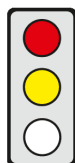


KEY ISSUES

Objective of the Directive: By reshaping and expanding the support criteria for "combined transport" (CT) more freight traffic will be shifted off the roads and onto railways and waterways.

Affected parties: Transport and logistics companies, railways, inland waterways and maritime transport



Pro: Limiting the initial and/or final road-leg of the journey to 150 km, or 20% of the total distance, creates greater flexibility and legal certainty.

Contra: (1) Using the subsidy model for supporting combined transport means that inefficiencies will be subsidised and there is a risk of deadweight effects.

(2) The generalised obligation on Member States, to support the "necessary investment" in transshipment terminals in order to reduce road freight, goes too far.

(3) The planned obligations on provision of evidence discriminate against CT due to the complex nature of the required information.

The most important passages in the text are indicated by way of a line in the margin.

CONTENT

Title

Proposal COM(2017) 648 of 8 November 2017 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**

Brief Summary

► Context and objectives

- By shifting freight transport off the roads and onto railways, inland waterways and the sea, the negative impact of freight transport - CO₂ and airborne pollution, accidents, noise and traffic congestion ("external effects") - will be reduced (Recitals 1 and 2).
- "Combined transport" (CT) is freight transport whose
 - main leg takes place by rail, inland waterways or sea and
 - only an initial and/or final road-leg of the journey takes place by road (Art. 1 (2)).
- The CT Directive [92/106/EEC] governs
 - permitted CT support measures by Member States – e.g. car tax reductions (Art. 6 (1) – and
 - conditions for the recognition of freight transport as eligible CT.
- The Commission wants to increase the competitiveness of CT thereby "strengthening" the shift away from road freight and reducing its negative impact (p. 3).

► Eligible "Combined Transport" (CT)

- In future, freight transport may also be recognised as eligible CT where
 - it takes place not only between countries but also simply within one country (amended Art. 1 (4)) or
 - it involves containers under 20 feet (6.096 m) in length (amended Art. 1) or
 - the main leg of the journey by rail, inland waterways or sea is shorter than 100 km as the crow flies; this does not apply to main legs by inland waterways or sea for which there is no economically viable alternative by road (amended Art. 1 (2) (b)).
- In future, a freight transport operation can only be recognised as eligible CT where both the initial and final road legs of the journey (amended Art. 1 (3)) are each
 - a maximum of 150 km as the crow flies or
 - a maximum of 20% of the total CT leg.
- Exceptionally, in the case of CT rail freight services, Member States may approve longer road-legs where this is necessary in order to reach the geographically "nearest" transshipment terminal ("hub") with the "necessary capability" for loading and unloading - transshipment equipment, capacity and "appropriate rail freight services" - (amended Art. 1 (3)).

► Expansion of CT support

- Member States must support the "necessary investment" in transshipment terminals for reducing road freight. This applies (new Art. 6 (4))
 - to the construction and, where necessary, the expansion of transshipment terminals and
 - the increase of efficiency in existing terminals.
- In this regard, Member States must coordinate with each other and with the Commission and ensure that (new Art. 6 (4))
 - priority is given to a "balanced and sufficient geographical distribution" of transshipment terminals EU-wide, and notably on the Trans European Transport Network (TEN-T, see [cepPolicyBrief](#)) so that
 - any location in the EU is never more than 150 km away from a transshipment terminal.
- Member States may take "additional measures" to make CT more competitive (new Art. 6 (5)). These may relate
 - to an entire CT transport operation or part thereof or
 - to the vehicle, load unit or transshipment operation used on such a leg,

► Documentation obligations for evidence of CT

- In the event of checks, lorry drivers must, in the case of an eligible CT transport operation, provide evidence thereof. Special CT documentation is no longer necessary. (new Art. 3 (3) and (4))
- The evidence must contain CT-relevant information such as (new Art. 3 (2))
 - routing and leg order, place of transshipment;
 - confirmation - signature or stamp - of the carrier on the main leg of the journey;
 - place and date where the CT transport operation begins and ends;
 - distance between departure and destination locations of the CT transport operations and of the initial and/or final legs of the journey.
- The evidence may (new Art. 3 (5))
 - be an "established transport document" supplemented by the information relevant to the CT,
 - also be provided electronically in a "revisable data format" - e.g. XML.

