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## REPORT

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	14213/1/17 REV 1 TRANS 464 CODEC 1785 IA 176
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States (Text with EEA relevance) – General approach

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### I. INTRODUCTION

1. On 10 November 2017, the Commission adopted the above-mentioned proposal, as part of the 'Europe on the Move' Mobility Package, as one of the Commission's initiatives related to low-emission mobility. This proposal is a review of Directive 92/106/EEC<sup>1</sup> (the Combined Transport Directive), which is the only legal instrument at Union level to directly incentivise the shift from road freight to lower emission transport modes such as inland waterways, maritime transport and rail.

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<sup>1</sup> Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States, OJ L 368, 17.12.1992, p. 38- 42.

## **II. CONTENT OF THE PROPOSAL**

2. The main objective of the proposal is to further increase the competitiveness of combined transport compared to long-distance road freight and therefore strengthen the shift from road freight to other modes of transport.
3. The proposal aims to reach this objective by:
  - broadening the scope of the current Directive 92/106/EEC to include national intermodal operations;
  - simplifying the definition of a combined transport operation, and adding flexibility to the length of the road leg;
  - specifying the requirements on evidence needed for combined transport operations;
  - extending economic support measures, mainly investments into transshipment terminals, in particular along the existing TEN-T core and comprehensive networks. Member States should implement additional economic support measures (such as tax exemptions) and coordinate them among themselves and with the Commission.
4. The initiative contributes to the Regulatory Fitness Programme (REFIT) as it aims to update and simplify the current Directive.

## **III. WORK WITHIN THE EUROPEAN PARLIAMENT**

5. In 2017, the European Parliament asked the Commission for clear, modern and comprehensible combined transport rules that can be implemented by the authorities. The Parliament specifically called on the Commission to revise the Combined Transport Directive to increase multimodal transport, eliminate unfair practices and ensure compliance with the social legislation relating to combined transport.

6. The legislative proposal has been assigned to the Parliament's Committee on Transport and Tourism (TRAN), which has designated Daniela Aiuto (EFDD, Italy) as rapporteur. On 25 April 2018, the rapporteur presented her draft report to the Committee. The report proposes amendments largely supporting the Commission proposal and acknowledging the findings of the preceding REFIT evaluation, and even proposes to strengthen the Commission proposal in a number of areas (like the Member States' reporting obligations, the fiscal incentives to be offered by the Member States for combined transport operations, or the investments supporting the development of transshipment terminals or the expansion of the existing ones). The vote in the Committee took place on 10 July 2018.
7. The Economic and Social Committee adopted an opinion on this proposal on 19 April 2018.

#### **IV. WORK WITHIN THE COUNCIL BODIES**

8. The Commission presented the proposal on 27 November 2017, in the Intermodal Working Party (hereinafter 'the Working Party'), followed by a first exchange of views. The Impact Assessment (IA) of the proposal was discussed in detail on 12 and 25 January 2018.
9. The file was discussed extensively during the BG Presidency. In general, delegations welcomed the envisaged overhaul of the Directive which had become less relevant over the years. They agreed with the need to accelerate the modal shift towards other modes of transport than road, in order to reduce road congestion and emissions. However, several delegations expressed doubts about the proposal's apparent focus on the road leg. In respect of support measures in general, delegations would have expected more explicit assistance from the IA on how the above mentioned support measures could be further developed. As regards the support for investments, many delegations contested the proposed aim of a geographical distribution of transshipment terminals, on the argument that the placement of and the investment in terminals should be decided by market needs.

10. Moreover, many delegations pointed out the link between this proposal and some of the proposals of the first mobility package and that this link should have been given more attention. In this regard, they highlighted the possible increase of cabotage operations as a result of the fact that the cabotage limitations provided by Regulation (EC) No 1072/2009 - the so-called '*market access*' Regulation - would not apply to the road leg of combined transport (CT). They also emphasised that the link between the CT proposal and the specific rules on the *posting of drivers* set out in Directives 96/71/EC and 2014/67/EU - would have needed further assessment. Consequently, they insisted that there should be coherence between the corresponding provisions of the above-mentioned files and that in order to ensure that, the work on them should run in parallel.
11. On 7 June 2018, the TTE Council adopted a progress report on this file. Building on the progress report of the BG Presidency, the AT Presidency has continued the work on the file in the Working Party meetings of 24 October and 7 November 2018, alongside a significant number of bilateral discussions, with the intention to clarify the positions of the delegations on the main issues of the file and to establish the best possible compromises in order to reach a General Approach.
12. On the basis of the comments and suggestions made by the delegations, the AT Presidency compromise text proposes solutions and clarifications on a number of issues, the main ones being the following:
  - limiting the *scope of the Directive to international* combined transport operations, namely between Member States, or between Member States and a third country. This practically maintains the scope of the current CT Directive (between Member States), but it includes the clarification regarding operations in third countries, following the ECJ ruling in C-2/84 (provided that the eligibility conditions for CT operations are met);

