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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: 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
– Draft Statement of the Council's reasons

I. INTRODUCTION

1. The European Commission submitted the above-mentioned proposal to the European Parliament and to the Council on 1 June 2017 as part of the First Mobility Package.
2. This proposal modifies Directive 2006/1/EC on the use of vehicles hired without drivers for the carriage of goods by road¹, with the aim of expanding market access to hired goods vehicles and reducing the complexity of the rules.
3. The European Parliament, during its 8th term, designated the Committee on Transport and Tourism (TRAN) as responsible committee. The TRAN Committee appointed Ms Cláudia Monteiro de Aguiar (EPP, PT) as rapporteur and voted on her report on 24 May 2018. The European Parliament adopted its first reading position, containing 15 amendments, on 15 January 2019².
4. During the 9th term, the TRAN Committee confirmed the rapporteur and, on 24 September 2019, decided to enter into informal political trilogues, based on the first reading position.
5. At the Council, the Working Party on Land Transport started its work on 1 June 2017. On 13 June 2017, the Working Party analysed the impact assessment. Delegations acknowledged the expected positive impact on the market penetration of hired vehicles, but several highlighted that possible negative effects needed additional analysis. These concerns related to a possible tax erosion and to controllability concerning the then remaining restrictions on the circulation of hired vehicles and concerning cabotage operations. Some delegations were not convinced by the argument that a more efficient market for vehicle hire would have an overall positive impact on the environment.
6. The Council (Transport, Telecommunications and Energy) exchanged views on the proposal for the first time on 5 December 2017, based on a progress report³.

¹ OJ L 33, 4.2.2006, p. 82.

² See ST 5386/19.

³ See ST 14841/17.

7. Following further work at various levels between 2018 and 2021, the Council reached a general approach on 3 June 2021⁴.
8. Between July and October 2021, negotiations took place between the European Parliament, the Council and, as facilitator, the Commission, with a view to reaching an agreement on the proposal. On 26 October 2021, the negotiators provisionally agreed on a compromise text, which was subsequently analysed and endorsed by the Committee of Permanent Representatives on 12 November 2021⁵.
9. In carrying out its work, the Council took account of the opinions of the European Economic and Social Committee of 6 December 2017 and of the Committee of the Regions of 1 February 2018.
10. Considering the provisional agreement between the co-legislators and following legal and linguistic revision, the Council is expected to adopt its position at first reading on the proposal on 20 December 2021.

II. OBJECTIVE

11. 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 it 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.

⁴ ST 9398/21.

⁵ ST 13377/21.

12. 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.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A. General

13. Based on the Commission proposal, the Parliament and the Council have conducted negotiations with the aim of concluding an agreement at the stage of the Council's position at first reading. The text of the draft Council position fully reflects the compromise reached between the two co-legislators.
14. The Parliament's position at first reading coincided with the majority view in the Council's deliberations at that point in time, according to which additional legislative efforts were needed to reinforce control provisions and to have safeguards in place to prevent a market liberalisation being used primarily to avoid national vehicle taxes. The Council's general approach, which was agreed more than two years after the Parliament's first reading position, confirmed this parallel assessment, and reflected in addition, as regards control provisions, on the finalisation of the other legislative initiatives on market opening in the First Mobility Package.
15. The compromise reflected in the Council position at first reading contains the following key elements:

a) Distinction between foreign companies' access to the hired vehicles market and own companies' access

16. The current Directive and the Commission proposal grant in essence the same right to hire vehicles to companies established where the Member State regulates (Article 3) as to companies established in another Member State than the one regulating (Article 2). However, both the Parliament (amendments 3, 4 and 9) and the Council favoured a differentiation of these cases. In the event that the company is established in another Member State and the hired vehicle is duly registered in any Member State, market access should not be restricted by a Member State where the company is not established. This should also be the starting point for the case of a company established in the Member State; however, for its use of vehicles registered in another Member State, the Member State of establishment should have certain safeguarding measures at its disposal, which allow a restriction.

