

INCEPTION IMPACT ASSESSMENT			
<b>TITLE OF THE INITIATIVE</b>	Proposal for the amendment of the 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		
<b>LEAD DG – RESPONSIBLE UNIT – AP NUMBER</b>	MOVE D.1 - 2017/MOVE/006	<b>DATE OF ROADMAP</b>	29/11/2016
<b>LIKELY TYPE OF INITIATIVE</b>	Legislative proposal (amendment)		
<b>INDICATIVE PLANNING</b>	4 <sup>th</sup> quarter 2017		
<b>ADDITIONAL INFORMATION</b>	-		

## A. Context, Problem definition and Subsidiarity Check

### Context

The priorities of the current Commission reiterate the importance of sustainable growth with less negative externalities. One of the most effective solutions for transport sector is promoting the so called modal shift towards multimodal transport that uses in major part modes of transport that cause less negative externalities such as rail, inland waterways and maritime transport<sup>1</sup>. The Combined Transport Directive (92/106/EEC) is the only EU legal instrument in place that directly supports multimodal freight transport<sup>2</sup>. The Low-Emission Strategy<sup>3</sup> also identifies the Combined Transport Directive as a tool contributing to decarbonisation objective.

The Combined Transport Directive was evaluated in the framework of the REFIT agenda, with the evaluation report<sup>4</sup> concluding that the Directive continues to be very relevant for supporting the reduction of negative externalities, however that effectiveness and in some cases efficiency could be improved. In the supporting public consultation<sup>5</sup> the consulted stakeholders, private and public, also showed considerable interest<sup>6</sup> on reviewing the Directive in order to simplify the conditions for eligibility (definition) for the provided regulatory and fiscal support measures and to bring the Directive closer to business-models and solutions of the 21<sup>st</sup> century.

The initiative mainly contributes to Commission general objective No 3 "A Resilient Energy Union with a Forward-Looking Climate Change Policy", and also to Commission general objectives No 2 "A Connected Digital Single Market" and No 4 "A Deeper and Fairer Internal Market with a Strengthened Industrial Base". It contributes to the specific objective "An efficient sustainable, safe and secure Single European Transport Area."

### Problem the initiative aims to tackle

Transport contributes to the negative externalities with costs for society estimated at 4% of EU GDP in 2011 and growing<sup>7</sup>. The large majority of costs (72.8% of GHG emissions, 97% of accidents) are caused by the road sector, which dominates the freight transport market. The EU transport, energy and environmental legislation have reduced the negative externalities per tonne-km, but have not been able to achieve overall reduction as road transport volumes continue to increase. Thus it is important to influence the user behaviour to achieve modal shift towards more sustainable modes of transport.

However the market does not currently provide appropriate price signals to users. Users make their decisions in highly competitive global market with a need to minimize costs and increase efficiency of delivery. In a situation where all external costs are not internalised, the road freight transport option is relatively cheaper and thus the users have no economic reason to use sustainable transport modes. In addition, most multimodal/intermodal

<sup>1</sup> The 2011 White Paper on Transport set a goal of shifting to rail or waterborne transport 30% of road freight over 300 km by 2030, and more than 50% by 2050

<sup>2</sup> Combined transport is a type of multimodal transport where the transported goods are carried in intermodal loading units such as for example containers which are lifted from one mode of transport to another, and where the road leg is limited to a short distance and the major part of the route is carried out by rail, inland waterways or maritime transport

<sup>3</sup> COM(2016) 501

<sup>4</sup> SWD (2016) 140 (evaluation report) and SWD (2016) 141 (executive summary) <http://ec.europa.eu/smart-regulation/evaluation/search/download.do?documentId=17165337>

<sup>5</sup> <http://ec.europa.eu/transport/sites/transport/files/media/consultations/doc/2014-combined-transport/summary.pdf>

<sup>6</sup> 80% of respondents to the public consultation supported an amendment of the Directive.

