

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(95) 2 final
Brussels, 13.02.1995

95/0012 (SYN)

Proposal for a
COUNCIL DIRECTIVE

On the use of vehicles hired without drivers for the carriage of goods by road.

(presented by the Commission)

EXPLANATORY MEMORANDUM

A. HISTORY

1. With Directive 84/647/EEC on the use of vehicles hired without drivers for the carriage of goods by road¹, the Council introduced a certain level of harmonisation in the field of using hired vehicles for the carriage of goods by road. The Directive (Article 8) required the Council to reexamine the restrictive Articles 3(2) and 4(2) of the Directive on the basis of a report from the Commission accompanied by proposals if appropriate.

The Commission presented this report in 1989 and proposed, based on this report, to delete both the restrictive clauses of Article 3(2), which excludes own account from the scope of the Directive, and Article 4(2) which gave the possibility to impose certain restrictions concerning a minimum hire period.

The Council amended the Commission proposal and adopted a Directive (90/398/EEC²) which only partly deleted the above mentioned restrictions: the clause on the minimum hire period was deleted, but the possibility for Member States to exclude from the scope of the Directive own account operations carried out by vehicles with a total permissible laden weight of more than 6 tonnes was maintained.

2. New Community legislation in the field of road transport has produced a new market situation in goods transport:

- the Council adopted Regulation 881/92/EEC³ which abolishes all quantitative restrictions as far as intra-Community road haulage is concerned.
- furthermore the Council adopted Regulation 3118/93/EEC⁴ which leads, after a transitional period, to a liberalization of cabotage for road haulage, for hire and reward as well as for own account, from 1 July 1998.

Since 1990, when the last amendment of Directive 84/647/EEC on hired vehicles was adopted, the process of realizing the internal market for road transport made important progress:

¹ OJ No L 335, 22.12.1984, p. 72.

² OJ No L 202, 31.07.90, p. 46.

³ OJ No L 95, 9.4.1992, p. 1

⁴ OJ No L 279, 12.11.1993, p. 1

For these reasons the Commission suggested in its White Paper on the future development of the common transport policy (1992), to introduce further harmonisation in the field of hired vehicles.⁵

B. JUSTIFICATION FOR ACTION AT COMMUNITY LEVEL

I. Subsidiarity

- a) What are the objectives of the proposed action in relation to the Community's obligations?

The Commission proposal aims at pursuing the harmonisation and liberalisation process concerning the use of vehicles hired without drivers for the carriage of goods by road initiated at Community level. Thereby, it reflects the progress realised in establishing a common market for road transport.

- b) Does competence for the planned activity lie solely with Community or is it shared with the Member States ?

The action falls under a shared competence (Article 75.1.d. of the Treaty of Rome)

- c) What is the Community dimension of the problem (for example, how many Member States are involved and what solution has been used up to now)?

The scope envisaged by this Directive concerns all Member States. Despite the existence of a Community Directive already foreseeing a minimal harmonisation, differences between the legislations of the Member States remain. Their restrictions do not allow transport undertakings to better manage their vehicle fleets.

- d) What is the most effective solution taking into account the means available to the Community and those of the Member States?

The main element of the proposal consists in allowing the hiring of vehicles without drivers in a Member State other than the one in which the operator is established. It is evident that this aim can only be achieved by action at Community level.

⁵ Com(92) 494 final, 2 December 1992: The future development of the common transport policy; A global approach to the construction of a community framework for sustainable mobility. V, par. 337 and 339 and in annex III, 1a.

Nevertheless, the proposal does not foresee the use of hired vehicles to carry out cabotage operations, which will only be completely liberalised as from 1.7.1998, owing to the discrepancies still existing between the Member States in the field of taxation and technical control. In order to take account of the discrepancies in the field of taxation, the proposal allows Member States the possibility to limit the validity of the contracts for the hiring of vehicles to carry out international transport operations in any Member State other than the one in which the lessee is established.

- e) What real added value will the activity proposed by the Commission provide and what would be the cost of inaction?

The Directive will enable undertakings to hire vehicles in any Member State for the intra-Community carriage of goods and will eliminate any restrictive treatment between own account and hire or reward transport.

Inaction would maintain artificial barriers affecting in a negative sense the productivity of undertakings in the carriage of goods by road, unabling them to make full use of the instruments and flexibility necessary in a liberalised environment.

- f) What forms of action are available to the Community (recommendation, financial support, regulation, mutual recognition, etc...)?

