

Directive 92/106 amendment: a good proposal

The European Commission proposal to amend Directive 92/106¹ is viewed positively by the intermodal sector. During its review, no conceptual flaws were identified, however a number of suggestions – technical in nature – are offered in this paper to complement and to further enhance the Commission proposal.

UIRR, the industry association of the European Combined Transport sector, has been calling for the amendment of Directive 92/106 since many years. The latest such request was issued in a position paper titled "Intermodal transport warrants for an EU initiative" published on 19 May 2016.

On 8 November 2017 the European Commission adopted its proposal to amend the Directive. In this position paper UIRR analyses the proposal in respect of the impacts on the Combined Transport sector, the aims of its suggestions being to foster the continued development of Combined Transport and to contribute to sustainable freight transport.

The Commission's proposed amendments are the product of nearly four years of preparation:

- A comprehensive 639-page study was prepared by a consortium of consultants²
- Under the guise of the study, an extensive public consultation of stakeholders³ was carried out (between 23 May and 15 August of 2014)
- The Directive 92/106 was put through the Regulatory Fitness and Performance Test (REFIT)⁴ that was initiated in November 2014 under the Juncker Commission's better regulation agenda.
- A second public consultation to prepare the amendment was carried out between 23 January and 23 April of 2017⁵

The entire preparatory process leading to the amendment proposal was actively assisted by UIRR.

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¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017PC0648&from=EN>

² <https://ec.europa.eu/transport/sites/transport/files/themes/strategies/studies/doc/2015-01-freight-logistics-lot2-combined-transport.pdf>

³ <https://ec.europa.eu/transport/sites/transport/files/media/consultations/doc/2014-combined-transport/summary.pdf>

⁴ https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly_en

⁵ https://ec.europa.eu/transport/themes/urban/consultations/2017-CTD_en

1. Overview

The Commission proposal to amend **Directive 92/106 concerning the establishment of common rules for certain types of combined transport of goods between Member States** effectively addresses the issues identified as not functioning well or outright lacking in the text of the current Directive:

- **The scope of the Directive is to be extended** to cover every combined transport movement carried out in the European Union – be it a ‘domestic’ operation within the boundaries of a single Member State or a ‘cross-border’ transport affecting at least two Member States.
- **Improvements were offered to the definition of ‘combined transport operation’**, which are generally in the right direction but require some vital augmentation.
- **The foreseen mandatory identification of all intermodal loading units** that take part in intermodal transport in accordance with the ISO6346 and EN13044 standards is an essential prerequisite of digitalisation in the sector.
- **Evidence of compliance with the ‘combined transport operation’ definition to be provided** has also been proposed by the Commission aiming for efficient enforcement, while reducing the disturbance caused by the enforcement process itself to intermodal logistics chains. Important enhancements are offered by UIRR to the Commission’s amendment proposal.
- **The proposed refining of monitoring and reporting** on the progress achieved in Combined Transport will result in much-needed improvements to the understanding of intermodal freight sector. UIRR suggests changes to minimise the bureaucratic burden on both the Member States and the sector stakeholders with criteria to be established in a Delegated Act drafted by the Commission.
- **The measures to support investment in transshipment terminals** are deemed to be effective and much-needed to create the necessary infrastructural preconditions for intermodal transport. The significant Member State investments made with EU funding support into mode-specific transport infrastructure, such as the TEN-T motorways and railways, should be complemented by the components making these accessible to intermodal freight.
- **Upgrades to the rules of state aid are needed** to ensure increased effectiveness of the support measures, but also to compensate for the comparative disadvantages suffered from the prevailing Member State-specific regulatory disparities. Compensation in the form of state aid is only needed until the disparities are corrected through legislative means.
- **The appointment of Competent Member State Authorities** is applauded to oversee the implementation of the revised Directive and to act as a point of contact for intermodal stakeholders, because in most Member States it is uncertain to whom intermodal stakeholders can turn to within the government. The internet database of Member State implementation measures will provide much needed information to the sector. For the purpose of usability, it is imperative that the EU-level publication is made in a single language.

2. UIRR suggestions

With these UIRR intends to enhance the amendments to the Directive proposed by the European Commission.

a. Definition of a '*combined transport operation*'

The Commission proposal seeks to create universal conditions for all combined transport sectors (Rail/Road, IWW/Road and SSS/Road), to avoid the term "*nearest suitable terminal*" but also to convey a certain degree of flexibility to users of combined transport services. The latter intention is highly welcomed by UIRR.