<sup>7</sup> These external costs are projected to increase by around 40% by 2030 and by little over 80% by 2050 (as compared to 2005)

transport operations have inherent disadvantages (network density, transshipment time and costs, time and destination wise limited connections, complexity of transport chain management) as compared to road transport. In this situation the modal shift will not take place to a desired degree without an intervention to directly support the use of multimodal transport, and it will not be possible to achieve the White Paper target of reducing the negative externalities of EU transport sector.

The Combined Transport Directive targets exactly this problem. However, the existing Directive was established by the REFIT evaluation to have some shortcomings to be fully effective and efficient. The problems identified where the following:

1. The definition of combined transport is complex and somewhat ambiguous and creates for combined transport industry legal uncertainty at minimum and delays and unjustified fines and other practical problems at worst when they are trying to benefit from the incentives in the EU law. The ambiguities relate to distance limitations of road legs and non-road legs and on, number of road legs. Furthermore, the definition does not reflect the economic realities of today and thus could be extended to cover wider range of transport operations, load units or geographical scope.
2. The support measures are ineffective, in particular as economic incentives do not follow a common methodology, only apply to rail-road combined transport and are too low to be effective
3. The provisions relating to transport documents are outdated making it difficult and costly for industry to prove eligibility. Current information requirements do not allow effective control of eligibility for the authorities and thus give rise to circumvention from one hand and unjustified administrative problems from other hand. There is little coordination between MS. Furthermore, only use of stamped paper documents is allowed.
4. There is lack of appropriate overview of market developments that hinders the systematic assessment on the need of the support both at Member State as well as .

Thus the initiative aims to improve the existing partially ineffective measure that tackles the market failure to provide price signals to users that would promote the use of socially less costly modes of transport.

#### **Subsidiarity check (and legal basis)**

The legal basis for the EU to act in the area of cross-border transport between Member States is Articles 90 and 91 of TFEU.

The cross-border character of the combined transport operations addressed in the Combined Transport Directive sets the need for action at EU level. Differences in legal and administrative conditions applicable to combined transport create additional costs for industry and administrations, and in certain situations make the use of combined transport economically undesirable, thus not allowing the EU-wide reduction of negative externalities. The aim of Combined Transport Directive is to ensure uniform conditions that would boost combined transport which makes the EU the most appropriate level to address the cross-border combined transport. As regards efficiency, the Combined Transport Directive does not create obligations, but establishes the eligibility for support measures.

### **B. Objectives and Policy options**

**The objective of the initiative is to encourage the use of non-road transport modes on long distance freight transport.** More specifically, this is achieved by improving the competitiveness of combined transport as an alternative to road transport, and thus contributing to road traffic safety, reduced congestion and environmental pollution, as well as better management of transport resources.

The amendment aims at improving the existing policy by eliminating ambiguities identified in the REFIT evaluation and by updating the incentives thereby improving the usefulness of the Directive as support measure and simplifying its use for the industry. This translates into **three specific objectives**:

- Simplify the eligibility criteria for the support provided by the Directive (definition)
- Review the support measures to ensure effectiveness
- Improve the implementation (transport documents, coordination and reporting)

To achieve these objectives, the below **policy options** are described.

**Option 1: baseline scenario** foresees keeping the existing Directive as it is;

**Option 2:** foresees **improving the transposition and implementation** of the existing Directive by giving **interpretative guidelines and launching infringements** where necessary;

**Option 3: Changing the scope (definition) for greater simplification and providing more effective support.**

In particular covering all intermodal transport in EU that fulfils a simplified limitation for road and non-road legs and reviewing the economic incentives; This should be accompanied by improved provisions on transport documents as well as by more effective provisions regarding data collection.

**Option 4. Changing the scope (definition) and reviewing the support measures to reflect provisions in road transport regulation**, in particular using the definition and limitations provided in Weights and Dimensions Directive and, in addition to option 4, also reviewing the existing regulatory support measures for road legs. This should be accompanied by improved provisions on transport documents as well as by more effective provisions regarding data collection.