The proposal is drawn up as a Directive following previous legislative practice in this field. Neither financial support, nor mutual recognition would be actions appropriate to achieve the goal of Community harmonisation.

On this occasion, Community norms will be recasted into one single text.

- g) Is it necessary to have a uniform Regulation or is a Directive setting out the general objectives sufficient, leaving the implementation at the level of the Member States?

For this field, a uniform Regulation is not necessary; a Directive is the adequate legal instrument providing the general aims for a minimal harmonisation to be achieved at Community level, but leaves the implementation of its provisions to the Member States.

II Reasons for Consolidation

The Parliament, the Commission and the Council as regards the simplification and transparency of Community Law, are faced with too many provisions, which have been amended on several occasions, often substantially, and have unanimously recognised the necessity to follow a working method to provide clarity and transparency by consolidating and recasting. The conclusions of the Presidency of the Edinburgh Council have confirmed this necessity.

On the occasion of further amendments, the Commission, presents a proposal to recast the Directives (directive 84/647/EEC amended by directive 90/398/EEC) in force in this area on the use of vehicles hired without drivers for the carriage of goods by road, into one single text. The new text replaces the existing Community norms.

III. Economic Advantages of Further Harmonisation

1. The economic arguments in favour of harmonisation and liberalisation of the use of hired vehicles for the carriage of goods by road are the following:

- offering transport operators the choice of vehicles and services best suited to their interest;
- lowering the operating costs of transport operators, whether operating for hire or reward or for own account;
- letting transport operators make the best use of factors of production and avoids tying capital up unnecessarily, in the sense that it is not necessary to invest in vehicles which would be under-used.

2. Short term vehicle hiring is particularly useful in cases of:

- temporary demand peaks or surges;
- seasonal or unexpected demand;
- short-lived demand for special types of vehicles;
- replacement of vehicles not available because of breakdowns, maintenance or compulsory roadworthiness tests;

Hiring in other Member States is particularly useful when:

- a haulier suffers breakdown on the territory of another Member State and needs to carry on the load in due time;
- a haulier can obtain a load for his return trip but needs another or an extra vehicle to carry it;

3. In addition, if own account operators were excluded from hiring vehicles, many industrial consignors might decide to buy their own vehicle fleet. This would remove part of the market currently taken by hire or reward operators. The present possibility to exclude own account transport operations carried out by vehicles with a total permissible laden weight of more than 6 tonnes leads to the exclusion of an important part of the own account transport market.

C. CURRENT SITUATION AND AIM OF THE PROPOSAL

Existing Community legislation concerning the use of vehicles hired without drivers for the intra-Community carriage of goods by road (Council Directive 84/647/EEC amended by Directive 90/398/EEC) still contains restrictions in two precise points:

- The vehicles can only be hired in the Member of establishment.
- The Member States may exclude from the scope of the Directive own-account transport operations carried out by vehicles with a total permissible laden weight of more than 6 tonnes.

The present proposal terminates these two provisions in that:

- it introduces the freedom to hire vehicles in any Member State to carry out transport of goods between Member States. However, given the fact that road transport taxation has not yet been sufficiently harmonised and in order to avoid any fiscal distortion in international road transport, the validity of the contract for the hiring of vehicles in Member States other than the one in which the lessee is established can be limited. Nevertheless, the period limiting the maximum duration of the contract of hire should not exceed two months;
- no distinction is made between own account and transport for hire or reward; both are subjected to the same criteria for hiring vehicles.

Nevertheless, the present proposal does not foresee the use of hired vehicles for carrying out cabotage operations, due to discrepancies still existing between Member States in the field of taxation and technical control. Taking into account the liberalisation of road cabotage as from 1.7.1998, this question will be one of the subjects dealt with in the report on the implementation of the new Directive on the use of vehicles hired without drivers for the carriage of goods by road, which the Commission will present to the Council before July 1998.

D. THE ARTICLES

The present proposal for a Directive contains a number of new elements compared with Directive 84/647/EEC, as amended by Directive 90/398/EEC, and should replace both Directives.

Article 1.

Article 1 defines "vehicle" and "hired vehicle". This is the same definition as in article 1 of Directive 84/647/EEC.

This article also stipulates that "vehicle taxes" should be understood as the taxes described in Article 3 of Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures.⁶

Article 2.

An undertaking could, until now, only hire a vehicle in the Member State of establishment to carry out transport between Member States. It is now proposed that it should be possible to hire a vehicle in any Member State, not only in the Member State of establishment, in order to reach a flexibility in the hired vehicle regime which is demanded in the present liberalised intra-Community road transport market.