Concerns are expressed with regards to the 150km limit "*as the crow flies*" especially in case of countries with a small or longitudinally shaped territory (e.g. Benelux, Austria), as well as countries which already offer a dense network of terminals and a wide scope of combined transport services. Road legs in these countries may increase compared to the existing situation if the necessity to use the "*nearest suitable terminal*" ceases.

On the other hand, there are numerous regions, or even countries, where currently neither the terminal nor the rail infrastructure and combined transport service supply may be deemed adequate, which enable users to reach a terminal within the 150 km or 20% limit. Factors include:

- Insufficient loading gauge to carry semi-trailers or hi-cube swaps/containers;
- Private or semi-private terminals, which cannot be accessed at all or only at discriminatory conditions, dominate the combined transport sector in some countries (e.g. Central and Eastern Europe, France);
- Services at terminals are targeting at a single market segment – maritime or continental;
- Lack of service on trade lane required or at non-competitive terms.

Rail/Road combined transport services are only competitive and viable if they are operated as full trains. A daily volume of 25-30 truckloads both directions must be captured for Rail/Road combined transport services to be competitive. Many areas (terminal locations) do not provide for sufficient market potential. Therefore, a significant portion of European terminals serve a limited number of trade lanes. Only terminals located in agglomerations may offer a network of services. For this reason, operators/shippers in these territories or countries are obliged to collect (and distribute) a certain percentage of shipments from more distant points beyond the Commission proposed limits.

A third option is proposed to address this case. The limits of the road leg may be exceeded "*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 and appropriate rail freight services*" when authorized by the Member State in question.

Finally, to develop the desired universal conditions, the reality that two European Directives – 2015/719 and 92/106 – both prescribe vital rules and a definition for '*intermodal/combined transport operation*' has to be taken into account. It is indispensable for easy compliance and efficient enforcement that these rules are aligned to the greatest possible extent.

Reflecting on the various concerns, UIRR suggests improving the definition proposed by the Commission through the following four steps:

1. Replace '*as the crow flies*' with '*distance*': The definition of '*combined transport operation*' has to be viewed with the definition of '*intermodal transport operation*' in mind as contained in Directive 2015/719 concerning the weights and dimensions of commercial road vehicles (for waterborne transport)⁶. One major difference between the two is that Directive 2015/719 defines a "*150km distance*" without the requirement "*as the crow flies*".

⁶ Directive 2015/719 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic - <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0719&from=EN>

The additional requirement of “*as the crow flies*” is an unnecessary complication when designing an intermodal transport chain. The shortest road “*distance*” on a route permitted for transiting HGVs is considered for the first or last mile transport by transport planners, and this is what the definition of ‘*intermodal transport operation*’ in Directive 2015/719 uses as well. The actual “*distance*” on road is the basis of invoicing for the road haulage portion of intermodal transport, therefore establishing a straight-line connection between two points – “*as the crow flies*” – constitutes a useless additional burden and should, therefore, be omitted. Replacing “*as the crow flies*” with plain “*distance*” would ensure full equivalence between the ‘*intermodal transport operation*’ definition in Directive 2015/719 (for waterborne modes) and the ‘*combined transport operation*’ definition in Directive 92/106 applicable to all types of intermodal transport including the road/rail variation.

2. Enable the combination of the ‘150km distance’ on each end of a ‘combined transport operation’ and its free apportioning by the shipper: UIRR suggests allowing the combining of permitted road distance of the “150km distance” on each end of the ‘*combined transport operation*’. Accordingly, the total road section of a ‘*combined transport operation*’ could be 300km, divided at the will of the designer of the actual transport chain as needed: e.g. 100km on the initial road leg would allow up to 200km on the final. This measure would not only allow necessary flexibility, but could also compensate for the distance reducing effect of replacing ‘*as the crow flies*’ with ‘*distance*’.

3. Establish a time and a reasoning requirement for Member State authorisations to exceed the road leg distance in case of road/rail combined transport: Exceeding the 150km distance limit to reach the *nearest suitable transport terminal* is permitted in Directive 2015/719 in the case of waterborne transport. The Commission’s proposal in Directive 92/106 foresees two types of similar deviations for combined transport that involves railway transport:

- (i) 20% of the non-road transport portion of the journey could be a first/last mile road distance, which translates to the extension of the road leg in case the non-road section is longer than 750km, and
- (ii) a complete removal of the distance limit by road to reach the geographically nearest terminal offering suitable services in the case of road/rail combined transport if authorised by the Member State or Member States on whose territory the road leg takes place.

