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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/ Council
No. prev. doc.:	6398/2/18 REV 2 TRANS 79 CODEC 218
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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) – Progress report

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/EEC¹ (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.

¹ 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 is foreseen for 10 July 2018.

IV. WORK WITHIN THE COUNCIL BODIES

7. 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.
8. The Impact Assessment (IA) of the proposal was discussed in detail on 12 and 25 January 2018. 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.
9. As regards the policy options, several delegations expressed doubts about the proposal's apparent focus on the road leg. In this context, some delegations pointed out that at national level, a possible unforeseen consequence might be to end up with only road transport on their own territory, while other transport modes would be used on the territories of other Member States.

10. In respect of support measures in general, several 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. They also would have welcomed more detail on the envisaged support measures and their impact on national budgets.
11. Finally, many delegations considered that the mutual impact of this proposal and of some of the proposals of the first mobility package would have needed additional study; 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.
12. This file was discussed in the Working Party on 12 and 25 January, 28 February, 9 and 28 March, 20 April, 4 and 15 May. Delegations welcomed the revision of the Directive and its objective to further promote and support the modal shift and the use of combined transport in order to decongest the Union roads and to lower transport emissions as much as possible. At the same time, most delegations pointed out the link with other files from the mobility package, namely Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market in relation to cabotage rules, and the Directive amending Directives 96/71/EC and Directive 2014/67/EC concerning the posting of drivers in the road transport sector² -the so-called '*lex specialis*'. In this respect, they insisted 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.

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

13. On the basis of the comments and suggestions made by the delegations, the BG Presidency compromise text proposes solutions and clarifications on a number of issues, such as:
- the extension of CT operations to allow non-road legs under the minimum 100 km non-road criterion for inland waterways operations around ports or for maritime crossings avoiding commercially viable road alternatives. However, some delegations propose to go back to the 100 km of the current Directive because they have short maritime crossings with no viable road alternative which would be excluded from the scope of the Directive.
 - a transitional period of 4 years for non-cranable semi-trailers without a driver, during which identification according to the international standards ISO6346 and EN 130044 will not be an obligation. All other loading units or road vehicles with a driver will have to be identified according to the above-mentioned international standards in order to be used for CT operations. The purpose of this compromise is to facilitate CT operations - especially with respect to transshipment in terminals and enforcement - while allowing at the same time smaller hauliers who don't regularly engage in CT operations to benefit from the advantages offered by the CT Directive without the obligation of identification according to the above-mentioned international standards. However, after the 4 year transitional period, this identification will be mandatory for all CT operations;
 - an alignment with Regulation 1072/2009 as regards the period of time during which, for road-side checks, the driver may contact the operator or the transport manager in order to help him provide the evidence proving a CT operation. However, this is to be understood as an exception from the desired general rule, namely that all necessary evidence should be on board at all times and immediately available for checking;
 - a report submitted by the Member States to the Commission every 5 years on information and statistics related to the implementation of the CT Directive in their territory. In order to avoid duplication of work and administrative burden, Member States may make use of existing EUROSTAT or national statistics databases.

V. MAIN OUTSTANDING ISSUES

a) **Scope of the Directive, cabotage rules and posting of drivers**

14. The Commission proposal extends the scope of the current Directive to national combined transport operations in order to incentivise CT operations, but proposes to leave 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 the initial/final road leg needs to be part of a CT operation between Member States. Following the European Court of Justice's decision in C-2/84, the proposal considers a CT operations a single operation from departure to arrival - regardless of the fact that the road leg may take place entirely on the territory of a Member State - and therefore assesses the advantages of CT operations at Union level.

15. Several Member States have expressed concerns about the fact that the Directive would now apply to all CT operations, including within Member States. Some delegations propose to revert to the scope of the current Directive (i.e. international CT operations) because, in their understanding, this would be equivalent with liberalisation of domestic cabotage. Others propose to clarify the application of Articles 2 and 4 in the context of the extended scope. They point out potential increased problems of illegal cabotage or of unfair competition due to the fact that certain hauliers from other Member States would be able to offer cheaper services than some of the domestic hauliers. These delegations argue that offering the liberalisation of cabotage as an incentive to counter-balance the inherent higher costs of combined transport operations may not be the best policy choice to encourage the reduction of road transport and that there should be coherence between the international transport of goods in the Union and the desired modal shift. Consequently, some of these delegations propose the complete deletion of Article 4. On the other hand, other delegations point out that there is no impact assessment on the deletion of Article 4, so it would be difficult to assess the consequences of such a substantial change. They also stress that the stakeholder consultations have not called for the deletion of Article 4. They express serious doubts about it, and recall that cabotage rules in this Directive are to be understood as defined in the '*market access*' Regulation. Delegations have also pointed out the issue of cabotage operations is closely linked to the posting of drivers rules foreseen by the Article 2(2) of the *lex specialis*, namely to the time threshold for the application of the rates of pay and annual paid holidays of the host Member State.