► Reporting

- Member States must report to the Commission every two years, inter alia about (amended Art. 5 (1))
 - the number and geographic coverage of transshipment terminals and the number of transshipments per year;
 - all national support measures, used and envisaged, including their "uptake" and "impact".
- The Commission must submit a report to the EU Parliament and the Council every two years, inter alia on (new Art. 5 (3))
 - the economic development of CT;
 - the effectiveness and efficiency of the support measures of the Member States.

► Cross-border cooperation and transparency

- The Member States must cooperate with each other across borders, provide each other with the "relevant" information and publish it (new Art. 9a (2) and (3)).
- The Commission must publish a list of the competent authorities and support measures (new Art. 9a (4)).

Main Changes to the Status Quo

- Until now, only freight transport between countries could be recognised as eligible CT. Now, this also applies to freight transport within a country.
- Until now, the main leg of the journey by rail, inland waterways or sea had to be at least 100 km long as the crow flies. Now this only applies to main legs on inland waterways or at sea for which there is no economically viable alternative by road.
- Until now, road-legs were limited to journeys to the nearest "suitable" transshipment terminal. Now all road-legs may be 20% of the total CT distance or 150 km.
- Until now, stamped transport documents had to be carried as evidence of CT. Now, existing documents can be used and may be presented electronically.

Statement on Subsidiarity by the Commission

Over 80% of freight transport takes place across borders by way of several modes of transport. According to the Commission, only EU rules on CT support measures by Member States can prevent these from having overlapping or "different results". In the case of investment support for transshipment terminals, only EU rules on coverage and cross-border coordination can prevent over-capacity. Extending the CT Directive to include purely national freight transport will reduce its negative effects which "have an impact beyond national borders" - such as CO₂ emissions and traffic congestion. (P. 6 et seq.)

Policy Context

The Commission wants to bring down CO₂ emissions from the transport sector by at least 60% by 2050, as compared with 1990 levels, reduce emissions of air pollutants, which are harmful to health "drastically and without delay" and curb noise and congestion costs ["Strategy for Low-Emission Mobility" [COM(2016) 501; see [cepPolicyBrief 30/2016](#)].

Legislative Procedure

8 November 2017	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Transport (leading)
Committees of the European Parliament:	Transport (leading), Rapporteur: Daniela Aiuto (EFDD Group, IT); environmental issues, public health and food safety, Rapporteur: TBA
Federal Ministries:	Transport and Digital Infrastructure (leading)
Committees of the German Bundestag:	TBA (leading);
Decision-making mode in the Council:	Qualified majority (adoption by 55% of the Member States making up 65% of the EU population)

Formalities

Legislative competence:	Art. 91 TFEU (Transport)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

By shifting some freight transport off the roads and onto railways, inland waterways and the sea, external effects such as CO₂ emissions and air pollution, as well as the cost of accidents and congestion, can be brought down and further sprawl of the landscape due to the expansion and construction of highways can be contained.

With the subsidy model being pursued by the Commission **to promote combined transport**, stakeholders receive financial support from the Member States, for transport services or the required vehicles, in order to mitigate the competitive disadvantages of CT as compared with other modes of transport. This gives rise to problems: Although, where subsidies are high enough, the desired result can be achieved, as with any centrally planned economic intervention, no-one knows what the optimum proportion of CT is or where or what level of funding is required. Consequently, **inefficiencies will also be subsidised**. In addition, this will cost taxpayers' money. **There is also the risk of deadweight effects**.

With a free-market approach, on the other hand, – apart from accounting for the proportional infrastructure costs as precisely as possible - prices would be attached to the CO₂ emissions and other external effects of all modes of transport. **The alternative option of charging for the external environmental costs of freight transport** would – even if only a rough approximation is possible – take away the competitive disadvantages of the more environmentally friendly modes of transport. This **would give the logistics companies an incentive to avoid the roads** whenever the **total amount of freight and environmental costs for using ship or rail is lower** than using the road. Controlling lorry drivers in CT and other bureaucratic procedures would be superfluous, as would subsidies. Instead, uniform pricing of CO₂ in the transport sector would have to be introduced. **The best way to achieve this is** – as regards pricing of CO₂ emissions – **to include the entire transport sector in an emissions trading system (ETS)** such as the EU-ETS or a transport-specific ETS (see [cepInput 05/2015](#)) **and** – as regards pricing of other external effects such as noise, congestion and land usage – **to adjust the charges for using roads, rail and waterways** so as to create a level playing field for all modes of transport.

