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POSITION PAPER

Revision of the Combined Transport Directive 92/106/EEC

As outlined in the European Green Deal and the Sustainable and Smart Mobility Strategy, the transport sector will have to make significant efforts towards decarbonisation in the coming decades. The rail and inland waterway sectors have been attributed a particular role through the Commission's modal shift objective. More specifically, the recently published Sustainable and Smart Mobility Strategy (SSMS) stipulates that rail freight traffic should increase by 50% by 2030 and double by 2050, whereas transport by inland waterways and short sea shipping should increase by 25% by 2030 and by 50% by 2050. In this context, the Commission has pledged to substantially revamp the existing framework for multimodal transport.

CLECAT, the European association representing the interest of freight forwarders and logistics service providers, has long supported a revision of Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States (CT Directive), which is outdated, ambiguous and creates barriers to the effective operation of combined transport.

The CT Directive currently discourages some combined transport operations and disregards other forms of multimodal transport. The upcoming review represents an opportunity to address the existing shortcomings and set the legislative preconditions to achieve the Union's sustainability goals through a market-driven modal shift.

The below sets out CLECAT's vision on how the revision of Directive 92/106/EEC can be a key factor to achieve a successful market-driven modal shift.

Summary

- **Clear definitions are needed** to ensure a common understanding and application throughout the EU of the CT Directive, leaving no room for interpretation. This should counter existing problems and ease combined transport.
- CLECAT would support the change of the legislative instrument from a Directive to a Regulation. This would mean that the Regulation would have a more binding legal force throughout the Union and would avoid current problems caused by different interpretations.
- An **extension of scope of the instrument to all multimodal transport operations in the EU** should be introduced, provided that the longest leg of the journey is carried out by a sustainable mode of transport, in support of a market-driven modal shift.
- **Appropriate financial and non-financial incentives** are needed to support the industry to move towards multimodal transport.

- CLECAT equally highlights the need to allow for **mixed trains, the provision of high-quality reliable infrastructure, heavier load authorisations for multimodal transport, the introduction of eco-premiums and a reduction of administrative burdens and costs**

1. Current Issues faced by freight forwarders in Combined Transport

CLECAT is fully supportive of the European Green Deal and its ambition to make Europe the first climate-neutral continent by 2050. With this in mind, CLECAT considers that the revised Combined Transport Directive needs to be much more ambitious to achieve the objectives of the European Green Deal. Currently, Combined Transport is faced with a number of issues, including its cost factor and the shortcomings in capacity, but also the unclarity about the definitions in the CT Directive, diverging interpretations by Member States, and most recently the threat of Member States opting out of the cabotage exemption in Combined Transport stemming from Mobility Package 1.

1.1 Lack of Harmonised Definitions and Interpretations

The **lack of clarity on some definitions** has led to significantly diverging interpretations of the CT Directive amongst the Member States.

The definition of a '*combined transport operation*' itself is ambiguous and has led to diverging interpretations by various Member States. For example, France defines the road transport part of combined transport as a 1-leg operation, whilst other Member States (e.g. Germany and the Netherlands) define combined transport as a 2-leg operation. This differentiation inherently leads to different applications of the Combined Transport regime across the EU.

The existing lack of harmonisation distorts the level playing field and as a result imposes unjustified burdens on companies operating in certain Member States. For example, in Germany, the definition of a '*combined transport operation*' has been interpreted as ending as soon as the goods have been delivered. As a result, the return of empty containers after having delivered the cargo is not seen as part of the CT journey and can qualify as a cabotage operation to the detriment of operators. This creates situations of legal uncertainty for business, risks of breaches of law, unwarranted penalties, and ultimately disincentivises companies from investing in combined transport operations.

A further problem, stemming from the lack of uniform interpretation of definitions and the CT-Directive's application, can be found in the authorisation of heavier loads in cross-border operations, where a journey starts by road in a Member State and is destined for a multimodal terminal in another Member State, for example between France and Belgium. When the initial road leg of a combined transport operation starts in a terminal in Belgium close to the French border, France classifies the journey as a road-transport operation instead of a combined transport operation, based on the fact that only journeys starting in a terminal in France are considered as combined transport operations. In those cases, exemptions need to be requested by Belgian companies for the authorisation of the heavier load.

Next to diverging interpretations of the CT Directive's provisions, there is also incorrect application of certain provisions in some Member States. An example can be found in Sweden, where the definition of '*combined transport operations*' is limited in such a way that it prevents certain operations covered by the Directive from benefiting from its regime. To that end, the Commission also issued a letter of formal notice in Autumn 2020.

More recently, the introduction of [Regulation \(EU\) 2020/1055](#) amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector as part of Mobility Package 1 has created a further threat to the CT Directive stemming from diverse interpretations. As proven by the [Commission's study on the impacts of cabotage restrictions on combined transport road legs](#), a widespread application of the Article 4 waiver in accordance with Regulation 2020/1055 would lead to increased emissions, and a mid- to long-term negative impact on rail and intermodal freight. Additionally, the risk of not qualifying for the cabotage exemption leads to less companies being inclined to opt for CT operations. Such a development would be detrimental for achieving the sustainability goals of the Union.

