Opinion of the European Economic and Social Committee on 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'

(COM(2017) 282 final — 2017/0113 (COD))

(2018/C 129/11)

Rapporteur: **Brian CURTIS**

Consultation	European Parliament, 15.6.2017
	Council of the European Union, 12.6.2017
Legal basis	Article 91(1) of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	22.11.2017
Adopted at plenary	6.12.2017
Plenary session No	530
Outcome of vote (for/against/abstentions)	121/0/1

1. **Conclusions and recommendations**

Conclusions

1.1. The EESC welcomes this further step in removing some of the remaining obstacles to an effective and equitable single market in the European road haulage sector. In this instance the amending directive is concerned with facilitating the best use of vehicle fleets across Europe, particularly during seasonal peaks, and achieves a minimum level of liberalisation. Eliminating restrictions on the use of goods vehicles for own account use is a positive step.

1.2. The Committee remains of the opinion that drawing up legislation on transport issues would be better framed as a Regulation rather than a Directive — the latter allowing greater differences in interpretation and strictness in application across Member States. However, it is recognised that this short Directive achieves its objectives and that, in this instance, conversion to a Regulation would have been disproportionate.

Recommendations

1.3. To prevent the growth of letterbox companies (LBCs) the EESC urges that the measures proposed to strengthen Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 to eliminate rogue LBCs be agreed and effectively implemented by all Member States. Outcomes should be carefully monitored and form part of the report on the effectiveness of this amending Directive.

1.4. To discourage operators from taking advantage of lower vehicle registration taxation between Member States, further measures should be applied should analysis in the review period show them to be necessary, for example a cap on the proportion of the fleet owned by an operator that can be temporarily transferred to an affiliate operator in another Member State.

1.5. The Committee notes that even though increasingly effective tracing methods are being applied illegal cabotage remains a significant problem in the haulage sector. There is some risk that detection may be made more difficult with the implementation of measures in this Directive. Therefore further requirements to safeguard a traceable link between company and vehicle could be put in place.

2. **Introduction**

2.1. This amending Directive is presented as part of the *Europe on the Move* package, the wide-ranging set of initiatives which aim to make traffic safer; encourage smart road charging; reduce CO_2 emissions, air pollution and congestion; cut red-tape for businesses; fight illicit employment and ensure proper conditions and rest times for workers.

2.2. It deals with some of the unfinished business in the liberalisation of the use of hired goods vehicles in the single market. Divergent rules and regulations continue to exist between Member States and this was first tackled in 1984 ([1]) and subsequent homogenisation took place in the 2006 Directive ([2]). However, even after the transposition of this amending Directive, a range of restrictions will remain in place in many Member States.

2.3. The main concern addressed by this present amendment is the desire by operators to move the vehicle fleet around the EU in response to local demand. The ability to do this is at present faced with restrictions in national law and the application of regulation and operational requirements (soft law).

2.4. On the one hand operators argue that the present situation restricts the efficient use of European transport fleets. On the other hand transport unions are concerned that the proposal will weaken further an essential link between an operator and its assets and reduce the control and enforcement abilities of Member States over the genuine nature of the operators registered on their territory. Member States themselves do not have a unified approach to this issue, with a small minority arguing that the *status quo* should continue.

2.5. In addition, the governments of some Member States are concerned about a loss of revenue if vehicles are registered in one country but operationally based in another. For example, taxation levels on heavy goods vehicles range from around EUR 500 per vehicle in Latvia to almost EUR 5 000 in Ireland ([3]).

2.6. In previous transport opinions ([4]) the Committee has argued that, in order to reduce the differences in interpretation and strictness in application across Member States, the EESC should support a shift from a directive to a regulation. The Committee believes this remains a valid principle, but recognises that in this case a complete recast of the Directive would be disproportionate. The Committee also notes that, whilst the legal form of a Directive allows Member States greater flexibility in transposition and enforcement, it is more likely to give rise to continuing anomalies and differences of interpretation between Member States.

3. **Gist of the Commission Communication**

3.1. Following extensive review, consultation and analysis by the Commission this proposal brings forward amendments to the 2006 Directive. This Directive allowed Member States to restrict the use of hired goods vehicles with a gross vehicle weight above 6 tonnes for own account operations and also allowed restrictions on the use of a vehicle hired in a Member State different from the one where the undertaking hiring the vehicle is established.

3.2. The proposed amendments, which will deepen and strengthen the internal market, remove the possibility of restricting the use of all hired vehicles for own account operations. In addition, 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. Member States with more liberal regimes (such as Belgium, the Czech Republic, Estonia and Sweden) should be able to retain such regimes.

