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Delegations will find attached document SWD(2016) 141 final.

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COMMISSION STAFF WORKING DOCUMENT

REFIT EX-POST EVALUATION

of

Combined Transport Directive 92/106/EEC

EXECUTIVE SUMMARY

{SWD(2016) 140 final}

1. EXECUTIVE SUMMARY

Directive 92/106/EEC establishes common rules for the promotion of combined transport (Combined Transport Directive) in the EU. After more than 20 years in action, it was deemed appropriate to assess whether the Directive is still fit for its purpose, and it was hence subjected to a REFIT evaluation in the EU's Better Regulation framework. The current evaluation analyses whether the Combined Transport Directive has brought along the desired effects, whether it is still relevant to have an EU level instrument, whether it is in its current form effective and efficient, as well as if it is coherent with other EU policies. The evaluation covers the whole EU and the period from 1992 until today. The analysis is based on an external study carried out for the Commission in 2014 and on the results of the stakeholder consultations carried out in summer 2014, as well on Eurostat data, relevant policy documents of the Commission from the 1990s until today, models used by DG MOVE for analysing transport data and other relevant literature.

The Combined Transport Directive was introduced in an effort to curb the negative externalities of EU transport system and in particular of the road transport. The 1992 Transport White Paper that analysed the Community transport market and established the Community transport policy objectives had identified that road transport was responsible for the vast majority of environmental and social costs created by the transport sector such as costs resulting from pollution, congestion, excessive energy consumption and accidents and fatalities. It was concluded that the solution is to shift freight towards multimodal transport that uses in major part more sustainable modes of transport such as rail, inland waterways and maritime transport. However, it was also concluded that road transport was more competitive than other modes of transport and hence the shift could only be realised by providing support to multimodal solutions. It was against this background that the Combined Transport Directive was adopted. Combined transport is a type of multimodal transport where the transported goods are carried in intermodal loading units such as for example containers which are lifted from one mode of transport to another, and most importantly where the road leg is limited to short distance and the major part of the route is carried out by rail, inland waterways or maritime transport.

Overall freight transport increased over time due to reasons mostly outside of transport policy – the last 22 years have seen a major increase in the globalisation and this has resulted in an increased need for transportation of both intermediary products as well as final merchandise goods. When looking at the developments of combined transport in the last 22 years, we see that a considerable growth of the sector has taken place allowing shifting freight away from road in those years in the magnitude of 2.5 trillion tonne-kilometres, and created a saving of €1.1 billion in 2011 alone¹. However, within freight transport, road transport also continued to grow. The transport market today is still in the situation similar to that in 1992 where road transport dominates the haulage market, in particular as in the short term it is easier to start up road transport activities that require little investment from operators, are more flexible as regards destinations and have no transshipment costs. The resulting high negative externalities of the road sector continue to be a major problem, as the external costs of transport have not been fully internalised in the EU.

¹ It should be noted that not all the increase of combined transport in EU can be attributed to the Combined Transport Directive. During the 22 years changes in business models, the increased use of containers and the development of ICT as well as some national measures have also contributed to the growth of the combined transport market.

This was also the conclusion of the 2011 White Paper on Transport, which concluded that further efforts are needed to shift the transport pattern in the EU, and set a target that by 2030 the EU should shift 30% of long-distance freight away from road. The Combined Transport Directive remains the only EU legal instrument in place that directly supports multimodal transport and hence continues to be a very relevant tool for the EU transport policy.

As regards the effectiveness of the Directive, both the data analysed as well as the opinions of stakeholders asked in the public consultation support the conclusion that the Directive continues to have a noticeable impact on the choice of combined transport. In addition to benefits discussed above, the analysis shows that the combined transport operations in the EU measured in TEU have quadrupled during the last two decades with a clear "jump" just after the implementation of the Combined Transport Directive allowing the combined transport sector grow on average at almost double the speed of road transport sector and increasing its share in total freight transport by 48%. The stakeholders, who were consulted in the public consultation on the Combined Transport Directive, consider that the combined transport market would not have grown at this speed on its own as the combined transport operations in EU would not be economically viable without the support offered by the Combined Transport Directive. However, a number of provisions of the Directive, such for example the requirement to use paper documents, are outdated since they reflect the market situation in 1992, thus lowering the effectiveness of the Directive. Other provisions of the Directive suffer from ambiguous language and have hence resulted in a diverging transposition and implementation at Member State level which causes daily practical problems to the industry and hence are not entirely effective. This is in particular the case as regards the definition and the provisions of transport documents.

As regards efficiency, it needs to be reiterated that the Combined Transport Directive does not create obligations, but establishes the eligibility for support measures. This means that it does not create unavoidable costs for the industry as the operators can decide if the burden of fulfilling the conditions of this Directive is worth the effort as compared to the benefits received. The industry overwhelmingly indicated in the public consultation that similar results in the combined transport sector could not have been achieved with less burdensome measures. The only efficiency problem reported by the industry is related to the inability to use electronic documents throughout the EU. As regards the cost for public administrations, no Member State was able to quantify the cost related to the implementation of this Directive, however in the public consultation the participating public administrations also agreed that the results could not have been achieved at lower cost.

Furthermore as the Directive addresses specifically cross-border transport between Member States, the smoothness of which depends on minimum differences between the legal systems, it has the potential of adding considerable value as opposed to each Member State regulating it on its own. In practice, however, due to problems identified under effectiveness and efficiency, the Combined Transport Directive does not currently realise its full potential added value at EU level.

Finally, the evaluation looked at the coherence of the Combined Transport Directive with related EU policy measures. Measures aiming to reduce negative externalities, including those in environmental policy as well as those in transport policy, are clearly coherent with the Combined Transport Directive. A specific analysis was carried out on the coherence with the Weights and Dimensions Directive (96/53/EC) as well as with the Regulation (EC) No 1072/2009 that establishes inter alia the rules for road cabotage. The Weights and Dimensions Directive complements the Combined Transport Directive by allowing heavier loads for

combined transport to counterbalance the disadvantage of the weight of the transferrable load unit. As regards the cabotage rules, the evaluation concluded, based on the relevant case-law that there is no overlap and hence no contradiction between the instruments in force. According to the court, the road legs of the combined transport cannot be considered national transport as the full combined transport operation has to be seen as a single international transport operation, and cabotage rules do not apply to international transport. Problems reported by the industry in this context relate mainly to the inconsistent transposition or implementation of the Directive and/or the Regulation. On the other hand, the provisions on the transport documents were found not to be coherent with the EU Digital Single Market objectives.

Based on the above described analysis the current REFIT evaluation concludes that the Combined Transport Directive continues to be relevant for the purpose, however there are considerable shortcomings in its effectiveness and efficiency, in particular due to outdated provisions, as well as regards the transposition and implementation of the Directive, partly deriving from the sometimes obsolete and ambiguous language of the Directive.