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REPORT

From:	General Secretariat of the Council
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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 – Progress report

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. The proposal is part of the first mobility package and is linked to the proposed overhaul of rules on access to the profession of road transport operator and access to the road haulage market (Regulations 1071/2009 and 1072/2009).
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 the 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 establish a clear and uniform regulatory framework, giving transport operators across the EU equal access to the market for hired vehicles.

II. WORK AT OTHER INSTITUTIONS

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 agreement, 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.

III. 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 met on 7 July, 11 October and 6 November 2017 under the Estonian Presidency, and on 26 February, 20 March and 24 April 2018 under the Bulgarian Presidency to analyse the proposal in detail and to discuss Presidency compromises. A first attempt to reach a general approach at the TTE Council meeting on 7 June 2018 was not successful.

¹ See document 5386/19.

7. The Working Party on Land Transport returned to the proposal under the Romanian Presidency, namely on 14, 21 and 28 January, 4 April, and 2 May 2019, to discuss a Presidency compromise; the latest version is annexed herewith. Most delegations generally acknowledged the good progress made on the proposal, and some of them underlined that the adoption of the general approach would allow to deal with this file in parallel with the related files of the first mobility package, once negotiations with the European Parliament will start. Two delegations maintained their unchanged negative assessment of the proposal. The Commission maintained a general reservation concerning the outcome of negotiations.
8. While many delegations continued to have concerns about the proposal's impact on vehicle tax revenues, most of them acknowledged that the Presidency compromise allows Member States to limit the risk to a large extent (Article 1(2) - replacing Article 3 of the Directive - ; recitals 3 and 4). One delegation considered that the national vehicle registration rules might be undermined by introducing more freedom in the circulation of hired vehicles, and one other delegation needed to further scrutinise the proposal in view of recently adopted national laws.
9. As regards the cross-border use of hired vehicles by undertakings established in another Member State (Article 1(1) - amending Article 2 of the Directive - ; recital 4a), most delegations could accept the enlarged flexibility. Many delegations underlined the importance of effective control measures in this case, in particular to monitor cabotage activities. In this respect, the use of the ERRU² system (Article 1(2a) - inserting new Article 3a into the Directive - ; recitals 5b and 5c) appeared reasonable to most delegations, although some of them considered this too burdensome or not effective enough. Several delegations underlined that the ERRU system was going to receive a more complete updating once the changes to Regulation 1071/2009 within the mobility package I will be adopted, and argued for a co-ordinated timing of the respective updates.

² European Register of Road transport Undertakings, a system to ensure the interconnection of national electronic registers in accordance with Art 16(5) and (6) of Regulation 1071/2009.

10. The Permanent Representatives Committee discussed the compromise on 15 May 2019. On the one hand, many delegations expressed support for the compromise, in spite of certain remaining risks, for instance concerning tax revenues and control of road transport operations carried out in other Member States. On the other hand, a considerable number of delegations expressed doubts about whether a general approach is achievable already in June 2019. Some delegations entered a negative scrutiny reservation on the scope of the Commission's evaluation obligation concerning tax revenues (Article 1 (3) - new Article 5a of the Directive). The Presidency concluded after the meeting that a progress report would be most appropriate as a basis for discussion at Council.

IV. CONCLUSIONS

11. The Presidency considers that the good progress made has resulted in a further reduction of Member State concerns, while at the same time preserving the core of the Commission's objectives.
- a) To avoid unintended side effects, Member States may limit the hiring of vehicles registered in other Member States by their own undertakings to 30 days per calendar year and/or to 25% of the vehicle fleet. Through this short minimum period, it should be possible to safeguard national rules on vehicle registration and avoid tax erosion. A possibility to limit the hiring of light commercial vehicles for own account operations adds another safeguard. To ensure a comprehensive monitoring of the impact on tax revenues, the Commission's evaluation report could be extended to this aspect.
- b) To ensure that the use of hired vehicles by undertakings established in another Member State is not abused for circumventing market access rules, the vehicles must be provided with the certified true copy of the Community licence, when required under Regulation 1072/2009. In addition, Member States will have access to information on hired vehicles' registration numbers through the EU interface of national electronic registers, ERRU. In view of the fact that the ERRU system will be overhauled in Regulation 1071/2009 (Article 16)³, the compromise contains an obligation to add information on the registration numbers of hired vehicles in the national register.

³ See general approach on the proposal concerning Regulation 1071/2009, document 15084/18, p. 16.

12. The Presidency notes that many delegations have emphasized the link to the main files of the first mobility package. This link contains two facets: first, technically, in the need for improving the information exchange among Member States to improve monitoring and control; and second, in terms of the general political debate on market access and its restrictions. The European Parliament has adopted first reading positions on all the files concerned. The Council established a general approach for three proposals of the first mobility package,⁴ but not yet on the hired vehicles proposal. The Presidency also notes that while delegations generally acknowledge the importance of this link, they have expressed differing views about the appropriate timing for moving forward on this file, either in parallel with the other files or as a subsequent step.
13. In the light of the above, the Permanent Representatives Committee and the Council are invited to take note of the progress made on the file.

⁴ See document 15084/18.

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 Committee⁵,

Having regard to the opinion of the Committee of the Regions⁶,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2006/1/EC of the European Parliament and of the Council⁷ provides for a minimum level of the market opening for the use of vehicles hired without drivers for the carriage of goods by road.

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ 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 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.

- (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. They should also be allowed to limit the number of such vehicles being hired by an undertaking established on their respective territories.
- (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 length 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, operators should inform the authorities of the Member State in which they are established of the registration number of each motor vehicle at their disposal, so that this information can be inserted in the national electronic register. That Regulation 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 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 Council⁸.
- (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, Member States should be able to limit the use for own account transport operations of a vehicle with a maximum permissible laden mass of no more than 3.5 tonnes if it is registered outside the Member State of establishment of the undertaking using it.
- (7) The implementation and effects of this Directive should be monitored by the Commission and be documented by it in a report. The report should pay special attention to whether this Directive has resulted in the usage of older or certain types of vehicles and thereby has had an effect on road safety and whether it has entailed difficulties in relation to enforcement, including the enforcement of cabotage rules. 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 line with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In line with the principle of proportionality, 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:

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 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 sentence 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 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."

(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 the hired vehicle 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 this 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 hired vehicles that can be used by an undertaking provided that it allows the use of a minimum number of vehicles. This minimum number is at least 25% of the goods vehicle fleet owned by the undertaking on 31 December of the year preceding the request for authorisation to use the hired vehicle. 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;
- c) limit the use of such a vehicle with a maximum permissible laden mass of no more than 3.5 tonnes for own account transport operations."

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

"Article 3a

Member States shall take the necessary measures to ensure that the information on a hired vehicle's registration number is entered in the national electronic register referred to in Article 16 of Regulation (EC) No 1071/2009.

The Commission shall adopt, by means of implementing acts, the minimum requirements for the data to be entered in the national electronic register. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 5b(2)."

(3) the following Articles 5a and 5b are inserted:

"Article 5a

By [OP: please insert the date calculated 5 years after the deadline for transposition of the Directive], the Commission shall submit a report to the European Parliament and the Council on the implementation and effects of this Directive. The 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 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 report, the Commission shall assess whether it is necessary to propose additional measures.

Article 5b

1. The Commission shall be assisted by the Committee set up by Article 42(1) of Regulation (EU) No 165/2014 of 4 February 2014 on tachographs in road transport.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply."

Article 2

3. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [OP: please insert the date calculated [24] months following the entry into force] 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.

4. 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