16. In this respect, the interpretation of the Commission proposal is that the rules applicable to international road transport would apply to international combined transport operations, while the applicable to national road transport would apply to national combined transport operations. On the basis of this understanding, the provisions agreed in the *lex specialis* would be applicable to combined transport as well, and the great majority of delegations have repeatedly insisted that these rules have to be carefully balanced to avoid social dumping for the sake of incentivising combined transport operations. For that reason, the BG Presidency has decided to place recital 7 referring to the application of the above-mentioned legislative acts to combined transport in square brackets (i.e. to be decided at a later stage), in order to allow the negotiations in the *market access* Regulation and in the *lex specialis* Directive to reach an agreement.
17. Another issue related to the extension of the scope of the Directive is the application of Article 6(1), which refers to taxes which Member States must reduce for combined transport operations. One delegation recalls that taxation issues should be decided by unanimity, and proposes to maintain the application of Article 6(1) to international CT operations (between member States) as foreseen by the current Directive.

b) Eligibility of combined transport operations

18. For the purpose of a CT operation, the Commission proposal specifies that each road leg of a CT operation must be capped at a maximum of 150 km or at 20% of the total distance inside the Union as the crow flies. The proposal also removes the limitation on the non-road legs, in order to bring more important CT operations within the scope of the Directive. It also proposes the identification of intermodal loading units in order to facilitate their transfer and traceability during CT operations.

19. Many delegations do not agree with the 20% criterion, because it may allow very long road legs, which for some Member States may cover the entire country. They propose to keep only the 150 km cap - already an extension from the 100 km of the current Directive - which they argue could even be interpreted as favouring longer road legs and thus in a way contradicting the expressed main objective of the proposal, namely to encourage a modal shift. On the other hand, some delegations would prefer to revert to the 100 km current eligibility criterion.
20. Moreover, some Member States would like to avoid the situation of being entirely transited by the road leg of a CT operation and being obliged to offer incentives for that CT operation at the same time, when the modal shift does not even take place on their territory. Even though they understand the point of view of the Commission proposal - namely that the modal shift should be sought at Union level - these delegations find it difficult to offer tax or road charges reductions for CT operations when the road legs continue to take place on their territory and their country will actually not see any reduction in road traffic. For this reason, the BG Presidency compromise text proposes to make the support measures of the Directive optional, so that a Member State has the possibility to assess and decide in which situation the support measures of the Directive are appropriate to be offered to CT hauliers.
21. Other Member States welcome the extension of the maximum cap of the road leg to 150 km or 20% of the total distance within the Union, as they agree with the Commission's conclusion that it would trigger a positive increase in combined transport volumes.

22. As a consequence, the compromise text of the BG Presidency proposes to delete the 20% criterion in combination with the possibility for the operators to extend the 150 km cap, if necessary to reach the geographically nearest suitable transshipment terminal and thus maintain a certain necessary flexibility. The BG Presidency compromise text had also proposed that the requirements necessary for terminals as regards their transshipment capability would be specified in an implementing act, thus allowing the direct involvement of Member States in the choice of terminals used for CT operations. Moreover, in addition to the evidence proving CT operations specified in Article 3, drivers will also need to provide the justification for the necessity to exceed the 150 km road limit. However, in the Working Party meeting on 15 May, a large number of delegations rejected the implementing act as a compromise solution for the extension of the road legs to the nearest suitable terminal. They explained that work is still necessary to seek the necessary safeguards which would ensure avoiding potential abuse by the operators in their choice of more remote transshipment terminals beyond the 150 km road limit.

c) Geographical distribution of terminals and economic support measures

23. As the results of the stakeholders' consultations indicated that the measures considered to have the strongest positive impact on CT volumes would be support for direct investment in CT terminals, for IT investment and reduction in access charges for rail-specific CT operations, the Commission proposes mandatory support measures to promote Member States' investment in CT infrastructure and facilities, especially the geographical density of transshipment terminals. For that reason, the Commission proposes that loading points and terminals should not be - on average - more than 150 km apart. The proposal also provides for optional additional measures which Member States may use to reduce the costs of CT operations and to make them more competitive compared with road-only operations.