- the *identification* requirements for the purpose of CT operations: identification of intermodal loading units according to the international standards ISO6346 and EN130344 are required for semi-trailers without a tractor unit, swap bodies or containers, but it will not be an obligation for trailers, nor for vehicles with tractor units, or for non-cranable semi-trailers;
- the *extension beyond the 150 km limit of each road leg* will be at the choice of each Member State, according to its regional specificities. As the geography and the location of transshipment terminals of Member States is very different, each Member State will have the possibility to establish under which rules road legs may exceed the 150 km limit, in order to reach the closest suitable terminal on their territory. In order to help CT operators, the Member States will have the obligation to make the above-mentioned rules public;
- *non-discriminatory access to publicly supported transshipment terminals* for at least 5 years. This provision reflects the concerns of some Member States with respect to the fact that they could only guarantee non-discriminatory access to publicly financed or co-financed terminals for a certain period of time, unless specifically provided in a contract. However, Member States will have the flexibility to extend the open access beyond five years;
- an obligation for the Commission to assess the possibility to *simplify the state-aid rules* applicable to CT operations.

## V. MAIN OUTSTANDING ISSUE

### **Link with Mobility Package I regarding cabotage rules and posting of drivers**

13. The Commission proposal leaves Articles 2 of the Directive unchanged as regards national quotas and the prohibition of national authorisations for combined transport operations. The Commission proposal also leaves Article 4 unchanged, namely that hauliers (who meet the conditions established by Regulations (EC) 1071/2009 and 1072/2009) have the right to carry out cabotage in the initial/final road legs which are part of a CT operation, between Member States, but also within the borders of a Member State.
14. From the beginning of the discussions on this proposal in the Council, several delegations have proposed to revert to the scope of the current Directive (i.e. international CT operations) because, in their understanding, the new scope would be equivalent with liberalisation of domestic cabotage. These delegations question the policy choice of incentivising CT operations at the expense of potential increase in illegal cabotage or unfair competition due to cheaper services offered by certain transport hauliers. Therefore, they propose the deletion of Article 4 of the current CT Directive. Other delegations oppose this view.
15. Most delegations agree that, as regards the road legs of CT operations, there is a close link between the cabotage issue in this Directive and Regulation (EC) No 1072/2009 - the so-called '*market access*' Regulation, as well as with the specific rules on the *posting of drivers* set out in Directives 96/71/EC and 2014/67/EU<sup>2</sup> -the so-called '*lex specialis*'. In this respect, they have consistently highlighted that there should be coherence between the corresponding provisions of these files and that in order to ensure that, the work on them should run in parallel. The application of posting rules for initial and final road legs of a combined transport operation is now regulated in the proposal amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting of drivers, the so-called '*lex specialis*' (Article 2(2b) and recital 12e).

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<sup>2</sup> Commission proposal: COM(2017) 278 final - 2017/0121 (COD)

16. In the Coreper meeting on 14 November 2018, two Member States, supported by a number of other delegations, emphasised again the need to delete Article 4 of the current Directive. Another group of Member States reiterated their opposition to the deletion of Article 4. Consequently, the Presidency is proposing a compromise which amends Article 4 by allowing the possibility for the Member States to limit the time period during which a vehicle may provide services during the initial and/or final road legs within a host Member State.
17. Other outstanding issues are reflected in the footnotes of the text in the Annex to this report.
18. All delegations, as well as the Commission, have a general scrutiny reservation on the latest version of text (in annex to this report). Changes with respect to the previous version of the text (document 13871/18) are marked with **bold** and ~~strikethrough~~.
19. The Commission fully reserves its position on the entire compromise proposal, pending the negotiations with the European Parliament.
20. DK, MT and UK have a parliamentary scrutiny reservation on the proposal.

## VI. CONCLUSIONS

21. The Permanent Representatives Committee is invited to examine the text set out in the Annex to this report and, if possible, resolve the outstanding issues with a view to allowing the Council to reach a general approach on this proposal at its meeting on 3 December 2018.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
amending Directive 92/106/EEC on the establishment of common rules for certain types of  
combined transport of goods between Member States**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

Having regard to the opinion of the Committee of the Regions<sup>4</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The negative impact of transport on air pollution, greenhouse gas emissions, accidents, noise and congestion continue to pose problems to the economy, health and well-being of European citizens. Despite the fact that road transport is the main contributor of those negative effects, road freight transport is estimated to grow by 60 per cent by 2050.