b) Possibilities to restrict the access to hired vehicles for companies established in the Member State

17. Considering this agreement on distinguishing between the cases, the negotiations focused on the scope of safeguards for restricting access to hired vehicles to avoid fiscal distortions (Parliament amendments 4 and 11; Council general approach Article 3(2) of the amended Directive).
18. For a compromise on the option to limit the length of the contract of hire of a vehicle registered in another Member State, the positions of the institutions converged. The compromise guarantees that in case of measures taken by a Member State, the contract of hire may always cover at least two consecutive months in a calendar year. An option to require that a contract may not last longer than 30 days is available if this requirement follows from the Member States' vehicle registration rules.
19. For the option to limit the share of vehicles registered in another Member State relative to the domestic fleet engaged in road transport, the positions of both institutions favoured a guaranteed minimum share of 25 %. The agreed text adds technical detail to the Parliament's amendment.

20. Finally, a solution had to be found in respect of optional restrictions for the use of hired vehicles in own-account transport operations (Parliament amendments 28 and 34; Council general approach Article 3(2)(c) of the amended Directive). The Parliament's position was broader in the sense that the restriction would also have applied to vehicles registered in the Member State where the company is registered; and the Council position was broader in the sense that it did not distinguish according to the weight of the vehicle. The Commission was open to accepting a safeguard in line with the logic of the other safeguards, but insisted on discontinuing a rule which allowed exempting own-account operations in a general manner. Finally, the Parliament accepted the Council position in this respect.

c) Monitoring and control

21. Bearing in mind that the current rules do not grant any freedom to hire a vehicle that is not registered in the Member State where the company is established, the question of monitoring and control of the use of hired vehicles, in particular in the context of existing market restrictions for cabotage operations⁶, was of high importance for the compromise.

22. The Parliament's position contained a tight control framework (amendments 5 and 12), which differed from the Council position mainly in the use of cooperation channels between Member States. The compromise consisted of aligning the cooperation mechanism, in a more descriptive way than in the Council position, with the cooperation rules in Regulation (EC) No 1071/2009, which the First Mobility Package had modernised. In order to avoid a disproportionate administrative burden, the Parliament accepted that information on hired vehicles does not need to be notified each time a vehicle is hired, as long as the information is available and accessible in the Member State carrying out controls during roadside checks (new Articles 3a and 5b).

⁶ See Article 8 of Regulation (EC) No 1072/2009.

d) Transposition and policy evaluation

23. The compromise provides for a transposition deadline (Article 2 of the amending Directive), which will be close to the implementation of new control provisions in the First Mobility Package, expected to be implemented by August 2023.
24. The Commission's reporting obligation on the implementation and effects of the Directive (Parliament amendments 7 and 13, new Article 5a of the amended Directive) were revised by converging the positions in terms of timeline and expected subjects of the report.

B. Other elements of the Council position

25. The Council accepted reformulated amendments from the Parliament (recitals 2 and 4, from Parliament's amendments 1 and 6). The following other elements, which were added by the Council to the Commission proposal, entered the final text of the Council position:
 - a recital (recital 8) and related parts of Article 3(2) refer to means of control in case a Member State has restricted the length of a contract of hire taken by companies established on its territory;
 - in line with other recent EU legislation⁷, Member States must accept the presentation in electronic form of documents that the driver needs to keep on board (recital 6, Article 2(2) of the amended Directive).

⁷ See for instance Article 8(4a) of Regulation (EC) No 1072/2009 and Article 5 of Regulation (EU) 2020/1056.

IV. CONCLUSION

26. The Council's position maintains the main objectives of the European Commission's proposal and fully reflects the compromise reached in the informal negotiations between the Council and the European Parliament, with the support of the European Commission.
 27. This compromise was confirmed by a letter from the Chair of the European Parliament's TRAN Committee addressed to the Presidency and dated 16 November 2021; it is expected to be subsequently adopted by the Council (Environment) on 20 December 2021 as a first reading position.
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