



*European Economic and Social Committee*

**TEN/651**  
**Combined transport of goods**

## **OPINION**

European Economic and Social Committee

**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  
[COM(2017) 648 final/2 - 2017/0290 (COD)]**

Rapporteur: **Stefan BACK**

Consultation	European Parliament, 29/11/2017 European Council, 04/12/2017
Legal basis	Article 91(1) of the TFUE
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	05/04/2018
Adopted at plenary	19/04/2018
Plenary session No	534
Outcome of vote (for/against/abstentions)	159/1/3

## **1. Conclusions and recommendations**

- 1.1 The EESC supports the initiative to update Directive 92/106 ("the Directive") to render the combined transport concept more efficient and attractive and render transport more sustainable in accordance with the aims set out in the 2011 White Paper on transport policy and the undertakings made under the Paris Agreement.
- 1.2 The EESC is in favour of extending the scope of the Directive to domestic operations to further reduce road transport.
- 1.3 The EESC also takes favourable note of the efforts to simplify the Directive to make the concept more attractive and improve legal certainty.
- 1.4 The EESC finds particularly useful the simplification of the delimitation of road transport legs, including the flexibility option opened to Member States which enables adaption to local conditions. Nevertheless, the EESC points out that the limit of 20% of the distance between the initial loading and the final unloading points could lead to road transport distances well above the 300 kilometres beyond which the 2011 White Paper on transport favours a successive modal shift away from road transport.
- 1.5 To facilitate access to information on the implementation of the Directive in each Member State and facilitate planning of combined transport operations, the EESC suggests an obligation on each Member State to make all pertinent information regarding the implementation of the Directive available on a dedicated website.
- 1.6 The EESC approves the clarification and simplification provided by the exhaustive enumeration of the documentation that should be available for compliance control as well as by the provision that those documents may be produced in electronic form. The EESC suggests that wherever applicable, any national decisions authorising a longer road leg should also be part of the documents to be produced.
- 1.7 The EESC appreciates the proposed obligation on Member States regarding investment in transshipment terminals and in particular the obligation to coordinate investments with neighbouring Member States. The EESC nevertheless questions whether the objective of a maximum distance of 150 kilometres from any location in the EU to the nearest terminal is realistic, bearing in mind the situation in areas with low population density and sparse rail and harbour networks and therefore suggests that a clear flexibility option should be provided.
- 1.8 In the EESC's opinion, to increase certainty and speed up the effects of incentives to this transport, support measures to combined transport shall be considered compatible with the internal market and shall be exempted from the notification requirement according to State aid rules provided that support is less than a pre-defined ceiling.
- 1.9 The EESC questions the usefulness of the proposed provision in Article 1(2) second paragraph which seeks to exclude certain inland waterway and maritime transport legs from being taken into account for combined transport operations. The EESC considers that this proposal is

unclear and prone to diverging interpretations and also questions its usefulness since no similar selection criteria, clearly based on the idea of excluding choices that do not need encouragement, have been considered necessary with respect to rail transport.

- 1.10 The EESC also finds it difficult to understand why the so-called "cabotage exemption" in Article 4 of the Directive remains unchanged. As a matter of transport policy, the EESC on this point first refers to the currently pending proposals regarding market access in international road transport of goods with respect to cabotage and the current debate on market access and competition, including social aspects. The EESC also points to the general principle that service provision in a country other than that where the service provider is established should be done on a temporary basis. In the opinion of the EESC, there is nothing to prevent a provision stipulating that road haulage legs within the framework of a combined transport operation are separate transport operations, except where the entire transport operation is carried out with one lorry or one vehicle combination including the tractor and that Regulation (EC) 1072/2009 applies to all operations. Article 4 of the Directive should be amended accordingly.
- 1.11 The EESC finds it surprising that the provision in Article 2 of the Directive which requires Member States to liberalise the combined transport operations referred to in Article 1 from all quota systems and systems of authorisation by 1 July 1993 is not included in the proposals to amend the Directive. As it now stands and in view of the extended scope of the Directive, this article could be interpreted as having a wider effect than probably intended, in particular regarding market access. The EESC would therefore suggest that this article be rephrased or deleted.
- 1.12 The EESC takes note that the proposal to amend the Directive remains silent as to the applicability on combined transport of Directive 96/71 EC on the posting of workers. The EESC assumes that this directive will also apply with respect to combined transport operations and that this applies also with respect to the proposed *lex specialis* on posting in road transport proposed by the Commission (COM(2017) 278).
- 1.13 The EESC would also underline the significant potential of digitalisation for facilitating and promoting combined transport. A few examples of possible ways forward have been mentioned above. The potential for development in this field is considerable for transport as a whole, including in combined transport.
- 1.14 The EESC recommends that the possibility of a solution concerning transport costs, similar to Council Regulation (EC) 1405/2006, should also be examined by the Commission with respect to Cyprus and Malta.

