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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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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

Delegations will find attached document COM(2017) 282 final.

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2017/0113 (COD)

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

(Text with EEA relevance)

{SWD(2017) 196 final}

{SWD(2017) 197 final}

{SWD(2017) 198 final}

{SWD(2017) 199 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• **Reasons for and objectives of the proposal**

Directive 2006/1/EC on the use of vehicles hired without drivers for the carriage of goods by road¹ provides for a minimum level of market opening for the use of hired goods vehicles in the single market. In doing so, it aims to (i) achieve optimum resource allocation by limiting the wasteful use of factors of production (e.g. capital tied up in underutilised vehicles) and (ii) increase the flexibility and productivity of the undertakings concerned. All objectives are associated with the use of hired vehicles.

However, at the same time, the Directive allows Member States to restrict the use of hired goods vehicles with a gross vehicle weight above six tonnes for own account operations. It also allows restricting the use of a vehicle which has been hired in a Member State different from the one where the undertaking hiring the vehicle is established.

These restrictions limit the effectiveness of the Directive. Moreover, they create an unnecessary burden on undertakings and a patchwork of rules which creates confusion among operators. Reducing the burden on undertakings and clarifying the rules is a core objective of the EU Regulatory Fitness Programme (REFIT) of which this proposal forms a part.

It is therefore proposed to remove the possibility to restrict the use of hired vehicles for own account operations. Moreover, the use of a vehicle hired in another Member State is to be allowed for at least four months to enable undertakings to meet temporary or seasonal demand peaks and/or to replace defective or damaged vehicles. Allowing Member States to limit the use of a vehicle hired in a Member State other than the one where the undertaking hiring it is established to four months seems necessary to avoid possible distortions given the considerable differences between them in the taxation of road vehicles.

Overall, the proposal ensures equal access for transport operators across the EU to the market for hired vehicles. It also ensures a uniform regulatory framework across the EU and enables transport operators to perform their transport activities in the most efficient way possible. As hired vehicles are usually newer, safer and less polluting, the proposal reduces the negative externalities of road transport.

This proposal is one of several proposals in the area of road transport which the Commission intends to adopt in 2017 to make the legislative framework governing the road transport sector in the EU fit for the future.

• **Consistency with existing policy provisions in the policy area**

Hired goods vehicles are referred to in both Regulations (EC) No 1071/2009² and (EC) No 1072/2009³, in the context of the conditions for stable establishment of a transport operator (which is one of the requirements for access to the profession of road transport operator) and in the context of the rules on the Community licence, a certified copy of which must be put at the disposal of the licence holder for each hired vehicle. In this sense, the operation of hired vehicles is relevant to the access to the international road haulage market. Both Regulations

¹ OJ L 33, 4.2.2006, p. 82.

² OJ L 300, 14.11.2009, p. 51.

³ OJ L 300, 14.11.2009, p. 72.

and the Directive form the legal framework in which the road haulage sector operates in the EU. The enforcement of the provisions of these three legal acts is closely linked. As regards in particular the enforcement of the proposed (optional) time limitation, whereby the use of a vehicle hired in a Member State other than the one where the undertaking hiring it is established may be confined to four months, the amending proposal made in respect of Regulation (EC) No 1071/2009 is relevant. According to that proposal, Member States would be obliged to indicate the number plate of each vehicle at the disposal of a transport operator in their respective national electronic register. Such a rule should be of great help for monitoring compliance with any time limitation as referred to above.

- **Consistency with other Union policies**

The proposal is fully consistent with the priority of the Commission to create a deeper and fairer internal market. The internal market for the provision of transport services using hired goods vehicles and for the provision of vehicle renting and leasing services will be strengthened. It is also in line with the objectives of the common transport policy as described in the 2011 White Paper "Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system".⁴ This proposal also reduces the regulatory burden on operators and clarifies the legal framework - both of which are objectives of the EU's REFIT programme.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this Directive is Article 91(1) of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

The EU shares competence with Member States to regulate the field of transport pursuant to Article 4(2)(g) TFEU.

