

7 June 2013

Decision of the Bundesrat

Proposal for a Directive of the European Parliament and of the Council amending Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic

COM(2013) 195 final

At its 910th meeting on 7 June 2013 the Bundesrat adopted the following opinion pursuant to §§ 3 and 5 of the Act on Cooperation between the Federal Government and the Federal States in European Union Affairs (EUZBLG):

1. The Bundesrat welcomes the Commission's intention to revise the 1996 Directive on the maximum authorised weights and dimensions of road vehicles in order to put on the market more aerodynamic vehicles with improved energy efficiency and with alternative – hybrid or electric – propulsion systems.
2. Furthermore, it welcomes the fact that this revision is also being used to increase road safety since the shape of the driver's cab will be improved so as to reduce the blind spots in the driver's vision, a structure will be incorporated for energy absorption in the event of a collision and the driver's safety and comfort will be increased.
3. The Bundesrat supports the Federal Government in its opposition to longer heavy goods vehicles with a total mass of up to 60 tonnes in international traffic.
4. The Federal Government is therefore asked to make representations to the Commission to ensure that Article 2(1)(b) is deleted. This amendment to the existing Directive 96/53/EC will facilitate international traffic using vehicles and vehicle combinations which exceed the uniform EU standards. Even if it were only to be allowed between neighbouring EU Member States which already permit such exemptions in national domestic traffic, it sends out the wrong signal for transport in the common EU market.

5. Vehicles and vehicle combinations – with the exception of large-volume or heavy-load vehicles or industrial machinery – which exceed the weights and measures laid down in the Directive when transporting divisible loads are primarily used for medium and long-distance transport which, even in the EU's view, should mainly be carried out by rail or using combined transport. The proposal would give a unilateral advantage to road transport and enable distortions of competition to arise in the transport industry of the common EU market (national domestic transport, cross-border EU transport, cabotage, transport operations to and from third countries). The proposal would give an advantage to road traffic and would reduce the potential for shifting traffic off the road. This runs counter to the objective of the 2011 White Paper 'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system'. A study by the Fraunhofer Institut für System- und Innovationsforschung shows that up to 35% of individual vehicles and 13% of combined transport could be removed from the roads.

The Commission states that Member States could voluntarily decide whether or not to allow longer heavy goods vehicles on their roads. Currently, pilot tests with longer heavy goods vehicles are being carried out on the roads in Sweden, Finland, the Netherlands and Denmark, as well as in Germany. If longer heavy goods vehicles are not allowed in one particular Member State as that State opposes them, there is a high risk of competitive disadvantages and distortion of the internal market. It is therefore not sufficient to enable the Member States not to allow longer heavy goods vehicles.

The Commission also justifies its proposal on the basis of improving road safety since the blind spots in the driver's vision will be reduced. However, the Bundesrat takes the view that road safety will deteriorate as a result of the longer distances needed for overtaking.

6. The Bundesrat asks the Commission to delete the proposed rules on the establishment of a system for pre-selecting and targeting checks on vehicles or combinations of vehicles in circulation (Article 12 of the proposed Directive). The following should be borne in mind:

- The task of police road traffic controls has not been delegated to the EU. As a matter of principle, the EU therefore does not have powers to regulate vehicle checks (by the police). To the extent, for example, that the Commission is relying on the additional powers clause in Article 352 TFEU because uniform checks are required across the EU to ensure the smooth functioning of the internal market, that requirement needs to be substantiated in more detail.
- Strengthening targeted checks on heavy goods vehicles is welcomed as a matter of principle. The police forces of the federal states already carry out checks on heavy goods vehicles whether or not anything is suspected. Compliance with all the relevant rules is checked, whether these concern the vehicle, the driver or the driver's behaviour on the road. The key factor is the safety of all road users as well as the protection of road infrastructure, e.g. by identifying road vehicles which exceed the maximum laden mass and axle weights.
- Although the Bundesrat takes the view that EU-wide harmonisation of the checks on heavy goods vehicles could indeed serve a useful purpose, especially on the trans-European road network, it currently doubts the need to make use, for example, of the additional powers clause for all public roads. Before requirements are proposed for carrying out checks in a European Directive focused on the internal market, the Member States' police authorities should be allowed to agree on this in the relevant committees.

- The Member States must be left adequate room for manoeuvre. There is no justification for unnecessary intervention which affects their material equipment, the deployment of personnel or administrative procedures.

The provision that the Member States must carry out a number of preselection measures equivalent to at least one weighing per 2 000 vehicle kilometres per year on average (see Article 12(3) of the proposed Directive) implies a simultaneous and uniform system of checks in the Member States. Solely in view of the number 2 000, this requires general agreement between the federal states on the network of checks and the plan for the checks. The proposed Directive is to apply for vehicles on the road both nationally and in international traffic and at all times. It is therefore limited neither to the trans-European network nor to motorways. It therefore covers all public roads, from a local authority road to the motorways. Since all public roads can be used at any time, a more or less uniformly dense network of checks operated around the clock would have to be set up and maintained on all trunk roads based on a system of priorities. The investment and administration needed would be considerable. In spite of this, the Bundesrat fears that, if checks are not carried out simultaneously and uniformly across the EU, the Commission's objective of preventing distortions of competition and ensuring the smooth functioning of the internal market will be stood on its head.

- If a vehicle is overladen the situation is different, for example, to one where speeding is involved. The police generally have to take immediate action such as stopping, immediately immobilising and unloading the vehicle. This means the police have to stay at the particular check points. The specification of a control quota (see Article 12(3) of the proposed Directive) would therefore seriously undermine the administrative and staffing authority in particular of police authorities where compliance could only be ensured by transferring resources from other areas of traffic monitoring. The Bundesrat therefore greatly fears that the specification of a control quota will reduce traffic surveillance in other areas which are even more important for road safety such as speed checks, checks on the distance between vehicles and drink-driving checks.

7. Furthermore, the Bundesrat does not consider it necessary to subdivide the proposed rules on penalties into different categories according to the severity of the infringement (Article 13 of the proposed Directive). If it is possible to do without the provisions on checks at the moment, it is most certainly possible to do without the rules on penalties. What is important to the police authorities is that the prosecution of road traffic offences is subject to the opportunity principle (discretion). However, the rules as proposed are based on a principle of legality which in this case at least does not apply.

8. Without prejudice to its rejection of Articles 12 and 13 of the proposed Directive, the Bundesrat wishes to point out the following:

In Germany adequate checks, including on overloading, are already carried out by the federal states' police forces and the Federal Office for Goods Transport (*Bundesamt für Güterverkehr*). To the extent that the proposal for a Directive is intended also to create (or restore) fair competition by means of dedicated inspections and to ensure compliance with competition rules, it has to be said that this is not a matter for the police.

The Bundesrat takes the view that the inspections in question also require a uniform technical and specialist approach at federal level and a guarantee that the Federal Government will meet the investment costs for performance of the automatic weight checks.

The Bundesrat therefore asks the Federal Government during the course of the further discussions to consent to the requirements for checks and the scope of the checks as set out in the proposed Directive only provided that it is recognised that the Federal Office for Goods Transport is competent in this matter and that it is responsible for carrying out the checks.

In addition, the federal states' police forces will continue to carry out traffic supervision duties under their own responsibility focusing on the places where accidents actually occur, thus making an effective contribution to increasing road safety within the meaning of the objective of the EU's road safety programmes.

9. The Bundesrat is forwarding this opinion directly to the Commission.