## **2. Background**

- 2.1 On 8 November 2017, the European Commission presented the second part of its mobility package headed by the keynote communication "Delivering on low-emission mobility" (COM(2017) 675).

2.2 The second part of the package includes the following proposals:

- A proposal for new CO<sub>2</sub> standards for cars and vans post-2020 with a proposal for the revision of Regulation (EC) 715/2007 with enhanced emission standards.
- A proposal for the revision of the Clean Vehicles Directive 2009/33/EU to strengthen the provisions promoting public procurement of such vehicles.
- A proposal to amend Directive 92/106/EC on combined transport to further promote such transport with a view to encouraging transport concepts that reduce road transport.
- A proposal to amend Regulation (EC) 1073/2009 on access to the international market for bus and coach services in order to open up this market further and so promote cheaper public transport by bus in order to reduce car travel.
- The package also contains an action plan on alternative fuels infrastructure in order to boost investment in the construction of such infrastructure, and so facilitate cross-border mobility in the EU using such fuels.

2.3 The package includes a combination of supply- and demand-oriented measures to put Europe on the path to low emission mobility and strengthen the competitiveness of the European automotive and mobility ecosystem. It aims to provide greater policy and regulatory certainty and create a level playing field.

2.4 The proposal covered in this opinion amends Directive 92/106/EC on the establishment of common rules for certain types of combined transport of goods between Member States (the Directive) (COM(2017) 648) (the proposal). It contains the following main elements:

- Combined transport no longer needs to be cross-border in nature. The Commission estimates that there is considerable potential for domestic combined transport in Member States.
- The minimum distance requirement for non-road transport is eliminated. On the other hand, a new provision provides that sea or inland waterway transport may not be taken into account if there is no alternative.
- Every load unit that complies with the criteria set out in ISO6346 or ENI 13044 or a road vehicle that is transported by rail, inland waterway or sea can be used in combined transport.
- The current rule on limitation of road transport is modified to provide that the first and/or final road transport leg within the EU may be a maximum of a direct line of 150 km or 20% of the distance as the crow flies in a direct line between the first loading point and the last unloading point. This limitation does not apply to empty load carriers nor to transport to or from the pick up or delivery point.
- Member States may authorise longer distances than indicated in the preceding point to make it possible to reach the nearest terminal with adequate equipment and capacity.
- For road transport to be accepted as part of a combined transport operation, the operator must demonstrate that the transport is part of a combined transport operation. The proposal indicates what information should be provided regarding the transport operation as a whole and with respect to the different parts of it. Additional information may not be requested. The information may be provided through different transport documents including in electronic form. It must be possible to produce the information during a roadside check.
- Duly justified deviations from the planned route shall be accepted.

- Member States are obliged to undertake the measures needed to support investments required in reloading terminals, in coordination with bordering Member States.
- Each Member State must appoint one or several authorities to be responsible for the implementation of the Directive and to serve as contact point for implementation issues.
- The proposal also requires the Member States to comply with a reporting duty with respect to the development of combined transport.
- The current exemption from the rules on cabotage remains valid with respect to road transport operations (road legs), part of a cross-border transport operation between Member States, that occur entirely on the territory of a Member State. The Commission justifies this exemption by stating that consultations undertaken have demonstrated that this provision helps make combined transport solutions more attractive. The Commission also refers to the Court of Justice judgment in case C/2-84 (Commission v Italy) which takes the view that combined transport should be considered as one single interconnected international transport operation.
- In the reasons given for the proposal, the Commission also points out that the rules on the posting of workers will apply to national combined transport, as they do to cabotage. No clear statement is made however with respect to the rules on the posting of workers and international combined transport operations.