The distance limit of 150km or 20% for road legs of *combined transport operations* may need to be exceeded due to the absence of a nearby (open access) transshipment terminal and/or for shortcomings of the railway infrastructure that prevent the running of intermodal trains. Member States have already agreed to upgrade their TEN-T railway lines by 2030 in line with the agreed technical parameters⁷, including that of a 4-meter profile gauge, which is a fundamental requirement for the unhindered circulation of most intermodal trains. Assuming an agreement to support proposed state investment assistance to the construction and/or the improvement of transshipment terminals, one day in the future no location within the European Union should be farther than 150km from a transshipment terminal.

While UIRR recognises the need for Member State(s) to be allowed to authorise the exceeding of the road leg distance to reach the *geographically nearest transport terminal which offers the required transport service*, the introduction of two conditions to this special licence are suggested by adding to it the word *temporarily*, which entails:

- **Naming the reason or condition** for the authorisation – such as rail infrastructure deficiencies or the lack of terminals.
- **Declaring a fixed deadline** for the authorisation – by when the reason is expected to be resolved.

The special Member State authorisations should also be required to be communicated to the European Commission with a view that the Commission publishes these on its database made public using the internet.

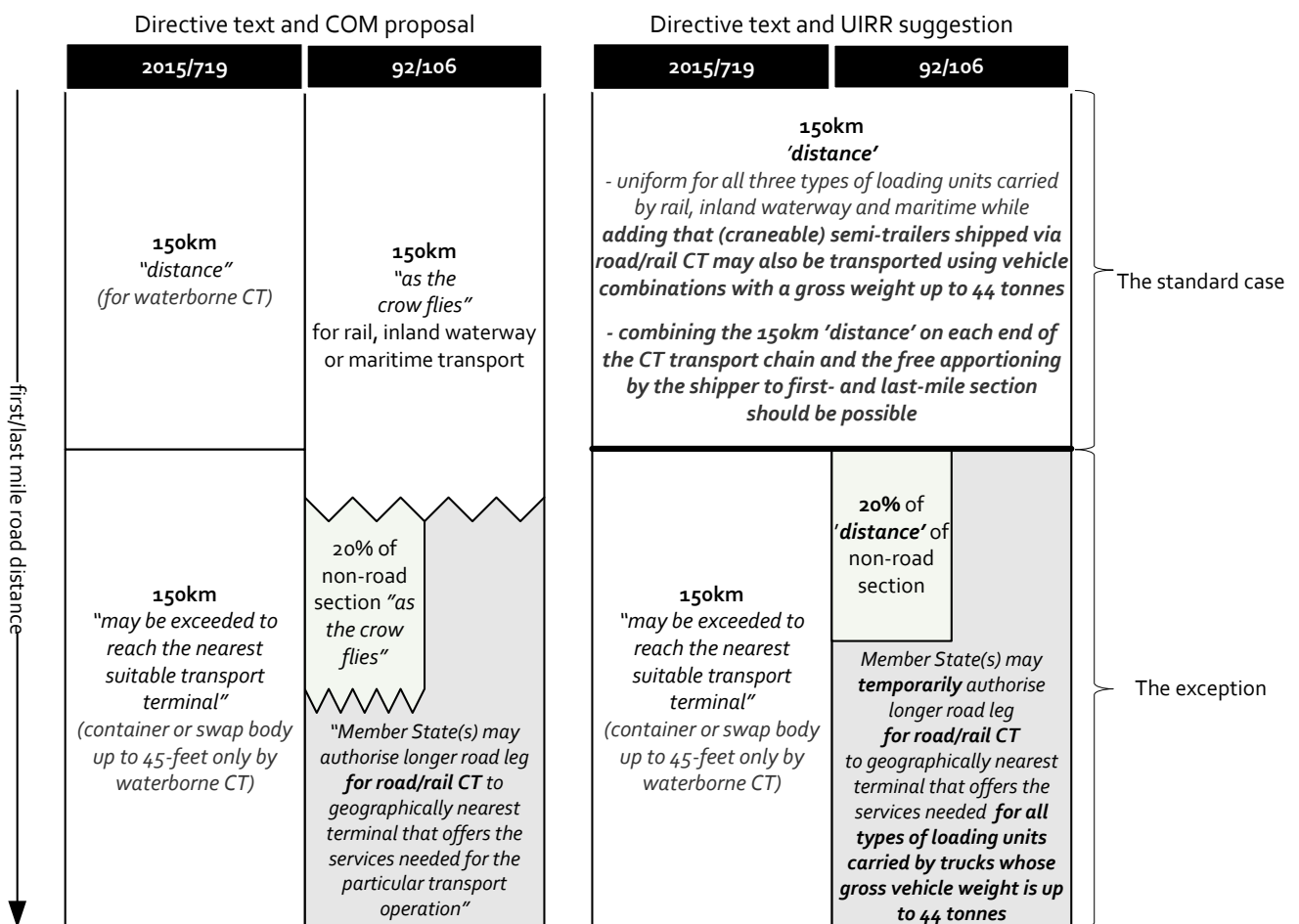
⁷ Regulation 1315/2013 on the TEN-T Network - <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1315&from=EN>