3.3. A period of four months has been chosen to avoid possible revenue distortions given the considerable differences between Member States in the taxation of road vehicles.

([1]) Directive 84/647/EEC.
([2]) Directive 90/398/EEC; Directive 2006/1/EC.
([3]) Ex-post evaluation of Directive 2006/1/EC Final report, January 2016.
([4]) OJ C 34, 2.2.2017, p. 176.

3.4. The proposal should ensure equal access for transport operators across the EU to the market for hired vehicles and provide a uniform regulatory framework offering greater efficiency for transport operators. A further benefit could be an improvement in safety and lower pollution as hired vehicles are usually newer.

3.5. A report on the implementation of these changes will be produced by the Commission within five years and could provide the basis for the adoption of additional measures.

4. **General comments**

4.1. The Committee welcomes the intentions of this amending Directive — a further step in removing some of the remaining obstacles to an effective and equitable single market in the European road haulage sector. In this instance the amending directive is concerned with facilitating the best use of vehicle fleets across Europe, particularly during seasonal peaks, and achieves a minimum level of liberalisation. Eliminating restrictions on the use of goods vehicles for own account use is a positive step.

4.2. The Committee remains of the opinion that drawing up legislation on transport issues would be better framed as a Regulation rather than a Directive — the latter allowing greater differences in interpretation and strictness in application across Member States. However, it is recognised that this short Directive achieves its objectives and that, in this instance, conversion to a Regulation would have been disproportionate.

4.3. However, the Committee wishes to express some reservations concerning possible consequential effects. These fall into two categories. The first of these concerns the growth of letterbox companies (LBCs); the second involves the possibility of an operator undertaking illegal cabotage without being detected. These issues are outlined below.

5. **Specific comments**

5.1. Commercial vehicles of all types are expensive assets and increasingly are provided to transport operators by leasing companies. To maximise the efficiency of transport operations the availability of vehicles needs to match demand. Not only is this seasonal but is geographically variable following, for example, the demands of agricultural production and tourism. However, to maintain operating standards, safety requirements and working conditions for drivers it is important that operators have assets and direct support infrastructure in the country of operation.

5.2. LBCs are entities established in an EU country, where they have no (or minor) economic activities, in order to 'regime shop' for lower taxes, wages etc. Such companies have little if any local support infrastructure, create unfair competitive situations and can also exploit their workers.

5.3. The challenge such companies pose has been recognised elsewhere in the mobility package and measures have been brought forward ([5]) to deal with this problem. The EESC recognises that dealing with LBCs is not the direct responsibility of this amending directive but is concerned that it may facilitate their growth and operation. Therefore, we urge that the measures proposed to strengthen Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 to eliminate rogue LBCs are agreed and effectively implemented by all Member States. Outcomes should be carefully monitored and form part of the report on the effectiveness of this amending Directive.

5.4. The measures, however, would not deal with operators taking advantage of lower vehicle registration taxation in some Member States. With a four month period of operation allowed in another Member State, it is conceivable that operators could rotate vehicles between countries to evade this restriction.

5.5. Such a concern appears to have some theoretical justification, even though the arrangements necessary would be logistically complex. The review period will reveal whether this possible loophole is taken advantage of. In this event the Committee suggests that further measures should supplement the 4 month restriction, for example a cap on the proportion of the fleet owned by an operator that can be transferred to an affiliate operator in another Member State.

([5]) COM(2017) 281 final amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector.

5.6. The Committee also has some concern about the possibility of illegal cabotage being facilitated. Cabotage is the haulage of goods for hire or reward in one Member State by a vehicle belonging to a non-resident haulier registered in a different Member State. (A goods vehicle operator with a standard international licence has Community Authorisation to only carry out up to three cabotage jobs in seven days within the host Member State. The jobs must follow a journey where goods were transported from one Member State to the host Member State.) In a perfectly competitive internal market restrictive rules would, of course, be unnecessary but this objective remains an aspiration. Lifting the restrictions on hired vehicles would make it much easier for a haulier to perform cabotage on a permanent basis (illegal cabotage) by simply hiring vehicles registered in the Member State where the haulier is interested in conducting this type of activity.

5.7. To prevent this, the Committee recommends that a number of requirements to consolidate and safeguard a traceable link between company and vehicle be considered. These should comprise:

— Mandatory declaration of the vehicle number plate of all vehicles in use by a haulier in the national electronic registers (NERs),

— Real time access of road inspectorates, during road side and company checks, to the NERs,

— Introduction of infringements relating to the hired vehicles directive in the so called 'list on categorisation of infringements leading to the loss of good repute'.

Brussels, 6 December 2017.

The President
of the European Economic and Social Committee
Georges DASSIS