24. Member States are in favour of the development of CT infrastructure as an important step towards reducing road freight and emissions. However, a large group of delegations do not support the distribution of transshipment terminals on the basis of geographical criteria and emphasise that their number and location should be decided by market needs. Moreover, these delegations argue that, for subsidiarity reasons, investment on the basis of national budgets should not be an obligation and should be the decision of Member States. Member States have also pointed out that more flexible state aid rules and coordination with the CEF and TEN-T initiatives would be useful in this respect.
25. In order to take care of the above concerns, the Presidency compromise text proposes to transform the obligatory investment support into an optional provision. However, some delegations support the Commission text and argue that by making investment optional, the provision becomes devoid of content and is no longer necessary, since Member States do not need a Directive to give them permission to provide for measures at national level.

VI. OTHER OUTSTANDING ISSUES

- *a standardised Union form for combined transport operations evidence*

26. A number of delegations is proposing the creation of a standardised Union form for the evidence necessary in a CT operation. The intention of the Commission proposal is that the list foreseen in Article 3(2) would constitute such a form in and by itself, leaving the operator the freedom of choice to present the evidence either on paper or electronically, without the additional burden of a new form. However, the above-mentioned delegations emphasise that such a form would replace the evidence in Article 3(2), would additionally avoid the translation problems and would therefore simplify the presentation of the evidence and facilitate the enforcement of the Directive.

- *non-discriminatory access to publicly supported transshipment terminals*

27. Article 6(4) of the proposal creates an obligation for the Member States to ensure non-discriminatory access to transshipment terminals. However, a number of delegations point out that this provision could not be applied indefinitely to private terminals even if they have benefited from government support, because they should have the freedom to run their business as they see fit. For that reason, they propose to introduce a deadline beyond which terminals should no longer have this obligation.
28. 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 are marked with **bold** and ~~strike through~~.
29. The Commission fully reserves its position on the entire compromise proposal, pending the negotiations with the European Parliament.
30. DK, MT and UK have a parliamentary scrutiny reservation on the proposal.

VII. CONCLUSIONS

31. Coreper and Council are invited to take note of the substantial progress achieved under the Bulgarian Presidency and that a number of issues need to be further clarified. Therefore, the competent Council preparatory bodies should be invited to pursue the examination of the proposal in order to achieve an agreement on it at the next TTE Council.

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 Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

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.

³ OJ C , , p. .

⁴ 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/EEC⁵ 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.

⁵ 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).

- (6) The volume of national intermodal operations constitutes 19,3% of the total intermodal transport in the Union. Such operations currently do not benefit from the support measures provided by Directive 92/106/EEC because of the limited scope of the definition of combined transport. However, the negative effect of national road transport operations, and notably greenhouse gas emissions and congestion, have an impact beyond the national borders. Therefore it is necessary to broaden the scope of Directive 92/106/EEC to national (intra-Member State) combined transport operations in order to support the further development of combined transport in the Union, hence an increase in the modal shift from road to rail, inland waterways and short sea shipping.
- (6a) Article 2 of Directive 92/106 EEC prohibits national quotas and authorisations for combined transport operations. The extension of the scope of this Directive to national combined transport operations should continue to prohibit such national restrictions when they are not based on EU law. Furthermore, Article 4 of this Directive continues to apply only to combined transport operations between the Member States.

- (7) [A combined transport operation is to be seen as one single transport operation that directly competes with a unimodal transport operation from the point of departure to the final destination. Regulatory conditions should ensure equivalence between international combined transport and international unimodal transport, and national combined transport and national unimodal transport respectively. In this regard it is important to point out that the relevant rules relating to posting of workers, including those set out in the *lex specialis* Directive and other social rules of transport continue to apply to combined transport operations. The application of these rules should take into account the character of the total transport operation. In particular, the rules on international road transport operations should apply to the road legs which are part of an international combined transport operation and the rules on transport by non-resident hauliers should apply to the road legs which are part of a national combined transport operation.]⁶
- (8) The current definition of combined transport 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. It would be useful to lift those ambiguities 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 would simplify the planning of combined transport operations.⁷

⁶ Wording clarifying the application of the different provisions of the *lex specialis* to be decided on at a later stage, depending on agreement reached in the discussions on the *lex specialis*

⁷ DK is proposing to clarify under which conditions the transport of empty loading units is to be considered part of CT operations.

- (9) In the current definition of combined transport, 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 through a tunnel such as 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, 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 ~~apply~~ **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.

- (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 transmission of transport information through electronic means such as in eCMR electronic consignment notes⁸ 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.

⁸ 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.

- (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 transhipments 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 assess which types of support measures could be considered to be compatible with internal market in application of Articles 107 and 108 of the Treaty.
- (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.
- (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 by the Member States and reported to the Commission on a regular basis and 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 be re-used for that purpose.

