

Brussels, 28th of May 2010

Joint position paper on Cross-border operations of Modular Concepts

CLECAT and ESC have recently examined the consolidated text of the 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 traffic¹, with a view to understanding its impact on the circulation of European Modular System (modular concept) combinations in the European Union.

It is helpful to remember that the Modular Concept was actually "conceived" to allow Scandinavian countries (at the time of their accession these allowed longer and heavier vehicles on their national territory) to join the Union without creating excessive problems either to the new entrants or to the already existing Member States, mainly from a competition point of view.

It is also helpful to note that legislation is supposed to be interpreted by using a comprehensive and holistic approach and by taking into account the aims of the legislative act. This means that articles must be read in conjunction with one another in order to achieve an interpretation that is line with the spirit with which legislation is written. To the contrary it is not good practice to read articles as stand-alone sentences, segregated one from the others, as this may lead to inconsistent and even contradictory results.

It must also be assumed that the legislator will not have sought to create complex and time consuming procedures without a reason.

This requirement appears very clear when reading some of the preambles of the above directive:

(17) Whereas Member States should be permitted, in national goods transport, to allow vehicles or vehicle combinations with dimensions deviating from those laid down in this Directive to circulate in their territory if the transport operations carried out by such vehicles are defined by this Directive as not significantly affecting international competition in the transport sector, i.e. operations carried out by specialized vehicles and operations carried out according to a modular concept;

(18) Whereas, in the case of modular concept operations, there should be provision for a transitional period to enable a Member State to adapt its road infrastructure;

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0053:EN:HTML>

(19) Whereas vehicles or vehicle combinations constructed applying new technologies or new concepts, according to standards which deviate from those laid down by this Directive, should be allowed to carry out local transport operations for a trial period to enable profit to be drawn from technical progress;

(20) Whereas vehicles which entered into service before the date of implementation of this Directive and which do not comply with the dimension characteristics laid down in this Directive, owing to previously differing national provisions or methods of measurement, should be allowed for a transitional period to continue to provide transport services within the Member State in which the vehicle is registered or put into circulation;

Reading the above indents in conjunction one with the other, the spirit with which this directive was written as regards the use of the modular system seems clear enough. New entrants should be allowed to continue operating their longer vehicles, provided they adapt their own legislation to EU "modules", to avoid negative effects on competition.

The preamble paragraphs addressing the possibility to use the modular system should be read – and understood – against the background of the overarching aims set out in paras (3) through (6) and (11).

(3) Whereas differences between standards in force in the Member States with regard to the weights and dimensions of commercial road vehicles could have an adverse effect on the conditions of competition and constitute an obstacle to traffic between Member States;

(4) Whereas, under the principle of subsidiarity, action should be taken at Community level in order to remove this obstacle;

(6) Whereas common standards on the dimensions of vehicles intended for the carriage of goods should remain stable in the long term;

11) Whereas, in implementation of the internal market, the scope of this Directive should be extended to national transport insofar as it concerns characteristics that significantly affect the conditions of competition in the transport sector and in particular the values relating to the maximum authorized length and width of vehicles and vehicle combinations intended for the carriage of goods;

In other words the overarching aim of this directive is to implement the internal market in road transport by facilitating international (hence cross border) circulation of road vehicles. This is achieved, by approximating the existing "differences between standards in force in the Member States" as regards weights and dimensions. This approximation is also intended to create a level playing field in the road transport market since the loading capacity will also be approximated.

The statements made in preamble paragraphs 17 through 20 make it clear that the possibilities granted to use vehicles with characteristics that diverge from the standards laid down in the directive must not be used in a way that distorts competition. It is clearly stated in paragraph 17 that the availability of the modular system on the territory of a Member State that allows vehicles with diverging dimensions eliminates any risk of distortion of competition.

In order to make sure that competition was not going to be distorted the Commission is to be notified (art. 4.4, art. 4.5, art 9, art 11) by member state's of their actions with regards to the differences in the implementation of the directive in different member states.

The aims of the directive, as now outlined, are implemented through the provisions of in particular the Articles 3 and 4. They stipulate the following:

Article 3

1. A Member State may not reject or prohibit the use in its territory:

- in international traffic, of vehicles registered or put into circulation in any other Member State for reasons relating to their weights and dimensions,*
- in national traffic, of goods vehicles registered or put into circulation in any other Member State for reasons relating to their dimensions,*

provided that such vehicles comply with the limit values specified in Annex I.

This provision shall apply notwithstanding the fact that:

(a) the said vehicles are not in conformity with the requirements of that Member State with regard to certain weight and dimension characteristics not covered by Annex I;

(b) the competent authority of the Member State in which the vehicles are registered or put into circulation has authorized limits not referred to in Article 4 (1) exceeding those laid down in Annex I.

2. However, paragraph 1 (a) shall not affect the right of Member States, with due regard to Community law, to require vehicles registered or put into circulation in their own territory to be in conformity with their national requirements on weight and dimension characteristics not covered by Annex I.

Article 4

1. Member States shall not allow the normal circulation of vehicles or vehicle combinations for the national transport of goods in their territory which are not in conformity with the characteristics set out in points 1.1, 1.2, 1.4 to 1.8, 4.2 and 4.4 of Annex I.

2. Member States may nonetheless allow circulation in their territory of vehicles or vehicle combinations for the national transport of goods freight which are not in conformity with the characteristics set out in 1.3, 2, 3, 4.1 and 4.3 of Annex I.

