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The Nordic Logistics Association's position on the revision on the Combined Transport Directive (92/102)

The Nordic Logistics Association is a joint organisation for land transport, representing the interests of transport and logistics operators from DTL (DK), SÅ (S) and NLF (N) with the support from SKAL (FIN). On behalf of these operators – some of which also do combined transport – we have the following comments on the proposal for revision of the Combined Transport Directive.

The Combined Transport Directive has caused major problems the last 20 years, with unclear definitions, complex legislation and non-effective enforcement measures.

It is important to underline that we do support combined transport as a concept and we do encourage actions and incentives that promotes combined transport and increases its attractiveness. However, in our view, the Directive has limited impact in promoting Combined Transport, and it should be seriously considered to reduce or abolish the directive. Combined Transport can be helped in other ways and by other means. In fact, it is important to remember, that a lot of Combined Transport is taking place without even being covered by the Directive, such as when the operator of the road leg is established in the country where the transport is carried out.

The present directive contains mainly 3 incentives for combined transport: 1) access to market under liberal conditions, which helps low-cost operators to operate in high-cost countries; 2) refund of the road charges (which in Sweden, Norway and Denmark has never been demanded by anyone); and 3) (marginal) increased weight limits – which in the Nordic countries are of little interest taking the general high weight limits into account.

In other words, the main incentive of the Directive, which is supposed to promote the use of many forms of transport, is giving liberal market access for road transport operators!

In this light we find, the European Commission's proposal for revision disappointing. We believe this is a missed opportunity to simplify and clarify the rules for Combined Transport of goods.

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Our main concerns are:

- The confusion about whether an operation is cabotage or combined transport is not solved which will cause continued abuse of the rules
- We are not in favour of including national combined transport operations and certainly not in the way proposed by the Commission, which creates legal uncertainty
- The text needs clarity on application of Lex Specialis on posting of workers
- The concept “nearest suitable rail loading station” still lacks clarity and can add significant number of kilometers to the road leg
- The change to 20% for the road legs is not an improvement and will only promote road transport above other modes
- The proposal needs to be improved on the documentation requirements and control options, otherwise abuses will continue to take place.

Background explanations:

Firstly, we are concerned by the fact that the proposal keeps the “cabotage exemption” for international combined transport operations, furthermore the proposal is not clear on this point. The exemption means that the rules for cabotage do not apply if you are doing an international Combined Transport operation. In our view, this exemption from the cabotage rules will only hurt the fair competition in the road transport sector. It will continue to make it possible for low-wage operators to continue to do what are in fact national transport operations, with no restrictions regarding number of operations and time. We are afraid that exemptions from cabotage rules for international combined transport will go against the very purpose of the directive – to move transport from road to sea or rail and decrease negative externalities – as the costs for road transport will continue to be significantly cheaper.

Secondly, we are also concerned about the extension of scope of the directive to also include national Combined Transport operations. Even though it is mentioned that national Combined Transport operations should be subject to cabotage rules and posting, there is missing a proposer reference to the provisions on cabotage in Regulation 1072/2009 to create legal certainty.

The question is which conditions apply to these road operations; could it become possible to drive combined transport only respecting the rules for cabotage – which may be further liberalized - without having to respect the limits on distance, as provided for in the Combined Transport Directive? Is it cabotage or is it combined transport? The revision of combined transport is relying on the revision of Regulation 1072/2009 on the cabotage restrictions regarding number of days and possibly restrictions regarding number of operations. We do not know what the outcome will be, but the proposed possibility of a 5 days unlimited cabotage, is for us a liberalization of the market and therefore unacceptable.



It is our position, that it is important that Recital 16, in Regulation 1072/2009 should be neutralized so that it is clear that national Combined Transport operations are subject to cabotage rules:

“This Regulation is without prejudice to the provisions concerning the incoming or outgoing carriage of goods by road as one leg of a combined transport journey as laid down in 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. National journeys by road within a host Member State which are not part of a combined transport operation as laid down in Directive 92/106/EEC fall within the definition of cabotage operations and should accordingly be subject to the requirements of this Regulation”.

Thirdly, we are missing clarity about the link between the *lex specialis* for posting of workers to Combined Transport operations, especially regarding the different applications of the rules for posting whether the Combined Transport is an international or a national operation. Why should the same operation in a Member State wait 3 days to be covered by Posting of Workers rules if it is defined as international, but only one day if national? The Commission needs to recognize that any road transport leg of a combined transport operation in a member state not carried out by a local operator, is in direct competition with the national operators and social rules must be the same for both operators. Social rules should be the same regardless if the Combined Transport operation is an international or a national one. We believe that the lack of clarity will lead to continuous ways to circumvent road transport rules and lead to unfair competition.

Fourthly, we want to point out our concerns regarding the definition and interpretation of “Nearest suitable rail loading station”. One of our main worries regarding the current Combined Transport Directive, is the possibility to, by using rail in a combined transport, chose how the “Nearest suitable rail loading station” is interpreted. This quite “open” definition has led to goods being transported a lot longer by road than necessary, as the closest loading point has been defined as “not suitable”. It should be obvious that such possible interpretations will not help the directive with its intentions to reduce the *“negative side-effects of goods transport on environment (such as CO2 and other emissions) and on society (such as, congestion, accidents, noise etc)”*¹ as stated by the European Commission. The proposal does give some sort of clarification, but we still believe that the definition is too large and gives too much of a room for different interpretations.

The proposal also shows weakness concerning the extension of the definition of the maximum length for the road leg to up to 20% of the total combined transport distance as the crow flies. Currently, the road leg is limited to 150km as the crow flies. The proposed review opens for the possibility to expand the road legs. With a total combined transport distance, for example 2000km, the road leg can be expanded up to 400km (20%) at the first and the last legs (loading and unloading point) and such extension needs to be authorised by Member States on whose territory the road leg take place. The proposal does not set any limit on how high the extension of the road leg can go. In our view, this works against the very purpose of

¹ https://ec.europa.eu/transport/themes/urban/consultations/2017-CTD_en



the Directive – to move transport from roads to rail or sea – and thus decrease the negative externalities on the environment and society, which could be detrimental for the existing possibilities in the Nordic countries to move goods by rail and sea. Even though the proposal lists in detail on how a Combined Transport should be documented, we are concerned that the change will cause ambiguousness and complicate enforcement and controls.

Our sixth point concerns documentation. The Commission is putting a lot of emphasis on improving controls and enforcement. Yet the proposal for revision of Combined Transport Directive will continue to create situations, where operators and drivers will not only benefit but will have the possibility to create a combined transport operation during a control, in order to escape the other rules. The proposal lacks proper instruments to ensure full and proper documentation.

Finally, as regards article 3, paragraph 1, we find it unacceptable that empty containers are accepted as a Combined Transport.

On the more positive note, we welcome the European Commission initiative to take good steps forward regarding increased control requirements, documentation requirements and increased cooperation between member states. Moreover, we are pleased to see that the European Commission is aware that the major problem for Combined transport is the transshipment costs. The proposal includes measures for investment support for transshipment infrastructure, which can help to reduce the “competitiveness gaps between intermodal transport and road-only freight transport”. We appreciate that the European Commission proposes an obligation for member states to take steps to ensure sufficient investments and capacity; to establish a well-functioning network for combined transport. The paragraphs added in Article 6 are therefore warmly welcomed.