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<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .



- (2) Reducing the negative impact of transport activities remains one of the main goals of the Union's transport policy. Council Directive 92/106/EEC<sup>5</sup> which establishes measures to encourage the development of combined transport, is the only legislative act of the Union to directly incentivise the shift from road freight to lower emission transport modes such as inland waterways, maritime and rail.
- (3) The goal of reaching 30% of road freight over 300 km shifted to other modes of transport such as rail or waterborne transport by 2030, and more than 50% by 2050, in order to optimise the performance of multimodal logistic chains, including by making greater use of more energy-efficient modes, has been slower than expected and according to the current projections, will not be reached.
- (4) Directive 92/106/EEC has contributed to the development of the Union's policy on combined transport and has helped shift a considerable amount of freight away from road. Shortcomings in the implementation of that Directive, notably ambiguous language and outdated provisions, and the limited scope of its support measures, have significantly reduced its impact.
- (5) Directive 92/106/EEC should be simplified and its implementation improved by reviewing the economic incentives to combined transport, with the aim of encouraging the shift of goods from road transport to modes which are more environmentally friendly, safer, more energy efficient and cause less congestion.
- (6) [...]<sup>6</sup>

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<sup>5</sup> Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ L 368, 17.12.1992, p.38).

<sup>6</sup> COM has a reservation on the reduction of the scope, in line with the reservation in Article 1(1).

- (6a) Article 2 of Directive 92/106 EEC prohibits national quotas and authorisations for combined transport operations. **This Directive does not affect bilateral agreements concluded by Member States with third countries regarding combined transport operations.** ~~Regarding international combined transport operations, that Directive should continue to prohibit such national restrictions when they are not based on EU law.~~
- (7) **While the further liberalisation contained in Article 4 of Directive 92/106/EEC compared to cabotage in Regulation (EU) No 1072/2009 has been beneficial to promote combined transport and should, in principle, be retained, it is necessary to ensure that it is not misused. Experience shows that that provision, in certain parts of the Union, has been used in a systematic manner to circumvent the temporary nature of cabotage and as the basis for continuous presence of vehicles in a Member State other than that of the establishment. Such unfair practices risk leading to social dumping and jeopardize the respect of the legal framework relating to cabotage. Article 4 of Directive 92/106/EEC should therefore be amended by giving Member States the possibility to address such problems by introducing a proportionate limit to the continuous presence of vehicles within their territory.**
- (8) The definition of combined transport in Directive 92/106/EEC includes different distance limits for the road legs of a combined transport operation, according to the mode of the non-road leg. For rail, there is no fixed distance limit but instead the undefined notion of “nearest suitable terminal” providing some flexibility to take account of specific situations. That limitation has raised many difficulties in its implementation due to various interpretations and specific difficulties to establish the conditions for implementation. Those ambiguities should be lifted while also ensuring that some measure of flexibility is retained. In particular, allowing an equal catchment area for all modal combinations and facilitating enforcement thanks to the simplicity of measuring the road leg distance in direct line based on addresses or GNSS coordinates of the beginning and end point of a road leg (by using, for instance, existing tools) would simplify the planning of combined transport operations.

(8a) The objectives of this Directive to further promote the shift from road transport to more environmentally friendly modes of transport, and hence reduce the negative effects of the Union transport system, should be reached on the whole territory of the European Union. Whereas the 150km distance limit as the crow flies in principle allows an equal catchment area for all modes of transport in all Member States, regional differences due to geographic and economic criteria, as well as population density, have to be taken into account. A certain flexibility to exceed this road leg distance limit could be needed if a road/rail terminal suitable in terms of transshipment equipment and/or terminal capacity cannot be found within this distance. To the same extent, flexibility is needed for reducing this road leg distance limit in specific, clearly defined cases in order to ensure that all Member States experience a shift from road to environmentally friendly modes of transport and to avoid that some regions benefit from a modal shift, while others, on the contrary, experience even more road transport: in the situation when a road leg transits the territory of a Member State without loading or unloading freight, that Member State may choose not to consider that operation as combined transport and thus not to apply the support measures foreseen by this Directive and/or Directive 96/53/EEC with respect to weight exemptions referring to combined transport.<sup>7</sup>

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<sup>7</sup> COM has a reservation on this recital, in line with the COM reservations on Article 1(3a) and (3b).