**Option 5: Changing the scope (definition) to cover all inter/multimodal transport with extended support measures**, i.e. removing all limitations on road legs and non-road legs and extend the geographic scope to cover all intermodal transport operation in EU (incl. with 3<sup>rd</sup> countries). In addition to economic incentives under option 4, foresee direct support to investments. This should be accompanied by improved provisions on transport documents as well as by more effective provisions regarding data collection.

### C. Preliminary Assessment of Expected Impacts

Per stakeholders, the following general impacts can be identified:

- The general public will benefit from all options through the reduction of overall increasing negative externalities.
- The industry involved in combined transport operations<sup>8</sup>: any support to intermodal transport will improve the competitiveness of combined transport industry in comparison to long distance road transport. The simplification of rules and procedures is expected to increase the volume of combined transport operations in general and thus have a positive effect on operators.
- The long distance road transport operators not involved in/competing with combined transport: shifting freight from road to more sustainable transport means may have a negative effect on road transport companies. However, as the total transport volumes keep growing, the road transport may also remain on the same level or reduce only slightly. Also, the road transport industry can without large investments reorient from long distance road transport to short distance combined transport road legs, which per tonne kilometre is more profitable than long distance road transport.
- Member States: the impact will depend on the option chosen, however simplification and better enforcement will considerably reduce the implementation costs. Implement of electronic documents and related cooperation may involve initial investment into equipment and training, while amendment of support measures may result in increased somewhat the pressure on the budget, however the reduced congestion pressure on road infrastructure should decrease the need for investments into road network.

#### Likely economic impacts

In case of no action, small positive economic impact on combined transport is foreseen to continue, however this will not be enough to shift the modal balance of transport system as the directive will not be able to bring full EU value added as current language allows for disparities in interpretation as identified in the REFIT exercise. It also does not permit digital documents.

In case of options 2-5, the economic impact on combined transport operators, logistics service providers, freight forwarders, rail, inland waterways and short sea transport operators is foreseen to be positive, boosting the use of combined/intermodal transport volumes, however the magnitude depends on the option chosen. The increase of the combined transport volumes would also most likely have an effect on investments into the non-road physical infrastructure that would in turn have a positive long term effect on EU transport system and further support the reduction of negative externalities. As regards the impact on SMEs, it is expected that increase of combined transport will have positive economic effect on SMEs focusing on short distance combined transport road legs. As regards SMEs who act as freight forwarders and logistics operators engaged in organising combined transport operations, or as combined transport operators, rail and waterways undertakings carrying out combined transport operations, the effect is expected to be positive. The SMEs in particular need support to compete with the cheaper long distance road transport as they do not usually benefit from economies of scale available to large enterprises who carry out all parts of the combined transport operation (organising, transport, transshipment) nor can they cross-subsidise between different activities as they usually only carry out one type of activity.

Option 2 would allow clarifying some issues and reducing the disparities between the Member States, however the complexity of the definition and ineffective fiscal support measures cannot be addressed through soft measures. Thus the option 2 can be foreseen to reduce the cost of compliance for industry, but not considerably

<sup>8</sup> Specialised combined transport operators, freight forwarders, logistics service providers, transport operators in rail, inland waterways, short sea shipping and road operators carrying out combined transport road-legs.

increase the combined transport volumes, thus resulting in limited positive impact.

The options 3 and 5 are expected to have considerably positive economic impact both through simplification of rules and procedures and resulting reduced costs for industry as well as through increased combined transport volumes. As the scope of option 5 is much wider than that of current Directive or other options, the economic effect will also be bigger; however there may also be a negative effect on the road operators as more operations will shift to combined transport and thus the net impact will need to be assessed in the impact assessment. However, the preliminary assessment is that the even if the initial impact on road operators is negative, in medium run it would be positive as the operators reorient to providing combined transport road legs, which per tonne-km are more profitable.

