Parliament

The President

For the Council

The President