4. The possibility to carry (craneable) semi-trailers taking part in road/rail combined transport using vehicle combinations up to 44 tonne gross weight: UIRR suggests to extend the definition of 'combined transport operation' to include (craneable) semi-trailers transported in vehicle combinations with a weight up to 44 tonnes when using road/rail combined transport. (craneable) semi-trailers are becoming the intermodal loading units of choice for an increasing number of shippers, already amounting to one in six shipments in 2016 and showing by far the most dynamic growth of 20.2% in the same year.

The 44-tonne gross vehicle weight exemption for (craneable) semi-trailers should be limited to road/rail combined transport to reduce the enforcement risks in view of the following condition supported by UIRR:

*"Non-road legs using inland waterway or maritime transport, for which there is no equivalent road transport alternative or which are unavoidable in a commercially viable transport operation, shall not be taken into consideration for the purposes of the combined transport operations."*⁸

The picture below summarises the four UIRR suggestions to enhance the definition of 'combined transport operation':



⁸ Par 2 of Article 1 of the Commission proposal to amend Par 2 (b) of Article 1 of Directive 92/106

b. Provision of evidence of a '*combined transport operation*'

Three phenomena stand out when examining the current enforcement practice of adherence to the definition of '*combined transport operation*':

1. The Member States, which make it a point to control the compliance with the '*combined transport operation*' definition, typically do it in the form of roadside checks.
2. Experience shows that both the definition and the evidence are at best uncertain, frequently leading to disputable situations.
3. The outcome of those roadside checks that allege an infraction of the '*combined transport operation*' definition by the haulier carries a disproportionate repercussion in terms of both a substantial fine exacerbated by impounding the truck and the consignment alongside with it. Latter is perceived by the market as a disproportionate disruption of the intermodal transport chain, which undermines confidence in the reliability of combined transport.



Roadside checks: a control by the police

- *Trafficworthiness of the vehicle:* securing of the cargo, axle load and emission control, general technical condition;
- *Suitability of the driver:* license, health/fitness of driver, compliance with working time rules;
- *Cargo control:* conformity with shipping documents, compliance with applicable dangerous goods rules, etc.;
- *Payment of road tolls;*
- *Compliance with the '*combined transport operation*' definition:* for purposes of cabotage exemption, 44-tonne-rule and state aid measures;
- *Are there any outstanding (unpaid) fines?*

Roadside checks aim to control compliance of a wide range of rules, of which the '*combined transport operation*' definition may be only one. Moreover, controlling the compliance with the '*combined transport operation*' definition is often not the principal motivator for conducting roadside checks. UIRR accepts the need to make the roadside controlling of compliance with the '*combined transport operation*' definition easier and more efficient.

Controlling will be improved under the Commission proposal through the enhanced definition of '*combined transport operation*' itself and the additional requirements for '*evidence*' to be provided by the haulier that the road transport leg is part of a '*combined transport operation*'. However, in its current form the Commission proposal is difficult to interpret and may even constitute an unbearable administrative burden to sector players.