- (9) In the definition of combined transport in Directive 92/106/EEC, the minimum distance of 100 km for the non-road leg of a combined transport operation ensures that most combined transport operations are covered. Rail and short sea shipping legs typically run over larger distances to be competitive with unimodal road transport. That minimum distance also ensures exclusion from the scope of specific operations such as short ferry crossings which would occur anyway. However, with such a minimum distance limitation, a number of inland waterways operations around ports and in and around agglomerations, which contribute greatly to decongesting the road networks in sea ports and in the immediate hinterland and to reducing environmental burdens in agglomerations, do not fall under the scope of the current Combined Transport Directive. It would therefore be useful to remove that minimum distance limitation, while maintaining the exclusion of non-road legs the sole purpose of which is to overcome a natural obstacle and that do not bring along modal shift in the EU. Such excluded non-road legs include direct island crossings by ferry (such as Cork-Roscoff or from Puttgarden to Rødby) or through a tunnel (such as the Eurotunnel) where there is no road alternative to the non-road leg, and cases where there is a theoretical road alternative for the non-road leg of the operation, but this road leg is not commercially viable as it is considerably longer and causing uncompetitive delays and prices, such as the ferry crossing from Tallinn to Stockholm, or the ferry crossing from Bari to Dubrovnik. On the other hand, if rail or inland waterways is used before or after a ferry crossing, and the conditions for initial and final road legs are met, the transport chain from shipper to consignee should also qualify as combined transport. Moreover, non-road legs consisting of island connections where the operator chooses to go by ferry to a more distant port instead of the closest one, and thus avoiding a considerable distance of road transport, such as choosing Cork-Santander instead of driving from Roscoff to Spain, should not be excluded and should be able to benefit from support, as they bring along modal shift.

- (9a) Furthermore, while the current definition of combined transport only covers operations between Member States, a part of an intermodal transport operation between Member States and a third country should be interpreted to be covered by the Directive if the Union part of the operation fulfils the conditions set out in the definition of combined transport, as it brings modal shift in the Union. In that case, however, the non-road leg that crosses a European Union border has to be at least 100 km on EU territory. To avoid any doubt, a clarification to this effect is necessary.
- (9b) While the part of intermodal transport operations starting or ending in third countries that takes place within the Union is covered by this Directive under certain conditions, the conditions for access to the market and access to occupation applicable to hauliers from third countries continue to be subject to Union or Member States agreements with third countries containing provisions on road transport.
- (10) The minimum size limit of intermodal loading units currently specified in the definition of combined transport could hamper the future development of innovative intermodal solutions for urban transport and any limit to container size or format should therefore be removed. On the other hand, being able to identify intermodal loading units through existing and widely used means of identification could speed up the handling of intermodal loading units in terminals and facilitate the flow of the combined transport operations. The maximum dimensions allowed for intermodal loading units on the initial and final road legs are governed by the provisions of Directive 96/53/EC.

- (11) The outdated usage of stamps in proving that a combined transport operation has occurred prevent the effective enforcement or the verification of eligibility for the measures provided for in Directive 92/106/EEC. The evidence necessary to prove that a combined transport operation is taking place should be clarified as well as the means by which such evidence is provided. In particular it is important to reiterate that such evidence may be provided, partly or fully, through existing transport documents such as consignment notes provided for under various international conventions. The use and presentation of transport information through electronic means such as eCMR electronic consignment notes<sup>8</sup> should be encouraged as it simplifies the provision of relevant evidence. In this regard, it is important to ensure the acceptance of electronic information by the relevant authorities. The provided evidence, whether on paper or in electronic format, should be reliable and authenticated, depending on the format by a written signature, a stamp or an electronic authentication method. The regulatory framework and initiatives simplifying administrative procedures and the digitalisation of transport aspects should take into consideration developments at Union level.
- (12) The scope of the current economic support measures defined in Directive 92/106/EEC is very limited, consisting of fiscal measures (namely the reimbursement or reduction of taxes) which concern only certain types of combined rail/road transport operations. Other relevant measures for all modal combinations should also be encouraged in order to reduce the share of road freight and to encourage the use of other modes of transport such as rail, inland waterways and maritime transport to reduce air pollution, greenhouse gas emissions, road traffic accidents, noise and congestion.

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<sup>8</sup> Provided for in the Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) concerning the Electronic Consignment Note.

