

Directive 92/106 amendment: Aiuto Report

This paper reflects the position and proposed amendments of UIRR, the industry association of the European Combined Transport sector, to the Draft Report on the Amendment of the Combined Transport Directive (92/106) prepared by TRAN Committee Rapporteur, Daniela Aiuto¹.

Overview

UIRR would firstly like to thank the members of the European Parliament Transport and Tourism (TRAN) Committee, and its Rapporteur's and Shadow Rapporteurs' excellent work that has gone into the drafting of the Report.

Simultaneously, praise should go to the co-reporting of the Committee on the Environment, Public Health and Food Safety (ENVI) and its Rapporteur, Michel Dantin², as well as to Stefan Back, Rapporteur of the European Economic and Social Committee for his referral titled "Combined transport of goods"³.

The TRAN Draft Report proposes 47 amendments to the original Commission Proposal of 8 November 2017⁴. Of the 47 amendments, UIRR

- endorses without comments: 27⁵
- endorses while attaching comments: 17⁶
- proposes changes to: 3⁷

Most importantly, UIRR wishes to emphasise the importance of maintaining the legal equivalence of international (intra-EU) road haulage and international (intra-EU) combined transport operations (Article 4).

¹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-619.311%2b01%2bDOC%2bPDF%2bVo%2f%2fEN>

² <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-618.208%2b01%2bDOC%2bPDF%2bVo%2f%2fEN>

³ <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/combined-transport-goods>

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017PC0648&from=EN>

⁵ Rapporteur amendments endorsed by UIRR without comments: 2, 3, 5, 6, 7, 10, 14, 15, 16, 18, 19, 22, 23, 24, 27, 29, 31, 31, 32, 33, 34, 35, 36, 37, 38, 42, and 43

⁶ Rapporteur amendments endorsed by UIRR with comments: 4, 8, 9, 11, 13, 21, 25, 26, 28, 39, 40-41, 1 and 44-47

⁷ Rapporteur amendments to which UIRR proposes changes: 12, 17, 20

Changes to Rapporteur-proposed amendments

UIRR proposes the following comments to Rapporteur-proposed amendments it otherwise endorses:

a) #12 to Article 1 – paragraph 1 – point 2:

| Article 1 – paragraph 3 – subparagraph 3 Rapporteur's amendment | Suggested changes by UIRR |
|---|--|
| <i>Exceeding</i> the road leg distance limit <i>specified in this paragraph</i> for combined road/rail transport operations <i>shall be allowed</i> by the Member State or Member States on whose territory the road leg takes place, in order to reach the geographically nearest <i>transshipment</i> terminal which has the necessary operational transshipment capability for loading or unloading in terms of transshipment equipment, terminal capacity, <i>terminal opening times</i> and appropriate rail freight services, <i>in the absence of a transshipment terminal fulfilling all of these conditions within the distance limit.</i> | <i>Exceeding</i> the road leg distance limit <i>specified in this paragraph</i> for combined road/rail transport operations <i>shall be possible within</i> the Member State or Member States on whose territory the road leg takes place, in order to reach the geographically nearest <i>transshipment</i> terminal which has the necessary operational transshipment capability for loading or unloading in terms of transshipment equipment, terminal capacity, <i>terminal opening times</i> and appropriate rail freight services, <i>in the absence of a transshipment terminal fulfilling all of these conditions within the distance limit.</i> <i>The operator who controls the combined transport operation shall document the reasons for the need to exceed the distance limit defined in Article 1 and ensure that this justification accompanies the loading unit along its journey.</i> |

Justification

Any form of Member State permit issuance with regards to a combined transport operation is seen as a return to the pre-1975 era, when combined transport was not yet liberalized. Such permit issuance requirement would be a regulatory burden, an increased complexity and a restriction to the present conditions of conducting combined transport⁸. The obligation for the planner of the combined transport operation to draw up a justification in writing, which is to accompany the shipment, should constitute adequate restraint that the maximum distance is only exceeded in justified cases.

