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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on 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
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Delegations will find attached document COM(2022) 14 final.

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Brussels, 12.1.2022
COM(2022) 14 final

2017/0113 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on 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**

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position of the Council on 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

1. Background

Date of transmission of the proposal to the European Parliament and to the Council (document COM(2017) 282 final – 2017/0113 COD):	6 June 2017
Date of the opinion of the European Economic and Social Committee:	6 December 2017
Date of the opinion of the European Committee of the Regions	1 February 2018
Date of the position of the European Parliament, first reading:	15 January 2019
Date of transmission of the amended proposal:	22 February 2019
Date of adoption of the position of the Council:	20 December 2021

2. Objective of the proposal from the Commission

The use of hired goods vehicles (instead of vehicles owned by the undertakings) can improve the allocation of resources (e.g. no need for capital to be tied up in a vehicle that is underutilised) and increase the flexibility and productivity of undertakings. The proposal aims at promoting the use of hired vehicles by removing (some of) the possibilities for Member States to restrict their use under Directive 2006/1/EC¹.

Member States may currently restrict the use of hired vehicles above 6 tonnes used for own account operations and they may restrict, on their respective territories, the use of vehicles, which an undertaking has hired outside its country of establishment. As the use of such vehicles is allowed in some Member States but not in others, there is a legal patchwork in the EU, which creates legal uncertainty. One of the objectives of the proposal was to get legal certainty for the use of hired vehicles across the EU. Another objective was to allow the use of vehicles hired (and registered) in another Member State, to meet in particular short-term, seasonal or temporary demand peaks or to replace defective or damaged vehicles.

3. Comments on the position of the Council

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.

3.1. Minimum period for hire

The question for which minimum period Member States have to allow the use of hired vehicles with a foreign number plate by undertakings established under their legislations was the most contentious issue for the co-legislators. The Council position is based on a two-track solution, linking the minimum hire period to the national rules for registration of hired vehicles. Member States would be free either to allow only 30 consecutive days for the use of hired vehicles with foreign number plates (for Member States with a registration requirement after 30 days or less) or to grant 2 months of use of such vehicles (for Member States with more “generous” registration rules). It would also be possible to have complete liberalisation (no registration requirement at all for foreign vehicles used by undertakings of the Member State), if a Member State so wishes. The Council has also adopted rules, which oblige haulage companies to register hired vehicles, also those hired in a Member State other than the Member State of establishment, in the national electronic registers of road transport undertakings.

The Commission can agree to this compromise solution as it reflects the objective of the Commission proposal to allow for more flexibility in the market of hired vehicles than under the existing directive. Limitations can now only be introduced by Member States for their own undertakings, while the existing directive allowed restrictions on the hiring of vehicles for foreign undertakings. Under the existing directive, Member States are able to ask for immediate domestic registration of hired vehicles with a foreign number plate. According to the Council position there will now be a minimum period of use (30 days) which all Member States have to grant, and during which they cannot ask for national registration of such vehicles (which is costly and burdensome for the undertakings). The provisions on the obligations for haulage companies to register hired vehicles in the national electronic registers are also acceptable, since they allow a better control of such vehicles by national authorities.

Since the renewed directive will likely increase the use of hired vehicles, and such vehicles are often newer and more environment-friendly, this solution is also beneficial for the achievement of the EU climate goals.

3.2. Limitation of hiring possibility to 25% of vehicles “at the disposal of” the undertaking

As regards the minimum threshold related to an undertaking’s vehicle fleet below which the Member State of establishment of the undertaking cannot restrict the use of vehicles hired and registered in another Member State, the Council text sets it at:

*“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.”*

The Council did however not want to include vehicles, which are at the disposal of an undertaking that have been hired (and that are registered) abroad. So, for instance, if the undertaking is established in a Member State that makes full use of this restriction, and if it has 120 vehicles at its disposal, of which 20 are registered in another Member State, then it may hire only 5 more vehicles in another Member State, to reach a total of 25 such vehicles (25% of $120 - 20 = 25$), instead of 10 more such vehicles (25% of $120 = 30$).

The Commission can accept the Council position. The concept “at the disposal” is well established (cf. Article 1(5)(d) (iii) and Article 4(3) of Regulation (EC) No 1072/2009²) and cannot be misunderstood in the way that “vehicles owned by an undertaking” could be misunderstood. Many lorries are leased; the lessees have the economic ownership, however the lessor keeps the legal ownership, so it is not clear how “ownership” would have to be understood. “Vehicles at the disposal of an undertaking” is of course a broader concept than “vehicles owned by an undertaking” as it also includes all vehicles held under a hire purchase, hire or leasing contract and not just vehicles wholly owned by an undertaking. Therefore, this concept allows a higher number of hired vehicles and increases flexibility for the haulage companies, which would be another argument in favour of supporting it.

3.3. Own account services

The Council’s position allows Member States to restrict the use of hired vehicles for own account operations only in the case of vehicles that are registered in another Member State, and this irrespective of the weight of the vehicle.

The Commission can accept this solution since it will exclude restrictions for domestic undertakings performing own account operations with domestic hired vehicles. Such restrictions are possible under the existing Directive. It was one of the main points of the Commission proposal to delete this very restrictive provision, for which there is no market need. The Commission can accept the Council solution which only allows restrictions for own account operations performed with vehicles with foreign number plates. This restriction can be justified, since Member States can exert no control over such vehicles, as they are not registered in the national registers of road haulage undertakings (which only contain professional haulage companies and not own account operators). For domestic own account vehicles such a control is possible since they need to be registered according to the national registration rules applying to all vehicles.

4. CONCLUSION

The Council position is acceptable to the Commission. It reflects the objectives of the Commission proposal and will significantly increase the flexibility for undertakings to use hired vehicles that are registered in other Member States, or to use such vehicles for own account purposes. It is thus an important step in the implementation of the Mobility Package I. Since the revised legislation will likely increase the use of hired vehicles, and such vehicles are often newer and more environment-friendly, this solution is also beneficial for the achievement of the objectives of the European Green Deal.

² 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.