- (19a) In order to ensure uniform conditions to facilitate the required reporting by the Member States, implementing powers should be conferred on the Commission ~~to specify the operational transshipment capability of a terminal and~~ lay down the **detailed** content and ~~details~~ of information on combined transport operations. Those powers should be *exercised* in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁹.
- (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) [...]
- (21a) [...]. (*moved to recital 19a*)
- (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 rather, 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/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

⁹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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 combined transport of goods¹⁰”;

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 combined transport operations.
2. For the purposes of this Directive, ‘combined transport’ means carriage of goods by a transport operation, consisting of an initial or final road leg of the journey, or both, as well as a one or more non-road legs of the journey using rail, inland waterway or maritime transport:

¹⁰ BE, DE, DK, EL, SE are against the extension of the scope of the Directive to include national combined transport.

- (a) in a trailer or semi-trailer, with or without a tractor unit, swap body or container, identified, in accordance with the identification regime established pursuant to international standards ISO6346 and EN13044, ¹¹where the unaccompanied intermodal loading unit is transhipped between the different modes of transport; or
- (b) by a road vehicle accompanied by its driver and carried by rail, inland waterways or maritime transport for the non-road leg of the journey (accompanied transport operation).

By way of derogation, point (a) of this paragraph shall until [*OJ please insert date 4 years after ~~entry into force~~ **the transposition referred to in Article 2 of ~~the~~ this Directive***] also cover non-cranable semi-trailers in unaccompanied combined transport that are not identified in accordance with the identification regime established pursuant to international standards ISO6346 and EN13044¹².

- 2a. This Directive shall not apply to those combined transport operations which do not bring along modal shift in the Union, when none of the non-road legs ~~is~~ has an equivalent viable road transport alternative¹³.
- 3. Each road leg referred to in paragraph 2 shall not exceed:
 - (a)—150¹⁴ km in distance as the crow flies;

¹¹ RO proposes to add: "... with a total maximum length of 45 feet,..."

¹² AT, supported by DE, is against the obligation to identify non-cranable semi-trailers on the basis of these standards.

¹³ FI proposes 50 km for the non-road leg, or to revert to the minimum 100 km of the current Directive. DK and HU propose at least 50 km for the non-road leg.

¹⁴ AT, supported by BE, DK, SI proposes a shorter distance, or exemptions for certain countries because of their specific situations. DK proposes 120 km, as a compromise. HR would support 100 km, but could also accept 120 km as a compromise. CZ and SK do not support further reduction of the 150 km limit. EE and PL support the COM proposal. LT would prefer to keep the 20% in point b)

~~(b) 20% of the distance as the crow flies of the total combined transport operation in the Union.~~

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 road leg distance limit may be exceeded for combined transport operations in order to reach the geographically nearest transport terminal which has the necessary operational transshipment capability for loading or unloading in terms of transshipment equipment, terminal capacity, terminal opening times and appropriate freight services.

~~¹⁵The Commission shall adopt by [date to be added] an implementing act to further specify the operational transshipment capability of a terminal as regards equipment, terminal capacity, opening times and appropriate freight services. That implementing act shall be adopted according to the examination procedure referred to in Article 10b(2).~~

Member States shall, from [date as in previous subparagraph + 12 months] publish and update the list of terminals fulfilling the necessary transshipment capability.

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 and 3, and
 - (b) the non-road leg that crosses a Union border is at least 100 km long in the Union¹⁶."

¹⁵ AT, CZ, DE, DK, EL, ES, HU, NL, PL, RO, SE are against this implementing act. IT and LU support the paragraph as it is. COM has a reservation on the deletion of the IA, whose purpose is to define harmonised criteria for the necessary operational transshipment capability of those terminals. HU proposes to define these criteria in the Directive.

¹⁶ LT and RO propose to add: '*or the nearest suitable terminal*' - for flexibility, to adapt to the existing infrastructure

4a. A Member State may decide not to apply the support measures provided by this Directive¹⁷ to combined transport operations with regard to a road leg that is ~~merely~~ transiting its territory without loading or unloading freight. ¹⁸

(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 information¹⁹:
 - (a) the name and address of the shipper or the operator who organises the combined transport operation on behalf of the shipper.
 - (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;

¹⁷ AT, supported by DK, HR, NL, SE and SI, propose to add the following: "...including the weight advantages foreseen in Directive 96/53/EEC, ..."

¹⁸ COM has a strong reservation on this new paragraph. CZ, ES, HU, IT, PL are against this paragraph.