The economic impact of option 4 could be negative, i.e. applying the definition of the Weights and Dimensions Directive may result in reverse shift for operations from container hinterland combined transport to long-distance road transport. The exact impact would inter alia depend on the transposition of the Weights and Dimensions Directive's amendment 917/2015/EC into national legislation (deadline 17.05.2017), and in particular on whether Member States choose to allow the use of nearest suitable terminal to be used in connection with waterborne transport. Furthermore, the impact of reviewing the regulatory support measures can be either positive or negative, depending on the final measures.

It should be noted that a considerable extension of the scope of the Directive, in particular options 4 and 5, may have a negative effect on the SMEs in road transport sector active in national transport operations (that are currently not covered by the Combined Transport Directive, but would be covered under the options 4 or 5) as a wider range of transport operations would not be subject to quantitative limitations under the Regulation 1072/2009/EC, this is particularly true for option 5.

The measures on digital documents in options 3-5 would have a positive economic effect on operators, shippers as well as Member States through simplification, reduction of costs and delays and disputes, even if it involves initial investment. It can also be expected to have spill-over effect to other modes of transport as well as creating possibilities for additional new ICT solutions that would further improve the logistics networks. This in turn would have a spill-over effect on merchandise trade and manufacturing as production and distribution processed can be streamlined.

In case of options 2-5, the economic impact on combined transport operators, logistics service providers, freight forwarders, rail, inland waterways and short sea transport operators is foreseen to be positive, boosting the use of combined/intermodal transport volumes, however the magnitude depends on the options chosen. The increase of the combined transport volumes would also most likely have an effect on investments into the non-road physical infrastructure that would in turn have a positive long term effect on EU transport system and further support the reduction of negative externalities.

#### **Likely social impacts**

First, all options will benefit the general public through reduction of negative externalities such as pollution, congestion and traffic casualties, the magnitude of impact of each option depends on its ability to foster modal shift, thus options 2-5 would have impacts in growing order.

Secondly, the increase of combined transport operations will create improved quality jobs in the sector, adding to labour market new "local" jobs compared to jobs in long distance road transport. One combined transport operation requires involvement of several modes of transport (short distance road transport and long distance transport by other modes of transport) as well as transshipment and terminal services to be provided as compared to only one driver in long distance road operation.

Thirdly, a direct short term negative social impact can be foreseen for long distance road transport operators from modal shift that is from shifting freight from long distance road transport to more sustainable modes of transport. This will be biggest in case of options 4 and 5. However, in medium and long term, the road operators can reorient to operating the road-legs of the combined transport operations that are more profitable and that are foreseen to increase with all options.

#### **Likely environmental impacts**

The shift from long distance road transport to combined transport will have a positive environmental impact as road transport is the most environmentally polluting mode of transport. According to the REFIT ex-post evaluation, the existing Directive contributed positive environmental impact through saving negative external environmental costs through modal shift that can be assessed to be up to €1 billion in 2011.

Any increase in modal shift away from long distance road would further increase the positive environmental saving, however the magnitude of the effect depends greatly on the options chosen, in particular whether the scope of the Directive will be changed or not. In this regard, from options 1-5, the option 5 would be expected to create the biggest environmental impact and option 1 the least.

#### **Likely impacts on fundamental rights**

The amendment is not expected to have impacts on fundamental rights

#### **Likely impacts on simplification and/or administrative burden**

Clarification or simplification of eligibility criteria will have a positive effect on the work of implementing authorities (usually police). In this regards options 2 and 3 and option 5 would all have a positive effect. The impact of option 4 needs to be further assessed.

As regards the review of economic incentives, the effect will depend from one hand on final measures in the proposal and from the other hand on the scope of application. Assuming, financial or fiscal support measures are foreseen, the wider the scope the bigger the financial burden will be on the Member State. The expected gradual increase of combined transport volume will further increase the financial effect on the Member States. Options 2 and 3 would have an impact depending on the type and magnitude of new incentives, while option 4 and 5 would also increase the beneficiaries considerably and thus have a bigger effect on Member States budgets.

