

## **Amendment of Directive 92/106/EEC**

### **Why combined transport operations need a flexible and EU-wide harmonised definition of the road leg**

The amendment of Directive 92/106/EEC concerning combined transport (CT) operations aims to promote the sustainability of goods transport in the EU. To this end, Member States shall provide incentives to stimulate the shift of road transport to CT services over rail and water.

CT operations consist of at least a road leg for initial or final haulage and a non-road leg on rail or water. CT chains of transport are the more environmental-friendly the shorter the road leg and the higher the employment rate of the load capacity of trains or vessels, which are mainly determined by technology and the state of the relevant infrastructure. Both impact factors should be taken account of in regard of the CT definition under Article 1 of the revised CT Directive. It must further be ensured that Member States implement the very same, common definition.

#### **150 km and 20% limits of the road leg**

According to the European Commission's proposal from 8 November 2017, the road leg in CT operations should not exceed the longest of the following two distance limits on EU territory:

- 150 km as the crow flies between the CT terminal and the point of loading or unloading; or
- 20% of the total door-to-door distance of a goods transport as the crow flies both for the initial and the final leg.

According to informed sources, the Council of the European Union whilst backing the 150 km limit suggests to removing the 20% provision. We strongly support this recommendation since an implementation of the 20% limit would imply a bureaucratic and costly system of evidences due to compromise the efficiency of CT operations. We are therefore calling for deleting the corresponding provisions under Article 3 as well.

#### **Geographically nearest terminal**

Under Article 1, the Commission has proposed a further rule on determining the length of an eligible road leg. It shall exclusively be applied for CT rail/road operations. The initial and/or final road haulages may be executed over even longer distances to the geographically nearest terminal in case of a facility fulfilling certain eligibility criteria such as handling capacity, opening times or appropriate services cannot be reached within the 150 km and 20% limits.

This provision avoids using the existing and somewhat discredited term "nearest suitable station" but replaces it by a term of similar meaning. What is new, however, is that the eligibility (suitability) of a terminal would be specified by several verifiable characteristics. This is exactly what we and the entire CT industry has been called for since many years. We are confident that objective criteria are due to ensure fair and more effective road-side controls.

We also advocate this solution as the 150 km limit cannot sufficiently take account of the operating conditions of CT rail/road services in the EU. There are numerous regions that currently do not provide for a terminal and/or rail infrastructure, which would enable users to reach an appropriate facility within a 150 km distance. The key reasons are as follows:

- The rail networks especially in France, on the Iberian Peninsula, in Central and South Italy and the UK offer only restricted loading gauges. They impede to carry 4m high semi-trailers on standard (pocket) wagons and thus substantially constrain capturing one of the largest market potential for CT services;
- Low loading gauges can even hamper to move high-cube containers and swap bodies on standard container flatcars or require for employing expensive special low-bed wagons;
- Quite some EU regions are dominated by private or semi-private CT terminals, which cannot be accessed at all or only at discriminatory conditions by third parties;
- Terminals may not be authorised to handle hazardous cargoes or waste.

But even if there were a terminal in a 150 km radius from the point of loading or unloading it does not mean that it would supply an appropriate rail service for the customer in question. This is owing to the following main factors:

- The terminal may be focused on either maritime or continental CT services whilst customers require just the opposite;
- Customers may find themselves in the same situation if terminals are serving only domestic or only international trains;
- The terminal does not serve the trade lane required for performing the underlying door-to-door goods transport;
- The service though operated on the requested trade lane is contracted by a single user. Other than multi-user services those “company trains” are not “open” and cannot be accessed by other companies;
- The profile of the CT service as concerns, for example, the transit time or frequency is not truck-competitive or does not match the requirements of the shipper or consignee.

We have often been asked why we do not offer at every CT terminal rail services on all trade lanes so that almost any customer can find a service within the 150 km limit. The reason is as simple as that: the specific economics of CT rail/road operations and the terms of competition with road-only transport are crucial for the density and the service profile of the CT service network.

Road freight transport in the EU is fully deregulated since almost 25 years, and cross-border operations can be performed without witnessing technical or infrastructure obstacles or divergent national regulations. CT operations over rail, in contrast, are confronted with a range of restrictions: non-harmonised legal and *de facto* market access conditions across the EU; an extensive list of deficits of interoperability in rail infrastructure and operations reduce the cost-efficiency and service quality of CT trains. The commercial situation of CT services further is strongly influenced by national regula-

tions such as track access charges, energy prices or priorities for infrastructure investments. As a result, the lowest common denominator defines the train capacity, the service offering and the economics of international CT services.

The CT industry therefore cannot fully exhaust the productivity potential specific to its technology that combines the strengths of road and rail. Instead, since many years, it has to stand up to a severe price competition with road-only transport.