- (13) The main infrastructure bottleneck hampering the shift from road freight to other modes of transport is at the transshipment terminal level. The current distribution and coverage of transshipment terminals in the Union, including along the existing TEN-T Core and Comprehensive network, is insufficient, while the capacity of existing transshipment terminals is reaching its limit and will need to develop in order to cope with overall freight traffic growth. Investing in transshipment terminal capacity may reduce overall transshipment costs, and hence produce a derived modal shift, as demonstrated in some Member States. Member States may take measures to support investment that would ensure that a network of efficient combined transport transshipment terminals with sufficient transshipment capacity to meet existing and future demand for transport infrastructure will be available to transport operators. Such measures could take the form of national transport policy planning, dedicated land planning, public private partnerships, lease of national or municipal land for dedicated purpose or different state aid measures. This would make combined transport operations more competitive compared to unimodal road transport and thus incentivise the use of freight transport alternatives and increase modal shift.
- (13a) The increased coverage, efficiency and capacity of transshipment terminals should, at the very minimum, be established along the existing TEN-T Core and Comprehensive networks. In order for operations to be able to benefit from this Directive, and giving due consideration to population density, geographical or natural constraints, market conditions and trade and freight flows, a long-term aim should be to have on average at least one suitable transshipment terminal for combined transport located no further than 150 km from any shipment location in the Union. Coordination between Member States and, where appropriate, with the Commission would facilitate achieving this target.

- (13b) In particular when a terminal is supported with public money, it seems important that open access without discrimination is granted to all combined transport users, at least for a certain period of time. A minimum period of 5 years seems appropriate since, for example, contracts for co-funding terminals under the ESI fund-programme contain this provision.<sup>9</sup> A longer time period may, however, be foreseen by other contracts, programmes and/or Member States. Measures which document such open, non-discriminatory access (such as publishing information on charges for terminal services) could contribute to further promotion of intermodal transport and hence to a derived modal shift.
- (14) Member States may implement economic support measures in addition to the existing ones, targeting the various legs and elements of a combined transport operation. Such measures may, without prejudice to Articles 29 to 37 of Directive 2012/34/EU, include for example the reduction of certain taxes, infrastructure access charges, external cost charges, congestion charges or other transport fees, direct grants for transporting intermodal loading units in combined transport operations, partial reimbursement of transshipments cost, exemption from traffic bans, support for investments into digital solutions for combined transport.
- (15) Support measures for combined transport operations must be implemented in compliance with the State aid rules contained in the Treaty on the Functioning of the European Union (TFEU). Furthermore, taking into account the importance of such support for development of combined transport, the Commission should<sup>10</sup> ~~may~~ assess the possibility to design criteria for the compatibility with the internal market of certain types of aid for combined transport in the light of experience developed.
- (16) [...] (*moved to recital 13a*)
- (17) Support measures should also be reviewed on a regular basis by the Members States to ensure their effectiveness and efficiency.

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<sup>9</sup> As foreseen by Regulation (EU) 1303/2013, in particular Art.71

<sup>10</sup> In line with its comments on Article 6(8a), COM is against replacing the term “*may*” by “*should*”.



- (18) For the purposes of this Directive, there should not be a distinction between combined transport for hire or reward and own-account combined transport.
- (19) To cope with and allow an evaluation of the evolution of Union transport, and in particular of the combined transport market, relevant, comparable and reliable data and information should be gathered at Union level<sup>11</sup>, as well as by the Member States and reported to the Commission on a regular basis. The Commission should submit a report to the European Parliament and the Council on the application of this Directive every five years. Where available, and to avoid duplication of work and administrative burden, relevant combined transport related data and information from existing sources, such as EUROSTAT or national statistical databases, ~~can~~ should be re-used for that purpose.
- (19a) In order to ensure uniform conditions to facilitate the required reporting by the Member States, the Commission should adopt guidelines for the Member States describing the methods for compiling and presenting the information on combined transport operations referred to in Article 5(1).
- (20) Transparency is important for all stakeholders involved in combined transport operations. To support such transparency, it is important to ensure publication of all relevant rules, measures and contact details in an easily accessible way.
- (21) [...]

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<sup>11</sup> COM has a reservation on this recital, as Article 5 does not foresee any gathering of information at EU level.

(22) Since the objectives of this Directive to further promote the shift from road transport to more environmentally friendly modes of transport, and hence reduce the negative externalities of the Union transport system, cannot be sufficiently achieved by the Member States but can, by reason of the primarily cross-border nature of freight combined transport and interlinked infrastructure, and of the problems this Directive is intended to address, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(23) Directive 92/106/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 92/106/EEC is amended as follows:

(1) the title is replaced by the following:

“Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of international combined transport of goods”;

*new Article 1a:*

The purpose of this Directive is to contribute to the reduction of air pollution, greenhouse gas emissions, road traffic accidents, noise and congestion by promoting the development of combined transport operations and to encourage the modal shift of freight transport from road to other modes of transport such as rail, inland waterways and maritime transport by increasing the competitiveness of combined transport operations compared to road freight.