In order to resolve the issue of excessive administrative burden, while at the same time to ensure that intermodal transport chains are not unduly disturbed, UIRR suggests separating the dataset to be provided as '*evidence*' to the authorities into the following two groups:

- Group I.** Information that describes the '*combined transport operation*' as it was **originally planned**: leg order, transshipment points, identification of the loading unit carried, the distance of the initial and final road legs to and from the designated transshipment terminals.
- Group II.** Information that proves that the '*combined transport operation*' has been **carried out as planned** – through the provision of (electronic) '*signatures*' from the various actors of the transport operation – and the explanation of any deviation from the original plan and reason thereof.

The data contained in Group I. should be contained in the dataset that accompanies the '*combined transport operation*' from its outset, ready to be handed over to authorities – if need be – within the scope of a roadside check.

The information listed in Group II. should only be provided in an ex-post control launched by the authorities in case the roadside check established sufficient doubts on the compliance of the specific transport operation with the definition of '*combined transport operation*' contained in the Directive. This way, the compliance burden on the intermodal actors performing the combined transport operation can be brought to a minimum.

For the sake of more thorough enforcement, UIRR recommends that the authorities creatively develop progressive techniques that result in less disruptive, while more efficient, controlling solutions than roadside checks. Overall regulatory compliance in road haulage could be considerably enhanced if smart controlling was devised, which would not depend on stopping the truck and holding it up while performing a transport assignment. Whether using roadside checks or smart controlling, what must be ensured is that a roadside control and its consequences – such as the impounding of the entire vehicle until the parties involved can rectify any alleged infraction – do not undermine market trust in the reliability of an entire transport system, such as intermodal freight transport.

The entire section on evidence – as contained in the Commission proposed amendments – would need to be reconsidered should legislation concerning a *single electronic freight transport document for the European Union* be adopted.

c. Monitoring and Reporting



Freight transport – irrespective of the mode of transport used – is performed as a competitive business service extended on a market basis within the European Union. As a business service, freight transport extensively depends on the use of publicly-owned transport infrastructure. Governments influence the modal equilibrium of freight transport through a number of practices:

- the fees charged for the use of the public transport infrastructure,
- regulated energy prices, including energy taxation, and
- the coverage of the adverse side effects of transport – collectively labelled as '*externalities*'⁹ – by public budgets [in contrast with mandating that these should be fully paid for by the beneficiaries of freight transport services through the prices charged to them].

State aid measures permitted by Directive 92/106 – "*to improve the competitiveness of combined transport*" (see Section 5 of this paper) – are an intervention to compensate the relative unfavourable position of the various modes and solutions to freight transport. Moreover, every use of public funds warrants for monitoring and reporting to ensure that the state aid measures achieve their desired effects, meaning that they do not over-compensate and that they are not inefficient either. In this spirit, UIRR supports the reinforcement of the monitoring and reporting provisions of the Directive.

It is equally important that the right types of data are collected and that the reporting is performed in a way that does not present an unreasonable administrative burden on either the stakeholders of the sector or the Competent Authorities of the Member States. In this regard, the Commission proposal should be considerably refined, which should ideally be done in the delegated act foreseen on the topic.

⁹ **Externalities of transport:** carbon emissions/climate change, chemical-, dust- and noise-pollution, accidents, congestion, destruction of biodiversity, consequences of excessive oil dependency

The data to be delivered by sector players should be defined by the digital systems that support the daily operation of '*combined transport operations*' so that these systems can be easily used for the data reporting – as opposed to the 'classic' 19th century statistics questionnaires, viewed widely to constitute a major administrative burden. This way the data delivery can be automatized with relative ease, while ensuring completeness of the dataset. Industry associations should be involved wherever possible to help sanitize the data for the purposes of the government monitoring and reporting. The technical details of such a collaboration could be worked out in the delegated act proposed on the topic (to be designed along the example of the Commission Implementing Regulation 2015/1100 on the Rail Market Monitoring Scheme or RMMS¹⁰).

UIRR suggests that the scope of the data to be produced by Member States should include two additional components:

- Reporting on any authorisations to exceed the maximum allowed road leg distance performed as part of a '*combined transport operation*' (see Section 2 of this paper), including their time limit and reasons.
- Quantified targets to be achieved through intermodal freight transport in terms of reducing the negative impact of transport – such as air pollution, greenhouse gas emissions, accidents, noise, congestion, etc. – and the accomplishment of modal shift aims as contained in the Transport White Paper of 2011.

Alike in the case of RMMS⁹, all Member State information should be delivered in a single language to assist with the efficient fulfilment of Commission publication and reporting obligations.