### 3. **General comments**

- 3.1 The EESC supports the initiative to update the Directive on combined transport as a way to render the combined transport concept more efficient and attractive. This will make transport more sustainable, reduce road transport and GHG emissions, and contribute both to the objectives set out in the 2011 White Paper on transport policy and compliance with the undertakings of the EU and its Member States under the Paris Agreement.
- 3.2 The EESC approves the move to broaden the scope of the Directive, by including domestic operations with currently untapped potential to develop combined transport and hence reduce road transport.
- 3.3 The EESC also takes favourable note of the simplification of the regulatory framework for combined transport, intended to make the concept more accessible and improve legal certainty, both of which should make this concept more attractive.
- 3.4 In this context, the improved clarity of the criteria describing the delimitation of road transport legs is particularly useful: the criteria are simple, clear and seem to leave no room for diverging interpretations. The EESC nevertheless concludes that the limit of 20% of the distance as the crow flies between the initial loading and the final unloading points could lead to road transport distances that are above the 300 km limit beyond which the 2011 White Paper on transport favours a modal shift away from roads, particularly in regions with sparse networks or long distances between terminals. However, the EESC considers that the overall interest of making the combined transport concept interesting for users and the added value of a clear and simple definition takes priority, and therefore approves the proposed solution.

- 3.5 The EESC also appreciates the element of flexibility granted to Member States to extend the road transport legs as required to make it possible to reach the geographically nearest transport terminal which has the necessary operational capacity for loading or unloading in terms of transshipment equipment, terminal capacity and appropriate rail freight services.
- 3.5.1 The EESC notes that it seems to be left up to the Member States to decide whether this authorisation should be granted through a generally applicable provision or on a case-by-case basis. The EESC underscores the importance of transparency, and therefore considers that national provisions on this matter as well as, wherever applicable, decisions in specific cases should be made available on a dedicated website, in accordance with the second paragraph of the new Article 9a, referred to in Article 1(7) of the proposal.
- 3.6 In order to facilitate planning of combined transport operations and make the concept more attractive, the EESC would suggest that all pertinent information regarding implementation of the Directive in each Member State be made available on a dedicated website in each Member State and that a provision to that effect be introduced into the second paragraph of Article 9a of the proposal.
- 3.7 The EESC approves the clarification in Article 3 of the proposal regarding the documents that are to be provided for the purpose of checks on compliance, the ban on requiring further documentation and the option to provide the documents required in electronic form. This provision facilitates operations and enhances legal certainty. Nonetheless, the EESC questions whether a copy of the decision taken should not also be available, in cases where a longer road leg has been authorised by a Member State under the third paragraph of Article 1(3) and where this authorisation is in the form of a dedicated decision.
- 3.8 The EESC notes with satisfaction the emphasis on investment in transshipment terminals and the obligation to coordinate such investments with neighbouring Member States and with the Commission to ensure balanced and sufficient geographical distribution, particularly in the TEN-T network, and to give priority to ensuring that no location in the EU is more than 150 km from such a terminal. The EESC doubts however that this aim is realistic in areas with low population density and a sparse rail and port network.
- 3.9 Support to combined transport needs to be notified to the European Commission and requires to be authorised according to State aid rules before being disbursed. Due to the lengthy procedures, the beneficiary of the aid most often receives the aid after 3 years from the moment the national public authority decided the aid and sometimes, when the schemes need to be modified, the beneficiary risk to lose all benefits. To reduce uncertainty and speed up the process, the EESC considers that aid less than a certain ceiling, for instance 35% of the total costs, should be automatically considered compliant to the Treaty and be exempted from notification.
- 3.10 The EESC would also draw attention to the possibilities offered to further develop combined transport through digitalisation. The proposal takes a step by allowing the use of electronic documents and the creation of dedicated websites in all Member States.

#### 4. **Specific comments**

4.1 The EESC notes that the second paragraph of Article 1 of the proposal excludes from a combined transport concept any inland waterway or maritime transport for which there is no equivalent road transport alternative or which is unavoidable in a commercially viable transport operation. This provision appears to be linked to the elimination of a minimum distance requirement for inland waterway and maritime transport and delivers on the statement in recital (9) of the preamble that "It would therefore be useful to remove that minimum distance while maintaining the exclusion of certain operations such as those including deep sea shipments or short-distance ferry crossings." The EESC has doubts about both the substance and wording of this provision.