(2) Article 1 is replaced by the following:

“Article 1

1. This Directive applies to international<sup>12</sup> combined transport operations.
2. For the purposes of this Directive, ‘international combined transport’ means carriage of intermodal loading units (loaded or empty) by a transport operation between Member States, or between Member States and a third country, consisting of an initial or final road leg of the journey, or both, as well as one or more non-road legs of the journey using rail, inland waterway or maritime transport:

Intermodal loading units shall be understood to be:

- (a) a trailer or semi-trailer, without a tractor unit, swap body or container, identified, in accordance with the identification regime established pursuant to international standards ISO6346 and EN13044, where the unaccompanied intermodal loading unit is transhipped between the different modes of transport; or
- (b) a road vehicle (a lorry with or without a trailer, or a semi-trailer with a tractor unit), or a non-cranable semi-trailer<sup>13</sup> carried by rail, inland waterways or maritime transport for the non-road leg of the journey.

[...] <sup>14</sup>

- 2a. This Directive shall only apply to those combined transport operations in which at least one of the non-road legs has an equivalent viable road transport alternative and thus the total operation brings along modal shift in the Union.

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<sup>12</sup> COM has a reservation on the scope. In the COM's view, it reduces the scope of the proposal by 20%.

<sup>13</sup> COM has a reservation on the exclusion of non-cranable semi-trailers from identification requirements.

<sup>14</sup> COM, supported by BE, LU and PT, would prefer to maintain the an obligation for identification for non-cranable semi-trailers after a transitional period.

3. Each road leg referred to in paragraph 2 shall not exceed 150 km in distance as the crow flies;<sup>15</sup>

That road leg distance limit shall apply to the total length of each road leg, regardless of any intermediary pick-ups on the initial leg and deliveries on the final leg of the journey. The transport of empty loading units before an initial or after a final road leg (such as from or to a container depot) is not considered as part of a combined transport operation.

- 3a. If a road/rail<sup>16</sup> terminal suitable in terms of transshipment equipment and/or terminal capacity cannot be found within a distance of 150 km as the crow flies, this road leg distance limit may be exceeded for combined transport operations, in order to reach the geographically nearest suitable transport terminal which has the necessary operational transshipment capability in accordance with rules specified by the Member States. For this purpose, Member States shall identify if the necessary operational transshipment capability<sup>17</sup> is not available and identify the suitable alternatives<sup>18</sup>. Member States shall publish these rules.

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<sup>15</sup> COM has a reservation on the deletion of the 20% limit and the related reference in Article 3. PL supports the COM proposal on this issue.

<sup>16</sup> MT, PL and PT suggest to add maritime ports.

<sup>17</sup> COM has a strong reservation regarding the reduction of eligibility for support below today's level. COM suggests to replace this paragraph with the following language: *"If a road/rail terminal suitable in terms of transshipment equipment, terminal capacity, terminal opening times and/or appropriate rail freight services cannot be found within a distance of 150 km as the crow flies, this road leg distance limit may be exceeded for combined transport operations, in order to reach the geographically nearest suitable transport terminal which has the necessary operational transshipment capability."*

<sup>18</sup> COM, supported by BE and LU, prefers the previous version of this text, with harmonised rules at EU level.

- 3b. A Member State may decide not to apply the support measures provided in Article 6 of this Directive to a road leg which is transiting its territory without loading or unloading freight. That Member State may decide that, for the purposes of Directive 96/53/EC, such a road leg shall not be considered as part of a combined transport operation. Member States shall publish these rules.<sup>19 20 21</sup>
4. Where a combined transport operation starts and/or ends outside of the Union, this Directive shall apply to the part of the operation in the Union if:
- (a) the part of operation taking place in the Union fulfils the requirements laid down in paragraphs 2, 2a and 3, 3a and 3b and
  - (b) the non-road leg that crosses a Union border is at least 100 km long in the Union."<sup>22</sup>
- (3) Article 3 is replaced by the following:

“Article 3

1. Member States shall ensure that road transport is considered forming part of a combined transport operation covered by this Directive only if the haulier carrying out the given road transport operation can produce clear evidence that such road transport constitutes a road leg of a combined transport operation.
2. The evidence referred to in paragraph 1 shall comprise the following information:
  - (a) the name, address and contact details of the shipper or the operator who organises the combined transport operation on behalf of the shipper.

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<sup>19</sup> COM has a strong reservation on this paragraph.

<sup>20</sup> IT, PL, SI and FI have a reservation on this paragraph.