Ideally, all required information¹¹ should be delivered by the Competent Member State Authorities biannually to the Commission in a single '**Member State Report on Intermodal Transport**'. The drafting of such a report may appear to be a burden the first time it is done, since the data collection system may not yet be in place and internal procedures within the affected ministries established. Once the first such Member State Report is prepared and the required support systems are established, the biannual updating of this Report should be a considerably smaller burden. The biannual update process should comprehensively involve every branch of government with an impact on intermodal transport and drive these normally modally driven units to think horizontally, from an intermodal perspective.

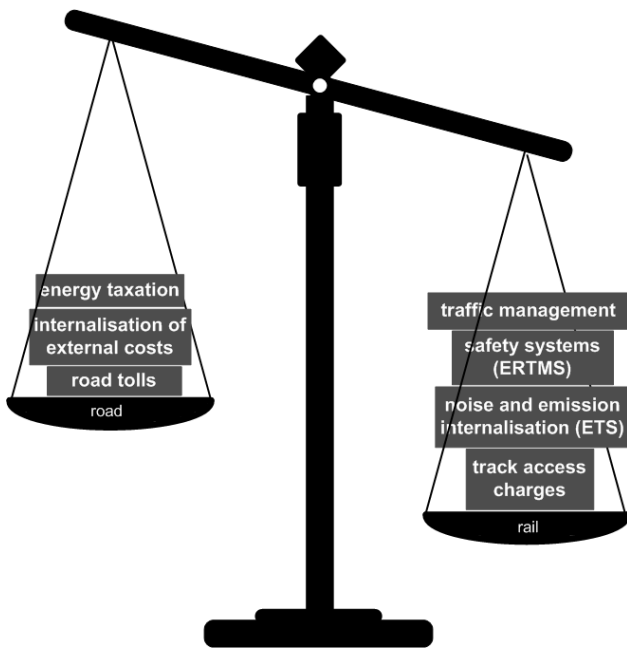
d. State aid provisions

Combined Transport can offer a multitude of low hanging fruits to address the most pressing problems of longer distance overland freight transport, such as GHG emissions, pollution, noise, congestion, accidents, road infrastructure degradation and oil dependency. In order to achieve this potential, the regulatory discrepancies that emerged between the various modes of transport as a consequence of the decades of isolated and 'organic' legislative developments, will have to be equalised, and their distorting effects neutralised, until the relevant laws are corrected in the spirit of fairness.

Common principles to amend the infrastructure access changing for road transport, as well as the heterogeneous state of internalisation are presently being considered by the European legislator. These must be agreed before the changes to the Member State legal framework can be made.

¹⁰ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R1100>

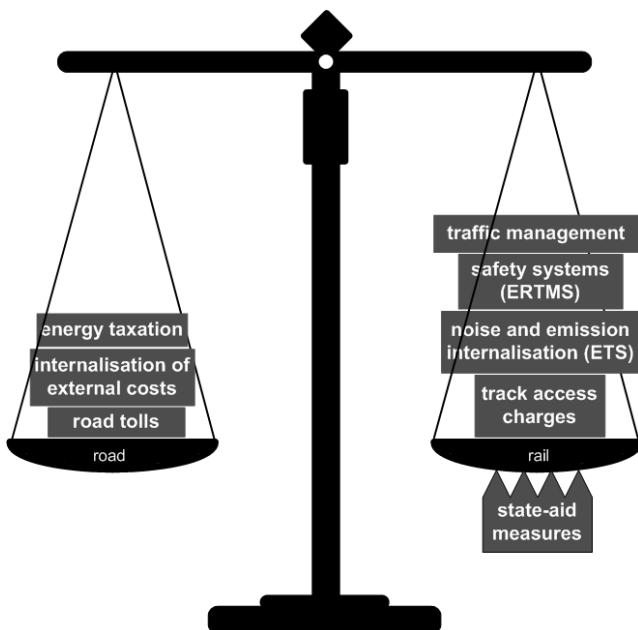
¹¹ Information to be reported: (i) performance statistics delivered by the sector, (ii) state aid measures, (iii) authorizations to exceed the road legs in case of road/rail combined transport, and (iv) targets the Member State wishes to achieve with the state aid provided to combined transport



Prevailing regulatory framework of road transport: insufficient road tolling, inconsistent internalisation of external costs and improper energy taxation all benefit road haulage today. The collective result of these defects is an unprecedentedly and unsustainably high market share of 76% for road freight in the European Union.