⁸ UIRR member, Kombiverkehr's, position regarding the conditions and circumstances of exceeding the 150km distance: https://www.kombiverkehr.de/download/ctd_amendment_kv_position_paper_2018-05-04_en

b) #17 Article 1 – paragraph 1 – point 3:

| Article 3 – paragraph 2 – subparagraph f Rapporteur's amendment | Suggested changes by UIRR |
|---|---|
| (f) a description of the combined transport operation routing, <i>signed by the responsible operator for the planning</i> , including at least the following details for each leg, including for each mode of transport which constitutes the non-road leg, of the operation within the Union: | (f) a description of the combined transport operation routing, <i>signed by the responsible operator for the planning, where the signature can mean an electronic signature</i> , including at least the following details for each leg, including for each mode of transport which constitutes the non-road leg, of the operation within the Union: |

Justification

For the sake of digitalization, it must be made clear that signatures can be electronic as well as physical.

c) #20 Article 1 – paragraph 1 – point 3:

| Article 3 – paragraph 4 Rapporteur's amendment | Suggested changes by UIRR |
|---|---|
| 4. The evidence referred to in paragraph 1 shall be presented or transmitted upon the request of the authorised inspecting officer of the Member State where the check is carried out. In case of road side checks, it shall be presented within the duration of such check. <i>If not available at the time of the road check, the signatures referred to in point (h)(iii) and point (j) of paragraph 2 shall be presented or transmitted within 15 days following the check to the competent authority of the Member State concerned. The evidence</i> shall be in an official language of that Member State or in English. During a roadside check, the driver shall be allowed to contact the head office, the transport manager or any other person or entity which may support him in providing the <i>information</i> referred to <i>in</i> paragraph 2. | 4. The evidence referred to in paragraph 1 <i>alongside any explanation for an operational re-routing or other deviation from the as-planned documentation of the combined transport operation that may have occurred due to unforeseen circumstances</i> shall be presented or transmitted upon the request of the authorised inspecting officer of the Member State where the check is carried out. In case of road side checks, it shall be presented within the duration of such check. <i>If not available at the time of the road check, the signatures referred to in point (h)(iii) and point (j) of paragraph 2 shall be presented or transmitted within 15 days following the check to the competent authority of the Member State concerned. The evidence</i> shall be in an official language of that Member State or in English. During a roadside check, the driver shall be allowed to contact the head office, the transport manager or any other person or entity which may support him in providing the <i>information</i> referred to <i>in</i> paragraph 2. |

Justification

Occasionally there is a need for road legs of combined transport operations to be changed on an ad hoc basis to reflect on unforeseen changes in circumstances such as force majeure or an event like the recent Rastatt incident, train schedule changes attributable to strikes, road construction-related diversions or other external reasons, which may require rectification during a roadside check and/or its ex-post follow up.

Comments to Rapporteur-proposed amendments endorsed by UIRR

UIRR proposes the following comments to Rapporteur-proposed amendments it otherwise endorses:

- a) **#4:** The same rules should apply to the road legs of international combined transport operations and international road haulage and thus maintaining their legal equivalence
- b) **#8:** The European Commission (DG MOVE) shall be informed of any state aid (compensatory measure, legal provision) that targets combined transport operations in a Member State with a view of publishing it on a single web portal.
- c) **#9:** Whereas ISO6346 or EN13044-compliant identification marking should be compulsory for every intermodal loading unit that uses unaccompanied combined transport – for reasons of digitalization like the Standard Carrier Alpha Code (SCAC) identifier in the USA⁹ and also to harmonize with the requirements of the Union Customs Code Delegated Regulation 2015/2466¹⁰ – however it should also be noted that only a small portion of the European non-craneable semi-trailer fleet takes part in unaccompanied combined transport today, therefore UIRR recommends a special entry-into-force rule for their compliance with the required identification marking scheme of 7 years from the day of adoption of the amended Directive.
- d) **#11:** In case the UIRR-suggested amendment to exceeding the maximum allowed distance to reach the geographically nearest terminal offering the adequate services is accepted, UIRR does not require the “20% rule” as it is seen to add unnecessary complication to combined transport operations.
- e) **#13:** The special situation of Switzerland needs to be taken into account when devising rules for third countries, since it often occurs that a road leg of an international combined transport operation takes place exclusively on the territory of Switzerland, while the non-road transport is carried out within the Union. The same sensitivity is due in case of Norway, and post-Brexit United Kingdom. UIRR believes that the best settlement of the issue relevant to Switzerland or Norway could be within the scope of the Land Transport Agreements that the EU has with these countries, by placing international combined transport operations under the scope of the Agreement.
- f) **#21:** UIRR suggests referencing the e-freight document regulation – proposal for which is to be unveiled by the Commission on 16 May – here.
- g) **#25:** UIRR emphasizes that Member States and Commission shall submit a report on CT operations at least every two years with an aim to deliver a regular and comprehensive insight into the development of this industry.

⁹ The Standard Carrier Alpha Code (SCAC®) is a unique two-to-four-letter code used to identify transportation companies. NMFTA developed the SCAC identification codes in the mid 1960's to facilitate computerization in the transportation industry. <http://www.nmfta.org/pages/scac?AspxAutoDetectCookieSupport=1>

¹⁰ **COMMISSION DELEGATED REGULATION (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code**
7/10. Container identification number

If applicable, for containers covered by the standard ISO 6346, the identifier (prefix) allocated by the International Bureau of Containers and Intermodal Transport (BIC) shall also be provided in addition to the container identification number.

For swap bodies and semi-trailers the ILU (Intermodal Loading Units) code as introduced by the European EN 13044 standard shall be used.

- h) **#26 and #28:** While the intermodal sector is ready to provide all data required, the variables to be supplied should not be defined in the Directive, but within the Delegated Act, to allow close adherence to the variables that could be automatically generated by the EDI systems used today.
- i) **#39:** State-aid for investment into extending existing transshipment terminals or the construction of new ones is indispensable as these function as the gates for freight to the TEN-T railway network. In case these access points are not extended, freight will not be able to use the transport infrastructure fixed up with EU and other public funds. Combined Transport is the engine of growth for rail freight today, therefore without Combined Transport the rail freight traffic growth eyed in the business plans of these infrastructure projects will not materialize, and Combined Transport will not be capable of delivering the modal shift expected of it by society.
- j) **#40-41:** State-aid measures should not be viewed as pure financial transfers, but as compensatory measures designed to balance the regulatory framework presently biased toward road haulage. These temporary compensatory measures should have a commensurate effect to the net result of the imbalance suffered by combined transport today. It can be reduced as soon as the regulatory framework within the various Member States changes towards fairness and mode-neutrality.
- k) **#1 and #44-47:** UIRR enthusiastically endorses the Rapporteur's proposed joint amendment of Council Directive 96/53/EC. Semi-trailers make up an increasing portion of combined transport already today, and as palletized dry goods will form most of shipments to be shifted from road to combined transport in the coming years, the proportion of semi-trailer use in combined transport is foreseen to increase. Therefore, it is fundamental to ensure the legal equivalence – in this regard – of every type of CT loading unit.

Equivalence in the legal standing of international road haulage and international combined transport operations

On cross-border relations, international combined transport operations compete with international road haulage. For the sake of fair and equal competition, the legal standing of these two types of cross-border land transport solutions needs to be identical: whatever market access rules may apply to international road haulage they should also be applicable to international combined transport.

The initial and/or final road legs of an international combined transport operation are integral components of this single international cargo-movement and should therefore be subject to the same provisions as unimodal international road-only haulage. Without such legal equivalence, if the legislator was to prescribe different rules for the road legs linked to international combined transport operations, the risk is high that – due to the extra costs – a considerable portion of combined transport operations will revert to pure road transport.