The Commission's proposals can be evaluated as follows: Equal treatment of national and international CT avoids distortions of competition, particularly in border areas. The abolition of the 20-foot minimum length for containers may significantly impair the efficiency of CT and make it completely uneconomic because transshipment terminals and wagons are not designed for smaller units. The Commission's objective of ensuring that smaller containers are used for shorter distances can also be achieved by way of the private-sector development of adapters for 20-foot containers. The abolition of the minimum length for the main-leg of 100 km as the crow flies means that short distances on inland waterways will also constitute eligible CT. This means they are no longer subject to unjustified discrimination.

Limiting the initial and/or final road-leg of the journey to 150 km or, in the case of long transport routes, to 20% of the total distance, creates greater flexibility and legal certainty than the current reference – interpreted variously by the Member States – to the nearest "suitable" transshipment terminal. This makes CT more attractive but, in individual cases, may deter freight forwarders from using the nearest suitable transshipment terminal.

The generalised obligation on Member States, to support the "necessary investment" in transshipment terminals in order to reduce road freight, goes too far because, in principle, it applies up to the point where no more transport can be relocated - without taking account of cost efficiency. The requirement that any location should never be more than 150 km away from a transshipment terminal is inappropriate for sparsely populated regions where there is no industry. This clause should not be allowed to restrict Member States' freedom to decide whether they want to ensure this maximum distance or to use the exemption already contained in the Directive. On the other hand, the proposed obligation of the Member States to coordinate with each other and with the Commission is appropriate in order to ensure a reasonable geographical distribution of transshipment terminals in the EU - especially on the TEN-T network, as this will ensure the avoidance of over-capacity.

Where they are implemented, CT support measures should not, as proposed, be linked only to increases in efficiency in the existing transshipment terminals but also to increases in the efficiency of the whole system because one significant competitive disadvantage of CT is the additional time and cost involved in the repeated transshipment of the freight [see Impact Assessment SWD(2017) 362, p. 15], and without an increase in efficiency CT remains unattractive for medium distances despite subsidies. In addition to "mega-hubs" that re-sort loads from several trains at the same time, decentralised rail-supported horizontal transshipment systems would also be a starting point. These are sliding devices installed on railway vehicles that are positioned in stations on the track next to the arriving train and can then quickly load and unload containers and reload them onto feeder trains (cf. EU Project [IN.HO.TRA](#)). This significantly reduces initial and final road legs. Unless the support criteria are widened, there is a risk of focussing CT on long main legs between major transshipment terminals with correspondingly long initial and final road legs.

The planned upper limit for road legs of 20% of the entire CT distance requires much more detailed evidence than the existing criterion which requires road transport to go to the nearest "suitable" terminal. Although **the proposed evidence requirements** can be complied with more efficiently due to electronic formats, they **discriminate against CT due to the complex nature of the required information** – such as signed route plans and signatures or stamps of the freight forwarder on the main leg – as compared with transport purely by road.

Legal Assessment

Legislative Competency

The EU can adopt provisions for international transport – such as in this case cross-border CT freight transport – (Art. 91 (1) (a) TFEU). In addition, it can adopt "all appropriate provisions" to realise a single EU transport policy (Art. 91 (1) (d) TFEU), which apply – e.g. regarding transport-related environmental protection – equally to both international and national transport. Finally, the EU can act to protect the environment and the climate (Art 191 TFEU).

Subsidiarity

In principle, expanding European CT legislation to include purely national transport is problematic from the point of view of subsidiarity. This applies e.g. in the case of the envisaged reduction of the mainly local impact of road freight, such as noise. Nevertheless, shifting domestic freight transport away from roads may reduce its negative cross-border consequences – such as in particular CO₂ emissions and congestion on the European TEN-T network. In addition, the objective of ensuring that any location in the EU should never be more than 150 km away from a suitable transshipment terminal, requires cross-border coordination in order to avoid investment errors due to clustering at national borders. The requirements for this can only be established at EU level. Overall, the Commission Proposal is therefore compatible with the principle of subsidiarity.

Conclusion

Using the subsidy model for supporting combined transport means that inefficiencies will be subsidised and there is a risk of deadweight effects. The alternative option of charging for the external environmental costs of freight transport would give the logistics companies an incentive to avoid the roads whenever the total amount of freight and environmental costs for using ship or rail is lower. This can be achieved by including the entire transport sector in an emissions trading system and adjusting the charges for using roads, rail and waterways. Limiting the initial and/or final road-leg of the journey to 150 km, or to 20% of the total distance, creates greater flexibility and legal certainty. The generalised obligation on Member States, to support the necessary investment in transshipment terminals in order to reduce road freight, goes too far. The planned obligations on provision of evidence discriminate against CT due to the complex nature of the required information.