Article 2 does not provide the possibility for hauliers to carry out cabotage operations with a hired vehicle. As this has already been explained, this restriction is, on the one hand, justified by the fact that despite the initiatives already taken at Community level to assure harmonisation in the long run, important discrepancies persist between Member States in the field of taxation as well as in the field of technical control of vehicles. On the other hand, complete liberalisation of road cabotage will only take place as from 1.7.1998, after a transitional period.

Article 3

It is proposed to delete the old Article 3, which had an overlapping function with the present version of Article 2. Nevertheless, taking into account the insufficient harmonisation of road transport taxation and aiming to avoid any fiscal distortion between international transport operations, it is therefore proposed to introduce a new Article 3. This Article foresees, in order to avoid the use of hired vehicles on a permanent basis, the possibility for Member States to limit the validity of the contract of hire for vehicles hired to carry out international transport operations in any Member State other than the one of establishment of the lessee. This restriction in time should be maintained until the taxes and their rates have been better harmonised within the European Union, this question however remains beyond the framework of the present proposal.

Article 4

This article stipulates that regulations of Member States which lay down less restrictive conditions, shall not be affected. It is the same provision as in Directive 84/647/EEC article 4 as amended.

⁶ OJ No L 279, 12.11.93, p.32.

Article 5

The new Article 5 lays down that the Directive shall not affect the fiscal legislation in force in the Member States, owing to the fact that the hired vehicles are subject to the national fiscal rules applied in the Member State of their registration.

Article 6

No comments

Article 7

Article 7 stipulates that this proposal is a new step forward in a global perspective for the complete liberalization for hiring of vehicles for the carriage of goods by road.

In view of maintaining the process, the Commission must draw up a report on the implementation of the new Directive before July 1998. Based upon the conclusions of this report and on the market situation once cabotage has been effectively liberalized, the Commission will present, before July 1999, a proposal to further advance the liberalisation process.

Articles 8, 9, 10 and 11

No comments

E. INTERESTS FOR EEA

In accordance with Article 99 of the EEA Agreement, EFTA countries were consulted on the proposal.

PROPOSAL FOR A DIRECTIVE

ON THE USE OF VEHICLES HIRED WITHOUT DRIVERS FOR THE CARRIAGE
OF GOODS BY ROAD

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission¹,

In cooperation with the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Whereas, for reasons of clarity and rationality, on the occasion of further amendments, Council Directive 84/647/EEC of 19 December 1984, on the use of vehicles hired without drivers for the carriage of goods by road⁴ should be recast ;

Whereas, under the principle of subsidiarity, action should be taken at European Union level in order that such obstacles be removed on a Community-wide basis ;

¹ OJ No C

² OJ No C

³ OJ No C

⁴ OJ No L 335, 22.12.1984, p. 72. Directive amended by Directive 90/398/EEC (OJ No L 202, 31.7.1990, p. 46).

Whereas, from a macroeconomic point of view, the use of hired vehicles permits, in certain situations, an optimum allocation of resources by limiting wasteful production;

Whereas, from a microeconomic point of view, this possibility brings an element of flexibility to the organization of transport, and thus increases the productivity of the undertakings concerned;

Whereas the carriage of goods in the Single Market should be facilitated;

Whereas it should be possible for an undertaking to hire a vehicle in any Member State other than the one of establishment in order to carry out international transport operations;

Whereas Member States should no longer be permitted to exclude own account operations carried out by vehicles with a total permissible laden weight of more than six tonnes from the scope of the Directive;

Whereas Directive 84/647/EEC contains restrictive clauses concerning the two above mentioned points, whose abolition would allow better financial management and cut the costs of hauliers operating on their own account or for hire or reward;

Whereas Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures⁵ lists "vehicle taxes" existing in all Member States.

⁵ OJ No L 279, 12.11.1993, p.32

Whereas road transport taxation has not yet been sufficiently harmonised and, in order to avoid fiscal distortions in international transport, it is at present preferable to provide the possibility for the Member States, in circumstances duly justified by the requirement to avoid the use of hired vehicles on a permanent basis, to limit to a certain extent the validity of the contracts for hiring of vehicles hired in any Member State other than the one of establishment of the lessee.

Whereas the application of the current Directive should be monitored by means of a report to be submitted by the Commission, and any future action in this area should be considered in the light of that report.