<sup>21</sup> SI suggests an alternative wording for this paragraph: „*The transit of an EU MS within the initial or final road leg of combined transport is only allowed/possible if the MS does not offer a suitable combined transport terminal.*”

<sup>22</sup> PL has concerns about this paragraph, because it excludes terminals which are close to the border.

- (b) identification of the intermodal loading unit transported, or in case an road vehicle is carried in a non-road leg, identification of this road vehicle;
- (ba) the name, address and contact details of the consignee;
- (c) the combined transport operation routing:
  - the places where each of the different legs of combined transport start and end in the Union and respective dates;
  - the following distances:
    - (i) distances as the crow flies for each road leg in the Union;
    - (ii) [...] <sup>23</sup>;
    - (iii) combined transport operations subject to Article 1.4 (b), the distance of the non-road leg in the Union
  - The road leg may only exceed 150km in accordance and compliance with the relevant rules of the Member States referred to in Article 1(3a) <sup>24</sup>;
  - In case of an initial road leg, a confirmation from the first/following transshipment terminal to prove that the identified intermodal loading unit will be transhipped between modes of transport, including the place and date, or a confirmation from the respective non-road leg operator(s) that the identified intermodal loading unit or road vehicle will be carried by them as part of this combined transport operation, including the place and date of point of pick-up;

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<sup>23</sup> COM has a reservation on the deletion of this point, in connection with the deletion of the 20% limit from Art. 1(3)(b).

<sup>24</sup> COM proposes to delete this subparagraph, in order to reflect the proposed amendment in FN 15 in Art. 1(3a) and reinsert the language from the BG Progress Report: " " - *if the road leg exceeds 150km as the crow flies, the justification for exceeding the distance in compliance with to the conditions set out in Article 1(3a)*".

- in case of the final road leg, a confirmation from the last transshipment terminal to prove that the identified intermodal loading unit has been transhipped between modes of transport, including the place and date, or a confirmation from the respective non-road leg operator(s) that the identified intermodal loading unit or road vehicle has been carried by them as part of this combined transport operation, including the place and date of delivery.
- 2a. Any evidence referred to in paragraph 1 shall be duly authenticated.
  3. Existing evidence or documents can be used if all the information required according to Article 3(2) is provided. In that case, no additional evidence or document shall be required in order to prove that the haulier is carrying out a combined transport operation.
  4. The evidence referred to in paragraph 1 shall be presented upon the request of the authorised inspecting officer of the Member State where the check is carried out. It shall be in an official language of that Member State or in English.
  - 4a. In the case of roadside checks, the driver shall be allowed to contact the head office, the transport manager the shipper or the operator who organises the combined transport operation on behalf of the shipper or any other person or entity which may support him in providing the information referred to paragraph 2. This information shall be provided within the duration of the road-side check<sup>25</sup>.
  5. Such evidence may be presented electronically, using a revisable structured format which can be used directly for storage and processing by computers.

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<sup>25</sup> In alignment with the latest compromise in Article 8(4a) of Regulation (EC) No 1072/2009.

6. In the case of road side checks, a discrepancy of the transport operation with the provided evidence, notably as regards the routing information referred to in point (c) of paragraph 2 shall be permitted, if duly justified, in case of exceptional and unforeseen circumstances outside the control of the haulier(s) causing changes in the combined transport operation. To provide the required proof, the driver shall be allowed to contact the head office, the transport manager, the shipper or the operator who organises the combined transport operation on behalf of the shipper, or any other person or entity which may provide additional justification on this discrepancy between provided evidence and actual operation.";

(4) Article 4 is replaced by the following:

**“Article 4**

- 1. All hauliers established in a Member State who meet the conditions of access to the occupation and access to the market for transport of goods shall have the right to carry out, in the context of an international combined transport operation, initial and/or final road legs.**
- 2. By derogation from the first paragraph, Member States may, where necessary to avoid misuse by carrying out unlimited and continuous services for the initial or final road legs within a host Member State, provide that the last unloading of such a road leg takes place within a defined period after the vehicle entered that host Member State. That period shall not be shorter than 5 days. A Member State having made use of this possibility shall also establish the period following the end of the haulier's operations relating to such road legs during which the same vehicle or, in the case of a coupled combination, the motor vehicle of the combination, may not be used in that host Member State for such initial and/or final road legs or cabotage operations as defined in Regulation (EC) No 1072/2009. That period shall not exceed 7 days.**