3. Vehicles or vehicle combinations which exceed the maximum dimensions may only be allowed to circulate on the basis of special permits issued without discrimination by the competent authorities, or on the basis of similar non-discriminatory arrangements agreed on a case-by-case basis with those authorities, where these vehicles or vehicle combinations carry or are intended to carry indivisible loads.

4. Member States may allow vehicles or vehicle combinations used for goods transport which carry out certain national transport operations that do not significantly affect international competition in the transport sector to circulate in their territory with dimensions deviating from those laid down in points 1.1, 1.2, 1.4 to 1.8, 4.2 and 4.4 of Annex I.

Transport operations shall be considered not significantly to affect international competition in the transport sector if one of the conditions under (a) and (b) is fulfilled:

(a) the transport operations are carried out in a Member State's territory by specialized vehicles or specialized vehicle combinations in circumstances in which they are not normally carried out by vehicles from other Member States, e.g. operations linked to logging and the forestry industry;

(b) the Member State which permits transport operations to be carried out in its territory by vehicles or vehicle combinations with dimensions deviating from those laid down in Annex I also permits motor vehicles, trailers and semi-trailers which comply with the dimensions laid down in Annex I to be used in such combinations as to achieve at least the loading length authorized in that Member State, so that every operator may benefit from equal conditions of competition (modular concept).

The Member State concerned which has to adapt its road infrastructure in order to be able to fulfil the condition under (b) may nevertheless prohibit, until 31 December 2003 at the latest, the circulation in its territory, in national goods transport operations, of vehicles or vehicle combinations which exceed current national standards on dimensions, provided that national legislation continues to apply to all Community carriers in a non-discriminatory manner.

The Member States shall inform the Commission of the measures taken pursuant to this paragraph.

5. Member States may allow vehicles or vehicle combinations incorporating new technologies or new concepts which cannot comply with one or more requirements of this Directive to carry out certain local transport operations for a trial period. Member States shall inform the Commission thereof.

Article 3 excludes restrictions on the freedom to circulate on the territory of Member States for vehicles that are in conformity with the criteria laid down in Annex I to the directive. This freedom is not impeded if a vehicle is "*not in conformity with the requirements of that Member State with regard to certain weight and dimension characteristics not covered by Annex I;*" and for which "*(b) the competent authority of the Member State in which the vehicles are registered or put into circulation has authorized limits not referred to in Article 4 (1) exceeding those laid down in Annex I.*"

Article 4 (4) provides the following possibility to authorise vehicles not in conformity with the mandatory provisions on dimensions.

"(4.) Member States may allow vehicles or vehicle combinations used for goods transport which carry out certain national transport operations that do not significantly affect international competition in the transport sector to circulate in their territory with dimensions deviating from those laid down in points 1.1, 1.2, 1.4 to 1.8, 4.2 and 4.4 of Annex I.

Transport operations shall be considered not significantly to affect international competition in the transport sector if one of the conditions under (a) and (b) is fulfilled:

(Abridged)

(b) the Member State which permits transport operations to be carried out in its territory by vehicles or vehicle combinations with dimensions deviating from those laid down in Annex I also permits motor vehicles, trailers and semi-trailers which comply with the dimensions laid down in Annex I to be used in such combinations as to achieve at least the loading length authorized in

that Member State, so that every operator may benefit from equal conditions of competition (modular concept).”

In other words a member state is free to allow vehicles that deviate from the limits set out by the directive provided it allows a system that makes it possible for vehicles from other Member States to compete on equal conditions as regards loading capacity, i. e. the modular concept. This means that the modular system makes it possible for all vehicles and vehicle combinations to provide the same loading capacity. It therefore grants a level playing field.

The text of the directive authorises national transport operations with vehicles that diverge from the overarching provisions in Article 3 and 4.1 and 4.2 regarding the criteria that will entitle a vehicle to circulate on the territories of all Member States. The modular system means to ensure a level playing field in states that authorise diverging dimensions.

No member state can grant an exemption beyond its territory and there is no obligation for other member states to allow such vehicles on their territory. The limitation to national transport of the capacity of Member States to grant exemptions therefore is to be read as a delimitation of what Member States can decide, not necessarily as a prohibition of cross-border traffic between adjacent states which allow similar vehicles.

The Directive does not expressly address the case of two adjacent countries, both of which allow similar dimensions and both of which have introduced the modular system. Since the very aim of the modular system is to avoid distortive effects on competition and ensure a level playing field, which is the essential aim of the directive, there is no reason to consider cross-border traffic with modular vehicle combinations as contrary to the directive.

It must also be noted that prohibiting cross-border transport with modular vehicle combinations between member states that allow the use of the modular concept on their own territory in their national traffic would be discriminatory and a waste of resources as it would oblige vehicle combinations coming from or leaving for other Member States to run empty when crossing the border. This would not only be inefficient from all points of view, but it is fundamentally in contrast with the free circulation principles enshrined in the EU treaties.

In conclusion, directive 96/53, may be interpreted as meaning that:

- the modular concept is allowed without restriction on the territory of all Member states that allow its use in their national transport as long as such member states treat all operators without discrimination;
- all operators:
 - o are allowed to operate modular concept combinations (each element complying with the dimensions listed in annex I of the directive) within the territory of all Member states that allow their circulation within their territory and
 - o are not allowed to operate modular concept combinations in the territory of member states that restrict the circulation of such combination even in their national traffic;
- Cross border operations of modular concept combinations between member states is allowed, if these member states allow modular concept operations within their own territory and have informed the Commission thereof.