1.2 Infrastructure

The availability of high-quality infrastructure is an important aspect for Combined Transport. In some parts of Europe sufficient terminal infrastructure is either lacking or not correctly used, with the number and distance of terminals differing greatly between the Member States. As Combined Transport is, by definition, a cross-border operation, it is not enough to have sufficient infrastructure on a Member State level, but instead corresponding infrastructure and terminals in other Member States are necessary.

Equally, the reality remains that priority on the railway network is often given to passenger transport, which leaves a limited amount of capacity with little flexibility for freight transport. A concrete example of the challenges of the shared infrastructure is the “Deutschlandtakt”, which is currently being developed in Germany. It demonstrates that it is particularly difficult to align public rail transit with its short frequency timetables with non-scheduled services in rail cargo transport. Additionally, the number of transhipment terminals with the necessary equipment varies widely in the EU.

1.3 Cost

A further issue concerns the pricing, which is – in the majority of cases – not competitive with road-only transport. Due to its inherent nature, requiring transhipment, logistical planning, as well as increased administrative burdens, combined transport is more costly than road-only transport operations. It is generally understood that rail journeys become more cost-efficient than road-only operations only on longer journeys, e.g. as of 300 km.

To address sustainability concerns, shippers and freight forwarders increasingly would prefer opting for CT operations, but are faced with higher costs which in most cases are not justifiable due to the low quality and reliability of rail freight.

2 Proposals for an ambitious revision of the Combined Transport Directive

Having identified the currently existing issues in the EU’s combined transport policy, CLECAT will set out below its proposals for an ambitious revision of the CT Directive.

2.1 Definitions

To counteract the currently existing issues surrounding the ambiguous definitions contained in the CT Directive, **clear definitions should be introduced which leave no room for interpretation**, thereby

ensuring a uniform understanding, interpretation and application of the legislation throughout the Member States.

Misconceptions are also present in relation to the definitions of combined-, intermodal-, and multimodal transport, which are often used interchangeably. As these definitions describe different scenarios, which are not all covered under the current legislation, the below sets out the definitions for multimodal-, intermodal-, and combined transport, which should be clearly stated in the legislation.

The term **multimodal transport** describes the use of different means of transport - at least two modes of transport - to transport a good as part of a transport service. In this case, however, the goods themselves can also be handled separately from the loading unit (it includes the handling of the goods directly).

A special form of multimodal transport is **intermodal transport**, whereby the transported goods themselves are not handled, but only the loading unit changes the mode of transport – i.e. standardised transport units (containers, swap bodies, semi-trailers) are moved for the change of transport mode.

Combined transport is a specific, privileged form of intermodal transport, that has to cross the border between two EU Member States and in which the majority of the distance covered is by rail, ship or inland waterway vessel and the pre- and onward carriage by road is kept as short as possible. In combined transport, two or more modes of transport are also used with a change of the loading unit within the transport chain.

To ensure uniformity throughout the Union and counteract the current fragmentation of regimes, the setup of the operation should be defined unambiguously. Multimodal, intermodal and combined transport should be considered as an at least 2-leg road transport operation, i.e. road transport on the initial and final leg, as defining it as a 1-leg road transport operation would be conditional upon a direct port or a rail connection. Such a restricted definition does not reflect market reality, as only few companies in the EU have such a connection, and should therefore not be continued in any Member State.

2.2 Legal Form

As noted above, operators in several Member States have experienced problems with the CT Directive, resulting in a lack of a uniform application of its provisions. These problems can be attributed to the current legal form of a Directive, as it requires Member States to transpose the content of the Directive, whilst leaving them the freedom how to achieve the result. This inherently leads to diverging transpositions amongst the Member States, which can create a patchwork of national legislation.

Taking into consideration the experiences gathered with the CT Directive, CLECAT would urge for a **new legal instrument in the form of a Regulation**, rather than a Directive. We believe that introducing the CT Directive's successor in the form of a Regulation would address the mentioned shortcomings, as Regulations apply automatically and uniformly to all EU Member States as soon as they enter into force, without needing to be transposed into national law, and are binding in their entirety on all EU Member States.

To ensure that the goals of the Green Deal are reached, CLECAT would also suggest **extending the scope of the regime to all multimodal transport operations in the Union**, provided that the longest leg of the journey is carried out via a sustainable mode of transport, i.e. railway or inland waterway, and the initial and final road legs are adequately short.

As such, the combination of various transport modes in a multimodal transport operation can increase the use of sustainable transport modes. To ensure that the most sustainable mode of transport is chosen, CLECAT strongly believes that an **accurate measurement and reporting of GHG emissions from freight movement and logistics operations should be introduced**, as this bears the potential to accelerate the reduction of negative environmental impacts of transport. Measuring emissions from transport and logistics operations supports companies in making better-informed freight transportation decisions, thereby improving the carbon performance and cost-efficiency of their supply chains.