Against this background, Kombiverkehr – like any other CT service provider – is forced to implement efficient full-trainload production systems such as direct, shuttle or liner trains, which minimise interfaces. They ensure competitive costs per shipment or TEU based on the largest possible train capacities within the limits of the rail and terminal infrastructures and the avoidance of costly shunting operations. The latter would be required if complex less-than-trainload systems designed to bundle the flows of several origins and destinations en-route were deployed.

Full-trainload systems, on the other hand, feature high fixed costs. In order to ensure competitive costs per unit and viable CT services CT operators are set to achieve a regularly high capacity employment ratio. A daily volume of 25-30 truckloads both directions must be captured to break even. As a single CT service is very unlikely to absorb the entire freight volume of a given trade lane but may reach a market share of 20% up to 50%, full-trainload systems can only be deployed if the total market potential amounts to about 50 to 100 truckloads per day.

Only few catchment areas of European corridors do provide for such a big market volume.<sup>1</sup> This even applies to many trade lanes linking agglomerations or seaports with inland centres if the catchment area were confined to 150 km as the crow flies. In order to operate viable and sustainable CT services we rely on our customers that, in addition to shipments hauled over short distances, they also collect or distribute, respectively, load units from/to more distant points beyond the 150 km limit. Recent studies commissioned by the European Commission provide evidence that road legs of more than 150 km are required for an average of 20% to 25% of the total CT volume shipped over rail in the EU.<sup>2</sup>

### **Authorisation by Member States**

In respect of the current situation of the CT rail/road industry outlined above we support the concept proposed by the Commission to allow longer road legs than 150 km under certain conditions. It would contribute to promote CT operations. This goal, however, will not be met if the utilisation of such an exception were subject to an authorisation “by the Member State or Member States on whose territory the road leg takes place”, as also proposed by the Commission.

If realised, we are concerned that instead of an overdue EU-wide harmonised regulation the existing patchwork of divergent national interpretations and implementing laws will be reinforced. We therefore recommend that, under Article 1, the above provision should be mandatory and all Member

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<sup>1</sup> The huge majority of European CT terminals therefore does not serve more than 2 to 4 trade lanes by direct trains.

<sup>2</sup> KombiConsult/Intermodality: Consultations and related analysis in the framework of impact assessment for the amendment of Combined Transport Directive (92/106/EEC), 2017. ISL/KombiConsult: Updating of EU combined transport data. 2017.

States are obliged to generally permit road legs in CT rail/road operations exceeding a 150 km radius provided that hauliers comply with defined eligibility criteria.

Against this backdrop it is unfortunate that the Council is said to suggest provisions, which would be even less instrumental for CT rail/road than the Commission's proposal:

- It would be at Member States' discretion if they transpose the provision into national law;
- Every single CT user would need to apply for authorisations for each CT service, for which the 150 km road distance were not sufficient. General authorisations reportedly are not intended;
- The provision shall be valid for all CT sectors.

We consider such a proposal a step backwards for CT operations, climate change policy and EU integration. Whilst CT operations are becoming increasingly European<sup>3</sup> it would be up to individual Member States if and on which conditions they recognise intermodal chains of transport as eligible CT operations. It is exactly intra-EU supply chains, which require for a certain percentage of extended road legs to capture sufficient volumes for viable CT operations. In terms of regulatory policy the introduction of a new authorisation procedure means that the industry will be falling back to the 1970's and 1980's in the period prior to the liberalisation of EU freight transport.

In addition to this negative political message we consider the proposal not suitable for various reasons:

- Based on the experience on how the existing CT Directive has been adopted by Member States it is more than likely that the provision – if transposed at all – will be interpreted differently. Each country may implement its distinctive authorisation process as concerns, for example, the competent authority, the contents and scope of application forms, the ex-ante and possibly the ex-post evidence, or the period of validity. International CT clients are due to be confronted with a sumptuous and bureaucratic system. This is the opposite of what the Commission – in full consensus with all stakeholders - had aimed at when it commenced the work on the CT Directive;
- The competent authorities in every Member State must possess perfect market information on each relevant CT sector to be capable of taking proper decisions. For every single terminal or transshipment facility they would need at minimum the following information: (regular) freight services (e.g. trade lane, time-table, frequency); multi-user or company service; regularly available capacities both of the terminal and the services supplied; authorisation for handling hazardous cargoes and/or waste; benchmarking information on road-only transport for the door-to-door chain of transport.