Road transport is increasingly international. The share of international road freight transport activity in total road freight transport activity in what is now the EU-28 has gone up from around 28% in 2000 to almost 36% in 2014.⁵ Only the EU can provide a uniform legal framework in the increasingly integrated internal market for the provision of road transport services. Without EU intervention, Member States would not provide the level playing field that is needed in the internal market. The existing patchwork of national rules can only be overcome through EU action. A uniform legal framework will reduce compliance and enforcement costs across the EU. As the Directive currently allows Member States to restrict the use of hired vehicles under certain conditions, reducing the scope of Member States to impose restrictions on the use of hired vehicles requires amending the Directive which can only be done at EU level.

- **Proportionality**

As indicated in Section 7.4 of the impact assessment, the proposal does not go beyond what is needed to address the identified problems. The proposal only contains some targeted amendments to the Directive which help improve the legislative framework in which the road haulage sector and the vehicle renting and leasing sector in the EU operate.

⁴ COM(2011) 144 final of 28.3.2011.

⁵ See EU transport in figures. Statistical Pocketbook 2016, Tables 2.2.4b and 2.2.4c; online available at http://ec.europa.eu/transport/facts-fundings/statistics/pocketbook-2016_en

- **Choice of the instrument**

Since the act to be amended is a Directive, the amending act proposed should in principle take the same form.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The staff working document related to the *ex-post* evaluation of Directive 2006/1/EC has been adopted together with this proposal.⁶ An external study was carried out in 2015-16. Its final report is published on the Commission's website.⁷

The main findings of the *ex-post* evaluation were that Directive 2006/1/EC could be more effective in achieving its objectives if it didn't allow Member States to restrict the use of hired goods vehicles in some market segments and under certain conditions. Restrictions on the cross-border hiring of goods vehicles prevent operators from optimising the utilisation of their fleets by shifting their vehicles to where they are most needed. Moreover, restrictions on the use of hired goods vehicles also lower the efficiency of Directive 2006/1/EC as they increase compliance costs for both transport operators and vehicle renting / leasing companies and as they increase implementation and enforcement costs for public authorities. In the absence of restrictions, these costs have been found to be small and negligible.

Allowing Member States to restrict the use of hired goods vehicles also goes against the needs of the European economy in terms of increasing the flexibility and efficiency of road haulage operations and it is not fully compatible with current policy priorities in terms of deepening the single market and promoting the use of safer, cleaner and more fuel efficient vehicles.

- **Stakeholder consultations**

Interested parties had several opportunities to provide contributions during both the *ex-post* evaluation and the impact assessment process. Next to targeted stakeholder interviews (27 interviews were carried out in autumn 2015 for the *ex-post* evaluation and 33 in the second half of 2016 for the impact assessment), there was a 12-week online public consultation (covering both *ex-post* evaluation and impact assessment) that took place between 11 August and 4 November 2016 (attracting 27 responses) and a 7-week consultation of SMEs between 22 September and 11 November 2016 through the SME panel of the Enterprise Europe Network. The consultation of the SME panel consisted of two separate questionnaires, one on the use of hired goods vehicles (156 responses) and the other on the use of hired buses and coaches (94 responses).

The consultation provided a number of data and valuable relevant contributions from practitioners. One of its outcomes was that the absence of EU rules on the use of hired buses and coaches was not really a problem and that there was no specific market segment dealing with hired buses and coaches. This is why one of the originally envisaged policy options that would have extended the scope of the Directive to the use of hired buses and coaches has been discarded.

⁶ SWD(2017) 198 final.

⁷ <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-evaluation-of-directive-2006-1-ec-final-report.pdf>

The consultation also provided some input on the justifications by Member States for applying restrictions on the use of hired vehicles. Some public authorities and trade union representatives fear more competitive pressure from the removal of restrictions regarding the use of hired vehicles for own account operations and more difficulties in enforcing road transport legislation from allowing the use of vehicles hired in another Member State. While the justifications for restrictions on the use of vehicles hired in another Member State have been taken into account, those related to restrictions on the use of hired vehicles for own account operations were not convincing.