3. **Member States making use of the derogation foreseen in paragraph 2 shall, in addition to what is provided for in Article 3, ensure that road transport is considered forming part of a combined transport operation covered by this Directive only if the haulier carrying out the given road transport operation can produce clear evidence of the relevant preceding operations and when the vehicle entered the host Member State.**
  4. **Member States making use of the derogation foreseen in paragraph 2 shall notify the Commission thereof before applying the relevant national measures. They shall review those rules at least every 5 years and notify that review to the Commission. They shall make the rules, including the length of the respective periods, publically available in a transparent manner."**
- (5) Article 5 is replaced by the following:

“Article 5

1. Member States shall submit to the Commission in the first instance by [*xx/xx/xxxx - 18 months after transposition of the Directive*] and every [five] years thereafter a report providing information related to the combined transport operations covered by this Directive on their territory. The report shall contain information and statistics, where available,<sup>26</sup> related in particular to main national and cross-border transport network corridors used in combined transport operations, the number of vehicles (a road train counting as a single vehicle), swap bodies and containers transported, transported tonnages, a list of transshipment terminals servicing combined transport operations and an overview of all national support measures applied and envisaged.
  - (a) [...];
  - (b) [...];

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<sup>26</sup> COM has a reservation on limiting the reporting to readily available information, thus reducing the obligation below today's level.

- (c) [...];;
  - (d) [...].
2. The Commission shall adopt guidelines for the Member States describing the methods for compiling and presenting information on combined transport operations referred to in paragraph 1.
3. On the basis of an analysis of the national reports and of data existing at Union level, in the first instance by [xx/xx/xxx - 9 months after the MS report submission deadline] and every [five] years thereafter the Commission shall draw up and submit a report to the European Parliament and to the Council on:
- (a) the economic development of combined transport;
  - (b) [...],
  - (c) [...],
  - (d) possible further measures, including a revision of the definition of combined transport as defined in Article 1 and an adaptation of the list of measures provided for in Article 6."

[Article 6]

- (6) In Article 6 the following paragraphs 4, 5, 6, 7 and 8 are added:
4. "Member States may<sup>27</sup> take measures for the achievement of the objective of this Directive to support investment in transshipment terminals as regards:
- (a) the construction and, where necessary, the expansion of such transshipment terminals for combined transport;

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<sup>27</sup> COM is against changing "shall" to "may" and proposes the following wording: '*...Member States shall take the necessary measures to encourage investment in ....*'

(b) the increase of operational efficiency in existing terminals.

4a. [...] <sup>28</sup>

Member States shall ensure that open access is granted to all operators without discrimination for all publicly supported transshipment facilities for a minimum period of 5 years or for a longer period where appropriate and/or if foreseen by a Member State and in accordance with Union law. Member States may establish additional conditions for the eligibility for the support.

5. Member States may take additional measures to improve the competitiveness of combined transport operations as compared to equivalent road transport operations.

Such measures may, without prejudice to Articles 29-37 of Directive 2012/34/EU, address any or part of a combined transport operation, such as the operation of a road or non-road leg, the vehicle, vessel or intermodal loading unit used or the transshipment operations.

6. Member States shall communicate without delay the text of the support measures taken pursuant to this Article to the Commission.

7. Member States shall periodically re-evaluate the needs of the combined transport market and where necessary adapt the measures for the support of combined transport.

8. [...]

8a. The Commission shall <sup>29</sup> assess the possibility to design operational criteria for the compatibility with the internal market of certain types of aid for combined transport in the light of experience developed <sup>30</sup>.";

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<sup>28</sup> COM is proposing to keep the text in a simplified form, as follows: "*Member States shall ensure that, when such measures are implemented, priority is given to ensuring a sufficient geographical distribution of suitable facilities in the Union, and in particular on the TEN-T core and comprehensive networks.*"

<sup>29</sup> COM is against the use of the term „shall“ and considers that the term „may“ must remain

<sup>30</sup> Regarding state aid, EL prefers the previous wording contained in BG Presidency's Progress Report (doc. 7864/18)

- (7) Articles 7 and 9 are deleted.
- (8) The following article is inserted:

“Article 9a

1. [...]
2. [...]
3. Member States shall publish in an easily accessible manner and free of charge the information relevant for the purposes of the application of this Directive, including the support available for economic operators and contact points in the relevant national authorities. Member States shall notify to the Commission the place where that information is published as well as the contact details and the different tasks of relevant national authorities.
4. The European Commission shall publish and keep up-to-date a list of contact points of relevant national authorities and implementing measures of Member States communicated to it, including those referred to in Article 1(3a) and (3b)";

- (9) The following article is inserted:

*Article 2*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by XXXXXX [ two years after the entry into force of the Directive.] at the latest. They shall immediately inform the Commission thereof. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 3*

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

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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