¹⁹ CZ, EL, HR, HU, IE, PL and RO propose the creation of a standardised EU form for combined transport evidence, to make it easier for operators to present the evidence, and to facilitate enforcement. SI would support this idea if this form replaced the evidence foreseen in Article 1. COM explains that the list of evidence in Article 3(2) constitutes such a form and is already provided in the transport documents of the driver.

- (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) [...];²⁰
 - (iii) combined transport operations subject to Article 1.4 (b), the distance of the non-road leg in the Union
 - if the road leg exceeds 150 km, the justification for exceeding the distance according to the conditions set out in Article 1(3) ;
 - in case of the final road leg, confirmation from the last transshipment terminal that the identified intermodal loading unit has been transhipped between modes of transport, including the place and date, or in case this is not available, confirmation from the respective non-road leg operators 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. No additional evidence or document shall be required in order to prove that the haulier is carrying out a combined transport operation.

²⁰ In line with footnote 10, COM has a strong reservation on this deletion.

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 [45 minutes]²¹ from the start of the road-side check.
5. Such evidence may be presented electronically, using a revisable structured format which can be used directly for storage and processing by computers.
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 that end, 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.";

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²¹ Time should be aligned with Article 8(4a) of Regulation (EC) No 1072/2009.

²² DK, supported by BE, IT, LU and SE, proposes the deletion of Article 4 of Directive 92/106/EEC.

(4) Article 5 is replaced by the following:

“Article 5

3. 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, 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) [...];
 - (c) [...];;
 - (d) [...].
4. The Commission shall adopt implementing acts²³ in accordance with Article 10b describing the **detailed** content ~~and details~~ of the information on combined transport operations referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10b(2).

²³ DE, supported by At and SI, is against the delegation of power to COM for this issue, the content and details of CT information needs to be included in the basic act itself, not in the secondary legislation.

5. On the basis of an analysis of the national reports, 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."

(5) In Article 6²⁴ the following paragraphs 4, 5, 6, 7 and 8 are added :²⁵

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4. "Member States may ~~shall~~²⁷ 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;
- (b) the increase of operational efficiency in existing terminals.

4a. [...] ²⁸

Member States shall ensure that publicly supported transshipment facilities are accessible to all operators without discrimination²⁹.

Member States may establish additional conditions for the eligibility for the support.

²⁴ In connection with the extension of the scope of the Directive in Article 1, NL suggests to keep the application of Article 6(1) to combined transport operations *between Member States*.

²⁵ AT, BE, CZ, EL, HR, IT, PL and SI propose to simplify the state-aid procedures, for instance by adding combined transport support to the Block Exemptions Regulation. PCY draws attention to the new text in recital 15 and the new paragraph 8a on this issue.

²⁶ BE, supported by LU, propose to extend paragraph 1 of Article 6 to all modes of transport, not just road and rail as in the current Directive.

²⁷ CZ would like a clarification of the wording and about how it can be transposed in national law. BE points out that now the level of ambition of the article has been lowered to the point of being unnecessary. COM is opposed to changing '*shall*' into '*may*' and proposes the following wording: '*...Member States **shall** take the necessary measures to **encourage** investment in*'

²⁸ Deleted text of this paragraph is now reflected in recital 13a. 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.*'

²⁹ DE and IT propose to add a deadline for non-discriminatory access. CZ and HU limit it to 5 years.

5. ³⁰Member 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^{31, 32}

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 re-evaluate their needs at least every [five] years and where necessary adapt the measures³³;
8. [...]
- 8a. The Commission shall undertake an assessment, in light of Articles 107 and 108 of the Treaty, of which types of support measures could be considered to be compatible with the internal market.";
- (6) Articles 7 and 9 are deleted³⁴.

³⁰ CZ, IT and PL propose to strengthen the language of this paragraph.

³¹ RO proposes the addition of the following text: "*..., respecting, where applicable, the principle of reciprocity between Member States*".

³² IT, supported by AT and CZ, proposes a new sentence as follows: "*Support measures to combined transport operations shall be considered compatible with the internal market within the meaning of Article 107(3) of the Treaty (TFEU) and shall be exempted from the notification requirement of Article 108(3) of the Treaty (TFEU), provided that they do not represent more than 35% of the cost of the operation.*"

³³ AT proposes to limit this obligation to financial support only and replace the 5 year frequency with "regularly".

³⁴ IT is against this deletion.

(7) The following article is inserted:

“Article 9a

~~6.~~ [...]

~~7.~~ [...]

8. 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.

9. [...]”;

(8) The following article is inserted:

“Article 10a

[...]”

"Article 10b³⁵

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.”

Article 2

10. 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.
11. 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.

³⁵ AT and DE propose the deletion of this article (no implementing act).

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