- **Collection and use of expertise**

The Commission was supported by an external contractor who carried out a study on the *ex-post* evaluation of the Directive and a support study for the impact assessment.

- **Impact assessment**

The initiative is supported by an impact assessment, which has received a positive opinion with reservations from the Regulatory Scrutiny Board. The reservations were addressed by providing more detail on the policy context, by explaining the magnitude of the problems identified and why they should be addressed now, by discarding the original policy option that would have extended the scope of the Directive to the use of hired buses and coaches (as no case could be made for this option), by explaining the risks of not achieving the expected outcome of the preferred option (in particular in view of possible incentives for tax planning or tax optimisation and possible difficulties for Member States in enforcing road transport legislation), by providing an attempt of quantification of the reduction in administrative costs and by providing more information on the stakeholder consultation.

The following policy options have been examined:

Option 0: Issue guidelines and recommendations.

Option 1: Targeted legislative amendments.

Option 1a: Allowing the use of hired goods vehicles for own account operations throughout the EU.

Option 1b: Allowing the use of goods vehicles which an operator established in one Member State has hired in another Member State for a certain period of time (three-to-four months) e.g. to meet temporary or seasonal demand peaks.

Option 1c: Combination of Option 1a and Option 1b.

Option 2: Same (or at least no more restrictive) rules for the use of hired vehicles as for the use of vehicles owned by undertakings.

Option 1c is the preferred option as it is the most effective option that addresses all the identified problems without going beyond what is necessary to do so. It is better than Option 2 as the latter would not remove the patchwork of rules in the EU related to the use of hired vehicles. Instead the different rules of the various Member States would remain in place as long as they did not put hired vehicles in a worse position than vehicles owned by the operators (e.g. requirements related to the re-registration of a vehicle purchased / hired in another Member State).

Under the preferred option, operating costs of EU hauliers could be reduced by a total of EUR 158 million in 2030. An operator switching from owned vehicles to hired vehicles should see his operating costs go down by around 2%. In addition, the vehicle rental / leasing sector stands to gain some EUR 81 million, bringing the total annual economic benefit to around EUR 240 million in 2030. In addition, it would lead to almost 5 000 additional jobs, 2 900 in the vehicle rental / leasing sector and 1 700 in the road haulage business.

- **Regulatory fitness and simplification**

The proposal is part of the Commission's REFIT programme. It aims at simplifying the rules on the use of hired vehicles. The market opening for the use of hired goods vehicles for own account operations will remove any restrictions which in turn will reduce compliance costs by the operators. Providing a uniform framework for the use of vehicles hired in another Member State (at least for up to four months) is expected to provide legal clarity and save operators up to EUR 12.8 million in costs for de-registration and re-registration of their vehicle.

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.⁸

4. BUDGETARY IMPLICATIONS

The proposal has no implications on the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The implementation of this Directive will be closely monitored. The Commission will submit a report on the implementation and effects of this Directive at the latest five years after the transposition deadline. By further liberalising the use of hired goods vehicles, this Directive is expected to boost the market for hired vehicles and lead to lower costs and more flexibility and profitability for operators. The relevant information is to be gathered from national competent authorities, from representatives of the vehicle renting and leasing business and through a survey among road transport operators. Useful information is also expected to come from the national electronic registers of road transport undertakings. As transport operators will in the future have to indicate the number plate of the vehicles at their disposal, it should be straightforward to get an overview of the share of foreign-registered vehicles in the vehicle fleet from these registers.

- **Detailed explanation of the specific provisions of the proposal**

The main elements of the proposal are the following:

Amendment of Article 2 of Directive 2006/1/EC

Article 2 provides the framework for the rules which Member States apply to the use of hired vehicles on their own territory by undertakings established on the territory of another Member State. In this context, the limitation of the scope of this Article to "traffic between Member States" is outdated as hired vehicles may also be used for cabotage operations in line with the provisions of Regulation (EC) No 1072/2009.