4.1.1 It appears that one of the effects of the 100 km requirement on inland waterway and maritime transport, as the Directive now stands, is to exclude short ferry transport and deep-sea shipping, as distinguished from short sea shipping. This follows from the fact that the 100 km requirement applies to transport carried out inside the EU. The proposal made in the second paragraph of Article 2 is clearly intended to have the same effect.

4.1.2 It seems however that the provision now proposed is likely to create uncertainty as to when it applies, possibly to the point of creating a regulatory obstacle to the implementation of combined transport projects.

Thus, the criterion of "no equivalent transport alternative" leaves open whether the equivalence should be assessed by time required, length in kilometres or cost. Likewise, the criterion "unavoidable in a commercially viable transport operation" leaves a wide scope of interpretation.

4.1.3 The EESC therefore questions the usefulness of the proposed provision, particularly since no similar selection criteria, clearly based on the idea of excluding choices that do not need encouragement, have been considered necessary with respect to rail transport.

4.2 The EESC also finds it difficult to understand why the so-called "cabotage exemption" in Article 4 of the directive remains unchanged. As a matter of transport policy, the EESC would here refer firstly to the pending proposals regarding market access in international road transport of goods with respect to cabotage and the current focus on market access and competition, including social aspects. The EESC also bears in mind the general principle that service provision in a country other than that where the service provider is established should be performed on a temporary basis.

4.2.1 The EESC takes note of the two arguments invoked by the Commission in favour of the solution chosen. One is that answers given by businesses during consultations show that the current solution is seen as making combined transport attractive. The other is that a combined transport operation, under the definition provided by the Directive in its current wording, is to be seen as a single international transport operation. In support of this argument, the Commission invokes the case-law of the Court of Justice, specifically case C-2/84 (Commission v Italy).



- 4.2.2 In the opinion of the EESC, the argument based on Court of Justice case-law is simply founded on the fact that the Court was bound by the choice of the legislator to define combined transport in a way that allows it to be seen as one operation or journey. It is therefore merely a matter of whether the legislator decides to see the combined transport operation as a whole or as a number of different operations undertaken in the framework of a transport concept. In any case, the EESC points out that when the Directive was adopted, the legislator found it necessary to provide for free market access for hauliers "regarding the initial and/or final road haulage leg which form an integral part of the combined transport operation and which may or may not include the crossing of a frontier".
- 4.2.3 In the opinion of the EESC, there is nothing to prevent a provision stipulating that road haulage legs within the framework of a combined transport operation are separate transport operations and that Regulation (EC) 1072/2009 applies to all road transport operations. Article 4 of the Directive should be amended accordingly.
- 4.3 In this context, it is also surprising to note that the provision in Article 2 of the Directive requiring Member States to liberalise the combined transport operations referred to in Article 1 from all quota systems and systems of authorisation by 1 July 1993 is not included in the proposal, in particular taking into account the fact that the scope of the Directive is to be extended to cover national combined transport.
- 4.3.1 With the scope of the Directive extended to cover national combined transport operations, this provision will also apply to such operations. The wording of the provision is fairly wide and could be interpreted as dispensing combined transport from the rules on admission to the profession in Regulation (EC) 1071/2009 and from all restrictions to market access as far as combined transport is concerned.
- 4.3.2 The EESC assumes that such effects are not intended and would therefore suggest either deleting this article or rephrasing it in order to make it clear that the dispensation from quota systems and authorisations applies without prejudice to rules on access to the profession or market access, with respect to each mode involved.
- 4.4 The EESC further notes that the proposal makes no mention of the applicability of the posting of workers directive to combined transport operations, with the exception of a reference in the explanatory memorandum to the applicability of the proposed *lex specialis* on posting of workers in road transport. This would mean that the rules on posting of workers under Directive 96/71/ EC would apply to road transport in the context of national combined transport.
- 4.4.1 The EESC assumes that the rules on posting of workers also apply to any posting within the framework of a combined transport operation which fulfils the criteria set out in Article 1 of Directive 96/71/EC and in the proposed *lex specialis*, when and if it is approved.
- 4.5 The EESC takes note of the concerns over the cost of long sea links on peripheral islands such as Cyprus and Malta and the pertinence in that regard of the support regime established through Council Regulation (EC) 1405/2006 to compensate for transport costs with respect to

agriculture on certain smaller Aegean islands, as raised by the EESC. The EESC suggests that the possibility of a similar solution for Cyprus and Malta should also be examined by the Commission.

Brussels, 19 April 2018.

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The president of the European Economic and Social Committee

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