In Germany, for example, the data needs would relate to more than 130 dedicated CT terminals and 20 or more other facilities such as short-sea ports or sidings that are handling CT

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<sup>3</sup> See Recital (6) of the Commission's proposal and ISL/KombiConsult study.

units. Neither has such a comprehensive database been set up hitherto nor will it be an easy, effortless undertaking. Not to mention the requirement for permanently updating the database. Moreover, governments would have to create a legal basis for obliging the CT actors (e.g. service suppliers, terminals, railway undertakings, barge and vessel operators) for providing the relevant information. To ensure data privacy and customer protection are not likely to be the only challenges;

- The competent authorities should examine applications on the basis of objective criteria and make appropriate and impartial decisions. We anticipate lengthy discussions on which metrics are verifiable and fair. We are further concerned that ghosts of the past will resur-rect when exemption permits were often issued or refused specific to individual companies;
- Every single CT user would need to apply for authorisations for each CT service, for which the 150 km road distance were not sufficient. Member States may not be fully aware of the administrative burden the authorisation procedure is due to create. The following example highlights the expected red tape:

*Kombiverkehr's customer base comprises of some 500 logistics service providers. It is likely that at least the top-100 clients organise and serve at minimum one supply chain, which re-quires for a road leg beyond the 150 km limit. If the Council's proposal were implemented the competent authority would have to examine some 100 applications straight after the provision would have entered into force. Big customers, who annually move 10,000 to 50,000 shipments or more via CT services, probably will need much more authorisations. Hence application forms will pile up on the desks of the authorities.*

One or the other EU Member State believes that an authorisation process specific to individual applicants will incur less efforts than a general allowance of road legs over 150 km under certain condi-tions and prevent a violation of the law. We hope we could display above what enormous adminis-trative burdens would lie ahead both for authorities and CT users if authorisations were required for all cases. If the exemption were generally allowed control authorities, would only be involved on a case-by-case basis if a road haulier cannot deliver appropriate evidence that he is carrying out an eli-gible CT operation. In order to confine the abuse of any legal provision the intensity of (road-side) controls could be increased.

#### **Extension to all CT sectors**

It is reported that the Council suggests to extending the scope of the exemption to every CT sector. We believe that such an approach would create a distortion of competition to the detriment of CT rail/road and, on top of that, far smaller contributions to a sustainable freight transport system.

**CT rail/road** operations back on a European-wide network of rail and terminal infrastructure. The to-tal transport volume distributes over the entire continent. A wide range of services is being supplied which makes sure that more than 75% of all intermodal road legs can be performed within the 150 km limitation. The proportion is due to rise continuously in line with an upgrading and enlargement of the rail network.

The conditions in the **CT inland waterway/road** sector vary significantly from those in CT over rail. A single corridor, the hinterland of the ZARA seaports (Zeebrugge, Antwerp, Rotterdam, Amsterdam), accounts for about 80% of the entire volume in Europe. The key factor is the superior capacity of the river Rhine (see below). Similarly efficient connections over inland waterways are available neither right nor left off the Rhine valley.

In case of an extension of the exemption to CT on inland waterways, authorisations might be approved for container transports with origins or destinations in regions such as Paris, Lyon, München, Nürnberg or Leipzig, which cannot be served as CT under the existing CT Directive (150 km limit). Although it would imply very long road legs from/to inland ports along the Rhine the costs of the total port-to-door supply chains could be competitive owing to the comparatively low cost per unit of barges. Whilst the capacity of CT trains on TEN-T corridors with a maximum length of 740 m amounts to 96-100 TEU, barges can carry up to 400-450 TEU to inland ports at the Upper Rhine valley and up to 800 TEU or more on the Lower Rhine valley.

The regions mentioned above are already linked with ZARA or other ports by effective CT services over rail. If users of CT inland waterway/road services were obtaining exception permits and thus benefit from certain incentives the competition with rail would be distorted. Volumes could be shifted within the CT industry from one sector to another. Instead of decongesting roads and reducing pollution the total size of road kilometres would increase since the road legs in CT rail/road operations in the above-mentioned regions are significantly shorter. Such effects are contradictory to the goals of the CT Directive.

The situation would become absurd if exception permits were also granted to **CT deepsea/road** operations. The Council is said to recommend including this CT sector in the CT Directive. The principal aim is the promotion of seaports. It would be more than adequate to apply the general 150 km limit of the road leg as CT deepsea/road operations do neither decongest roads nor reduce greenhouse gas emissions. They therefore do not match the goals of the CT Directive. If this sector additionally were included in the system of exception permits the negative impacts concerning emissions and road congestion would increase. Moreover, the longer the road journeys the more CT services by rail are threatened to be cannibalised.

### **Conclusion**

In view of the above results we recommend to grant the exception rule that road legs may be executed over distances beyond 150 km to the geographically nearest terminal under certain eligibility criteria exclusively to CT rail/road operations. This exception should be generally permitted. The corresponding provision under Article 1 in the amended CT Directive should be mandatory for all Member States.