Simplification of the documentation requirements and/or introduction of electronic documents (under options 3 to 5) will have a large positive effect on national authorities as the control of eligibility will be considerably simplified. However, it will also bring along initial implementation costs.

Modal shift from road to combined transport would further allow better use of existing transport infrastructure. From one hand, the use of road network by heavy goods vehicles and the road congestion would decrease that would have a positive impact on the need for investment into road infrastructure, from the other hand the rail and waterborne transport infrastructure that today in certain areas is underused, could be used more efficiently.

## D. Data Collection and Better Regulation Instruments

### Impact assessment

The work on the impact assessment will start in the second quarter of 2016 and will focus on assessing the impact of different options both on the combined transport as well as on the EU transport system in general with an aim to identify the option allowing for best balanced way to achieve the objective on reducing the negative externalities of the transport system.

The ISG will be created in the second quarter of 2016 and will include the representatives of Secretariat General (SG), Directorate-General for Mobility and Transport (MOVE), Directorate-General for Taxation and Customs Union (TAXUD), Directorate-General for Environment (ENV), Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (GROW), Directorate-General for Climate Action (CLIMA), DG Competition (COMP) and Legal Service (SJ).

### Data collection

An ex-post REFIT evaluation<sup>9</sup> carried out in 2015, the fact-finding study “Analysis of the EU Combined Transport”<sup>10</sup> carried out in 2014/2015, results of the public consultation and of the stakeholder meeting carried out in 2014 and the two reports on the Implementation of the Combined Transport Directive, for years 1993-1995 and 1996-1999 and the explanatory memorandum (impact assessment) of the Commission proposal for an amendment of the Combined Transport Directive in 1998 will all serve as a basis for the impact assessment.

Additional external data gathering exercise has been foreseen in two separate projects: First, an update of the existing data gathered in the above-mentioned study for years 2012-2015 where available (using the same sources and methodology of data gathering and verification) and secondly a data set gathering for questions that were not covered by the above-mentioned study. The call for tender should be launched in third quarter of 2016.

### Consultation strategy

Consultations will be carried out with an aim to get feedback on the proposed options and the likely impacts of each option. The stakeholders (see section C) will be consulted on the issues that were not addressed in the previous public consultation. The consultations are expected to give an overview on how different stakeholder groups view the proposed options, how these are expected to influence them as well as to establish the stakeholders preferred option.

Three consultation activities are planned:

1. A public consultation will be carried out in the form of an open internet-based public consultation running for 12 weeks. The consultation will be available in all official EU languages via [Your Voice In Europe](#) and via [DG MOVE's consultation page](#).
2. A further targeted consultation with stakeholders is foreseen to be carried out by an external consultant. The main focus of the targeted consultation will be a consultation about definition and the economic incentives and will be customised for different groups of stakeholders (industry, Member States, social partners and other interest groups).
3. A stakeholder meeting is organised, allowing stakeholder groups who participate in the targeted consultation to exchange views.

<sup>9</sup> SWD (2016) 140 (evaluation report) and SWD (2016) 141 (executive summary) <http://ec.europa.eu/smart-regulation/evaluation/search/download.do?documentId=17165337>

<sup>10</sup> Analysis of the EU Combined Transport, carried out by consortium of KombiConsult, Intermodality, PLANCO Consulting and Gruppo CLAS, 15 January 2015, <http://ec.europa.eu/transport/themes/strategies/studies/doc/2015-01-freight-logistics-lot2-combined-transport.pdf>

<b>Will an Implementation plan be established?</b>
An implementation plan will be established to help Member States to overcome technical and compliance challenges that have been identified as one of the problems under the current version of the Directive. The implementation plan will also foresee appropriate support actions by the Commission.