

Mr Brian SIMPSON
Chairman of the Transport and Tourism Committee
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Dear Mr. Simpson,

As was discussed in the meeting of the TRAN Committee of 26 March, I have been carefully considering the reading of certain points of Directive 96/53/EC¹ and I would like to inform you of my conclusions, in the light of the advice I have received. Although you are aware that the definitive interpretation of EU law remains with the Court of Justice of the European Union, I believe that it is important to first describe our understanding of the role of the Directive in the structure of European transport policy in order to explain our interpretation and its practical implications.

The first Directive on weights and dimensions of road vehicles, Council Directive 85/3/EEC, represented a first step in harmonising the diverging rules in this field in Member States. By laying down maximum standards, the Directive broke new ground, allowing hauliers who had up until then been held up at borders due to diverging sets of legislation to circulate throughout the Community, if their vehicles complied with the weights and dimensions limits in the Directive. In this sense this Directive is truly a cornerstone piece of legislation, key to ensuring free circulation and the setting up of the internal market for road transport.

Under the Directive, Member States could choose to exceed these standards if the infrastructure and market conditions on their territory allowed this. Several Member States chose to do so, without the Directive stipulating the geographical scope of such deviations. The Directive thus prevented Member States from rejecting vehicles in international transport, as long as they complied with the (maximum) standards. The Directive did not, however, prevent Member States from accepting vehicles which exceed these standards on their territory. This is still reflected in Art 3 which has remained in the today's Directive and which does not prevent Member States from accepting the modular concept on their territory.

With the opening up of internal borders in 1993 and the possibility for hauliers to carry out domestic transport operations in other Member States, the Directive was replaced and its key provisions were maintained and supplemented. Not only should the legislation ensure that hauliers could circulate freely from one country to another, it should also guarantee that when carrying out national transport operations abroad, they are operating

¹ COUNCIL DIRECTIVE 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorized dimensions in national and international traffic and the maximum authorized weights in international traffic (OJ L 235, 17.9.1996, p.59), as amended by Directive 2002/7/EC of the European Parliament and of the Council of 18 February 2002 (OJ L 67, 9.3.2002, p. 47)

on equal footing with local operators benefitting from the higher limits referred to above. The legislator therefore decided to forbid deviation from the standards for national transport in order to preserve fair competition, in particular in the newly opened cabotage market. The Commission's proposal was specifically amended by the legislator to ensure that the standards in the Directive were impartially applied in national transport. Derogations were however agreed for longer vehicles in cases which did not affect fair competition and provided that they were applied without discrimination.

The derogation related to the modular concept was a result of the accession to the European Union of Finland and Sweden, where these vehicles were already in use. With the concept applicable to any type of vehicle, irrespective of the country of registration the legislator considered that the modular concept does not significantly affect international competition. The driving principle behind this derogation, once again, is fair competition in a free market.

The notion of "national transport operation" was introduced in the derogation foreseen for the modular concept to mirror the requirement to comply with these standards in national transport. This does not rule out a situation where hauliers could benefit from similar derogations in two bordering countries, nor does it create a legally binding situation as regards international transport.

It therefore appears that the aim of the Directive is not to prevent the derogations laid out in Art 4(3), 4(4) and 4(5) from applying to cross-border traffic, as long as the Member States involved apply these derogations on their own territories and do so without discrimination to all hauliers. It must also be clear that these derogations should not distort international competition in the transport market, which is the key principle behind this piece of legislation. Finally these derogations should be applied reasonably so that their use does not lead to an exceptional practice becoming the norm, thus contravening the driving principles of the Directive.

Thus under Art 4(3), inter-member state journeys with indivisible loads or vehicles intended to carry an indivisible load are permitted, subject to the grant of a special permit delivered without discrimination by each Member State concerned. These permits should be mutually compatible and should remain in line with the principles underlying the Directive, including the principles of non-discrimination and fair competition. It implies notably that the conditions imposed are sufficiently transparent for all users, including those from other Member States.

As described above, Art 4(4) is an exception to Art 4(1) which prescribes only which vehicles may be allowed for national transport. A key element is to ensure fair competition between national operators and operators of other Member States when carrying out national transport operations. National transport operations are to be understood as operations from one point to another in a Member State's territory. They may therefore cover transport from a point in the territory of a Member State to the border. Neither this paragraph, nor Article 3, nor any other provisions of the Directive addresses the issue of the border crossing. However, a transport authorised from one point to the border within the territory of a Member State may be followed by a transport also authorised from the same border point to another point within the territory of another Member State. It follows from the economic and internal market objectives that such a transport operation across the border should not be prohibited between the two Member States concerned. It remains that conditions must be respected to ensure the compatibility of such an operation with all the objectives of the Directive and in particular the

condition that the derogation of Art 4(4) must not significantly affect international competition. These conditions could reasonably be regarded as satisfied if a cross border use remained within two member states where the existing infrastructure and safety requirements allow it. A last important condition is that these authorisations should be granted to hauliers without discrimination.


Similarly, trials under Art 4(5) could involve more than one member state, and include journeys between those Member States, provided the trial is still "local" – concerning for example a cross border region.

This is, in my view, the interpretation which is the most consistent with the text of the Directive and the initial ambition of the legislator. A more restrictive reading would lead to hauliers uncoupling their vehicles at a border to reattach them a few meters later. Such an interpretation would amount to reinstating artificial obstacles at borders in contradiction with both past and current policy aims. The interpretation set out above preserves the intention of the legislator whilst avoiding manifest absurdity in the application of the Directive.

I hope that this letter clarifies the uncertainties which may have existed regarding the application of the Directive and the approach that I intend to follow with regard to its implementation .

I consider this approach to be both legally sound (though I accept the Directive is not completely unambiguous), and also reasonable in policy terms. It achieves an appropriate balance between on the one hand the right of Member States under subsidiarity to determine transport solutions appropriate to their local circumstances and on the other the need for such national policies not to distort the internal market. I am though fully aware that this is a controversial and emotive issue. However the revision of Directive 96/53 which I expect the Commission to propose in late 2012 (addressing a number of more technical points such as aerodynamic adaptations) will provide an opportunity for the legislator to review the issue of cross border use of longer trucks.

Yours sincerely,



Siim KALLAS