Access charging for non-road modes: The process of deregulating railways – a prerequisite of increasing productivity and efficiency – has resulted in the introduction of distance-based track access charging for train operators. The methods of track access charging, as refined during the recast of the First Railway Package in 2012, have resulted in continued upward adjustments to the track access charges. Port and inland waterway fees have largely been placed on a market basis long time ago, hence there are no major changes in this respect.

The state of internalisation of external costs: on rail happened both for carbon emissions (through inclusion of energy generation in the Emission Trading Scheme) and recently noise emissions. Most of the other external costs of transport by rail and waterborne modes are internalised through signalling and other safety systems, as well as strict traffic controlling. The same is missing in road transport, which is reflected in much higher number of accidents, fatalities and injuries, as well as material damages caused, the rapid increase of air pollution-related illnesses, the dramatic evidence of global warming seen in temperature statistics and extreme weather occurrences. The COP21 Paris Climate Agreement not only recognises the climate components and requires counter-measures on governments, while the European Union externality studies¹² cover the rest.



The regulatory inadequacies described above weigh heavily on the competitiveness of combined transport, and therefore they need to be counterbalanced through adequate state aid measures until the regulatory framework can be suitably and mode-neutrally remedied through legislative means.

UIRR welcomes both forms of state aid proposed by the Commission.

'Incentives to invest in transshipment terminals' will deliver the much-needed expansion of intermodal-specific components of the transport infrastructure network.

'Operational support measures' in a structure that prevents cannibalisation of existing services and extended in a predictable manner accessible to every operator.

State aid should be made possible for all forms of *'combined transport operations'*, irrespective of the non-road mode(s) of transport used in the transport chain.

¹² https://ec.europa.eu/transport/themes/sustainable/studies/sustainable_en

Ideally, the Directive should be complemented to declare the purpose of the state aid (i.e. the 'compensation of regulatory discrepancies') and the duration until when the state aid is to be extended (i.e. to be temporary until the correction of the regulatory framework is devised and implemented).



The Swiss example highlights best the underlying philosophy, where after implementing a fair road tolling and internalisation scheme, as well as completing the necessary upgrades to the public transport infrastructure, the state aid schemes extended to combined transport will be gradually phased out until 2020.

3. Summary and UIRR recommendations

The proposal of the European Commission to amend, update and improve the Directive 92/106 is warmly welcomed by the European Combined Transport sector and its stakeholders, and UIRR invites every European citizen and their lawmaker representatives to endorse it as well.

The following **ten important technical adjustments** are suggested by UIRR to further enhance the text:

1. Replacement of the concept of '*as the crow flies*' with plain '*distance*' in the definition of '*combined transport operation*'.
2. Permitting the shipper to combine and freely apportion the 150km first and last mile road distance allowance within a concrete '*combined transport operation*'.
3. Introduction of a time limit and a reasoning requirement to any Member State authorisation that aims to permit the extension of road legs to reach the nearest suitable terminal, and the obligation to communicate these authorisations to the European Commission (for publication through its internet database).
4. Extension of the 44-tonne gross vehicle weight allowance, already permitted for containers and swap bodies carried by combined transport, to vehicle combinations that carry (craneable) semi-trailers when being shipped by rail/road combined transport.
5. The information that is to be delivered as '*evidence*' should be separated into two groups: the first to be delivered during a roadside check, while the second over the course of the follow-up controlling process to the Competent Member State Authorities.
6. Member States should be encouraged to develop smart means of enforcement, more effective yet less disruptive than the current roadside checks.
7. Digital systems used to support daily combined transport operations should be used to minimise the administrative burden of delivering the data required by stakeholders to the Competent Member State Authorities. The actual variables to be delivered should be determined by the capabilities of these IT systems. If possible, industry associations should be involved in the processing and sanitization of the data.
8. Member States should establish clear links between their climate policy, National Emission Reduction Plans, modal-shift aims and the state aid that they extend to combined transport, and include these in their biannual reporting to the Commission.
9. The description of operational state aid measures in the legislation should establish a direct link to declare the compensation of regulatory discrepancies as the reason for the state aid. Subsequently, the operational state aid should be predictably extended for a declared, temporary period.
10. All Member State information should be delivered to the Commission in a single language, just like in the case of the Rail Market Monitoring Scheme, to ease its publication and reporting burden.