HAS ADOPTED THIS DIRECTIVE,

Article 1

For the purposes of this Directive:

- "vehicle" means a motor vehicle, a trailer, a semi-trailer, or a combination of vehicles intended exclusively for the carriage of goods,
- "hired vehicle" means any vehicle which, for remuneration and for a determined period, is put at the disposal of an undertaking which engages in the carriage of goods by road for hire or reward or for its own account on the basis of a contract with the undertaking which makes the vehicles available.

- "vehicle taxes" means the taxes referred to in Article 3 of Directive 93/89/EEC.

84/647/EEC

Article 2

Each Member State shall allow the use within its territory, for the purposes of traffic between Member States, of vehicles hired by undertakings established on the territory of ~~another~~ Member State provided that:

1. the vehicle is registered or put into circulation in compliance with the laws in the ~~latter~~ Member State of hiring;
2. the contract relates solely to the hiring of a vehicle without a driver and is not accompanied by a service contract concluded with the same undertaking covering driving or accompanying personnel.

84/647/EEC

3. the hired vehicle is at the sole disposal of the undertaking using it during the period of the hire contract ;
4. the hired vehicle is driven by personnel of the undertaking using it ;
5. proof of compliance with the above conditions is provided by the following documents, which must be on board the vehicle .
 - (a) the contract of hire, or a certified extract from that contract giving in particular the name of the lessor, the name of the lessee, the date and duration of the contract and the identification of the vehicle ;
 - (b) where the driver is not the person hiring the vehicle, the driver's employment contract or a certified extract from that contract giving in particular the name of employer, the name of the employee and the date and duration of the employment contract or a recent pay slip.

If need be, the documents referred to in (a) and (b) may be replaced by an equivalent document issued by the competent authorities of the Member State.

84/647/EEC

ARTICLE 3

In circumstances duly justified by the requirement to avoid the use of hired vehicles on a permanent basis, Member States can introduce provisions limiting the validity of the contracts for hiring of vehicles hired in other Member State than the one of establishment of the lessee to carry out international transport operations. The period restricting the maximum duration of the contracts of hire may not in any case be less than two months.

Article 4

1. This Directive shall not affect the regulations of a Member State which lays down less restrictive conditions for the use of hired vehicles than those specified in Articles 2 ~~and 3~~.

84/647/EEC

ARTICLE 5

The undertaking hiring a vehicle is not obliged to register it in his Member State of establishment nor, by consequence, to pay "vehicle taxes" which are defined in Article 1, in its Member State.

ARTICLE 6

Without prejudice to Articles 2 ~~and 3~~, this Directive shall not affect the application of the ~~rules concern-~~
~~ing~~ national and Community rules concerning :

- the organization of the market for the carriage of goods by road for hire or reward and own account

and in particular access to the market and, in particular, concerning quota restrictions on road capacities,

- ~~prices and~~ conditions for the carriage of goods by road,
- the formation of hire prices,
- the import of vehicles,
- the conditions governing access to the activity or occupation of road-vehicle lessor.

user charges;

value added taxes;

84/647/EEC
(article 5)

ARTICLE 7

In view of achieving a complete liberalisation of the use of road transport vehicles, the Commission shall report to the Council before 1 July 1998, on the application of this Directive.

In the light of the conclusions of this report and of the market situation following the termination of all quota restrictions to carry cabotage, the Commission will present, before July 1999, a proposal of amendment widening the scope of the Directive.

ARTICLE 8

The Directive 84/647/EEC⁶ is hereby repealed, without prejudice to the obligation of the Member States concerning the deadlines for transposition into national law set out in Annex I, Part B, from the date of entry into force of this Directive as laid down in Article 9.

References to the repealed directive shall be taken as references to this Directive and shall be read according to the correlation table set out in Annex II.

⁶ including the provisions which amended this Directive, namely Directive 90/398/EEC.

ARTICLE 9

Member States shall bring into force the laws, regulations and administrative provisions needed to comply with this Directive no later than 31 December 1996. They shall forthwith inform the Commission thereof.

When the Member States adopt these provisions these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication: the procedure for such reference shall be adopted by Member States.

ARTICLE 10

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

ARTICLE 11

This Directive is addressed to the Member States.

84/647/EEC
article 9)

Done at Brussels.

For the Council
The President.