⁸ Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391.

The current provisions allow Member States to restrict the use of vehicles hired in a Member State other than the one where the undertaking hiring them is established. This creates a patchwork of rules across the EU and legal uncertainty which in turn prevents undertakings from benefiting from potentially more economically attractive hiring deals across the border. It is therefore proposed to allow undertakings to use vehicles hired anywhere in the EU all over the EU.

As vehicle taxation rates still differ considerably in the EU, and in order to avoid fiscal distortion, Member States may limit the time of use on their respective territories of a vehicle hired in a Member State other than the one where the undertaking hiring it is established, however not below a minimum period of four months. This four-month minimum period is meant to ensure that vehicles hired (and registered) in another Member State may be used to meet in particular short-term, seasonal or temporary demand peaks or to replace defective or damaged vehicles.

Amendment of Article 3 of Directive 2006/1/EC

Article 3 provides the framework for the rules which Member States apply to the use of hired vehicles by undertakings established on their own territory. The current provisions apply to hired vehicles registered or lawfully put into circulation in the Member State itself, "provided that the conditions laid down in Article 2 are satisfied." As the amended Article 2 allows the use of hired vehicles registered or lawfully put into circulation in any Member State, paragraph 1 is amended to remove this inconsistency. It should be possible to use a vehicle that has been registered or put into circulation in compliance with the laws in a Member State other than the one where the undertaking hiring it is established not only for transport operations in any other Member State (in line with the amended Article 2), but also for transport operations in the Member State where the undertaking hiring it is established.

Paragraph 2 is deleted as Member States should no longer have the freedom to restrict the use of hired goods vehicles for own account operations. Undertakings throughout the EU should be allowed to use hired vehicles for own account operations and profit from the associated benefits. They should not be restricted to the use of vehicles owned by them or to outsourcing the transport operation to an undertaking providing such services for hire and reward. The vehicles owned by undertakings that use them for own account operations are often underutilised and on average older, less safe and more polluting than hired vehicles.

New Article 5a in Directive 2006/1/EC

This Directive is a step forward in the market opening for the use of hired vehicles for the carriage of goods by road. By allowing the use of a vehicle hired in a Member State other than the one where the undertaking hiring it is established, at least for a period of four months, and by removing the restrictions on the use of hired goods vehicles for own account operations, the Directive opens up new possibilities for both undertakings hiring vehicles and undertakings active in the vehicle rental / leasing business across the EU.

The implementation and effects of this new Directive and its impact on transport operators for own account or for hire and reward and on the vehicle rental / leasing sector should be assessed in a report to be submitted by the Commission. This should be done once sufficient evidence is available, which should be the case five years after the end of the transposition period (six and a half years after the new Directive enters into force). On the basis of that report, the Commission will assess whether further measures should be taken.

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

(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 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.
- (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 their undertakings 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

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).

them to meet in particular short-term, seasonal or temporary demand peaks or to replace defective or damaged vehicles.

- (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 a vehicle hired in a Member State other than the one of establishment of the undertaking hiring it can be used within their respective territories.
- (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.
- (7) The implementation and effects of this Directive should be monitored by the Commission and be documented by it in a report. 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:

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 a Member State;"
 - (b) the following paragraph 1a is inserted:

"1a. Where the vehicle is not registered or put into circulation in compliance with the laws of the Member State where the undertaking hiring the vehicle is established, Member States may limit the time of use of the hired vehicle within their respective territories. However, Member States shall in such a case allow its use for at least four months in any given calendar year."

- (2) Article 3 is replaced by the following:

"Article 3

Member States shall take the necessary measures to ensure that their undertakings 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."

- (3) the following Article 5a is 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. On the basis of this report, the Commission shall assess whether it is necessary to propose additional measures."

Article 2

1. 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 18 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.

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