ANNEX 1

PART A

Repealed Directives (referred to in Article 8)

1. Directive 84/647/EEC except Article 6.
2. Directive 90/398/EEC

PART B

Deadlines for the transposal into the national legislation

Directive	Deadlines for the transposal
84/647/EEC (OJ No L 335, 22.12.1984, p. 72)	30 June 1986
90/398/EEC (OJ No L 202, 31.7.1990, p.46)	31 Decembre 1990

ANNEX II

CORRELATION TABLE

This Directive

Directive 84/647/EEC

Art.1

Art.1

Art.2

Art.2

Art.3

-

Art.4

Art.4(1)

Art.5

-

Art.6

Art.5

Art.7

-

Art.8

-

Art.9(1)

Art.7

-

Art.8

Art.9(2)

-

Art.10

-

Art.11

Art.9

IMPACT ASSESSMENT

IMPACT OF THE PROPOSAL ON BUSINESSES AND IN PARTICULAR ON SMALL AND

MEDIUM-SIZED ENTERPRISES (SMEs)

Title of the proposal:

proposal on the use of vehicles hired for the carriage of goods by road.

The proposal

1. In view of the subsidiarity principle, why is Community legislation necessary in this field and what are its main objectives?

Community legislation is needed to introduce harmonisation in the field of hired vehicles. In 1984⁷ a first step was taken towards this harmonisation. In 1990⁸ further harmonisation took place, but still a number of restrictions do exist.

Since 1993 the intra-Community road transport market is liberalised. In such a liberalised market more flexibility is needed as far as concerns the regime for hiring vehicles: undertakings active in the field of road haulage should have the instruments to operate in this liberalised market and thus should be able to hire vehicles in the Member State where they provide their service and no restrictions should exist based on a distinction between the different categories of undertakings and vehicles, as is still the case in the present situation.

This further harmonisation will increase the flexibility in the transport sector.

The proposal has the following major features:

- it introduces freedom to hire vehicles in any of the Member States for the purpose of the carriage of goods between Member States.
- no distinction is made between own account and transport for hire or reward; both are subjected to the same criteria for hiring vehicles.

⁷ OJ No L 335, 22.12.1984, P. 72.

⁸ OJ No L 202, 31.07.90, p. 46.

Impact on businesses

2. Who will be affected by the proposal?

-Which sector of businesses?

The Directive is principally affecting the sector dealing with road haulage for hire or reward.

-What size of firms?

There is no distinction between size of firms where it concerns the affectation. Road transport undertakings however belong for about 80% to the SME.

-Are there any particular geographical areas within the Community where such firms are established?

The proportion of SME's in the Southern Member States is relatively important.

3. What steps must firms take to comply with the proposal.?

No steps, it only gives them an opportunity to provide their transport services in a more flexible way.

4. What economic effects is the proposal likely to have?

- on employment?

None.

- on investment and the creation of new firms?

None.

- on the competitiveness of businesses?

A more flexible regime in the field of hired vehicles will improve the competitiveness of road transport. The rationalisation of transport capacity will increase road haulage efficiency, improve vehicle and staff productivity, adapt supply to demand and will minimise the costs of all operations. This flexibility will also enable small carriers to improve their financial management and reduce their fixed costs by hiring vehicles when their own are not available or exceptional demand has to be met. Especially now that the internal transport market has been largely liberalised⁹ demand for hired vehicles will also increase. Small firms will get the possibility to meet extra temporarily demand by hiring vehicles.

⁹ For road haulage: Regulation 881/92/EEC and 3118/93/EEC;

5. Does the proposal contain any measures intended to take account of the specific situation of SMEs (reduced or different requirements)

No.

Consultation

6. List of the organisations which have been consulted on the proposal and summary of their main points of view:

A consultation meeting concerning a revision of Directive 84/647/EEC, on the use of vehicles hired without drivers for the carriage of goods by road, was held on 6 September 1993. The following organisations were present: ECATRA (European Car and Truck Rental Association), IRU (International Road Union), UNICE and the EUROPEAN TRANSPORT WORKERS UNION.

All organisations were in favour of lifting the remaining restrictions on the hiring of vehicles in any Member State other than the one of establishment of the undertaking. Regarding the existing restrictions on own account transport, a majority of the organisations requested to lift them also. However, most of these organisations have serious reservations concerning the possibility of hiring vehicles with drivers, which, according to their point of view, will pose problems in the field of social protection.

The Commission has taken into account the opinion of the professional organisations consulted during the preparation of the new legal text, and has subsequently concentrated its proposal on the points on which the willingness to act existed, in other words, the lifting of the restrictions concerning own account transport and the possibility to hire a vehicle in a Member State other than the one of establishment of the undertaking.

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