CLECAT believes that the overall sustainability of the transport journey should be considered and represent a decisive element in the operator's choice, meaning that the most efficient journey should be chosen. Using GHG emissions as a performance indicator makes it possible for the freight forwarders to identify the most sustainable transport mode and sub-contractor. For example, on very short routes, it might even be more efficient and sustainable to carry out a road only operation rather than a multimodal one. In all other cases, an assessment should be made as to which combination of sustainable transport modes would result in the most sustainable multimodal transport journey.

The scope should be extended towards covering all multimodal transport operations rather than only combined transport operations, as the differentiation between those is not a fundamental one, but instead lies in the technicalities, as can be deducted from the definitions provided above. More specifically, intermodal and combined transport are both forms of multimodal transport, but differ in the fact that in those cases, the loading unit itself is transhipped (see definitions above). In each form of transport, the majority of the distance is performed by rail or by inland waterway. Both types of transport are predominantly performed by an environmentally friendly mode of transport and can as such contribute to the emission reduction. Therefore, CLECAT does not identify an appropriate rationale as to why combined transport, being a specific form of multimodal transport, should be the only type benefitting from the incentivisation policy. In addition to rail and IWT, multimodal transport operations also make use of shipping services. To allow the utilisation of sustainable transport modes to the fullest extent, CLECAT believes that the scope of the legal instrument should also be extended to cover EU short sea shipping.

By extending the scope to multimodal transport, the transhipment of the actual cargo would also be covered, which is more expensive due to its inherent nature as it requires the unloading and loading of the cargo itself, whilst providing the same sustainability benefits.

2.3 Incentivisation of Multimodal Transport Operation

Generally, multimodal transport operations (including intermodal- and combined transport operations) are less cost-effective than road-only transport. Therefore, to ensure that the modal shift ambitions as outlined in the SSMS can be met in the transport sector, appropriate incentives should be created for the industry to move towards multimodal transport.

One central aspect that would increase the use of multimodal transport and make rail freight operations more efficient, competitive and attractive for the end-customer would be the **support for mixed trains at EU level**. Currently, Member States often do not provide the support for trains with intermodal and conventional units. In other Member States, there is no prohibition *de iure*, however, a separation is enforced *de facto*. An example for this can be found in Germany, where two distinct funding schemes exist for Combined Transport- and Multimodal Terminals (railports). In this specific case, there is a strict differentiation between multimodal and combined transport. If the two forms are mixed in one terminal, i.e. a CT operation takes place in a multimodal terminal or vice-versa, the funding is completely lost. This is problematic, as the strict differentiation does not match the market reality and acts as a disincentive. Such a separation follows an outdated model of rail freight transport operations and hinders the most efficient organisation and use of multimodal transport. To promote multimodal transport and a shift to rail, such mixed operations should be allowed, and specific funding schemes should be introduced – ideally at EU level – to specifically support the utilisation of mixed trains. A best practice for such a scheme can be found in Belgium, which has introduced a mixed-train subsidy scheme for combining containers with conventional wagons. CLECAT believes that such a subsidy scheme should be introduced at EU-level, as it allows operators to plan train journeys and exploit the available capacity in the most efficient way.

The currently existing **cabotage exemption** (Article 4) should be continued, as it acts as a non-financial incentive for the utilisation of multimodal transport. To further promote multimodal transport operations, the **initial and final leg of the transport operation by road should be exempted from traffic bans**, e.g. driving bans during weekends and holidays, so as to fully use the potential of multimodal transport.

A further non-financial incentive would be the **continuation and extension of heavier load authorisations to multimodal transport operations**. Ideally, an authorisation for 44t or 46 t should be introduced for all forms of multimodal transport operations (including intermodal transport and keeping it in combined transport), whilst keeping the limit at 40t for regular mono-modal road transport operations. The scheme for authorising such heavier loads for multimodal transport should be introduced uniformly throughout all Member States. Special attention should be paid to the cross-border application of such authorisations to avoid situations in which a Member State does not accept a heavier load authorisation granted by another Member State on its territory.

Considering the higher cost of multimodal transport, **financial support measures** should also be considered, provided these do not lead to a distortion of competition. An example for a market-oriented financial support measure would be the introduction of an **eco-premium**, i.e. a financial support measure for customers and logistics service providers when shifting goods from road to rail, to compensate for the higher costs.

Indirect financial support measures should also be introduced for multimodal transport, including a **reduction of track access charges**, a **waiver of road toll charges for the road leg of CT**, as well as a **reduction of administrative burdens and costs** surrounding multimodal transport operations.

CLECAT would equally support a possible financial support measure in the form of introducing an **EU-wide funding scheme for craneable trailers** to offset their higher purchasing and operational costs. A financial subsidy of this form would be ideal, as not every operator might be interested in craneable trailers. However, there is a lot of potential for growth, if more trailers would be craneable, as having a craneable trailer is one less obstacle for potential customers of a combined transport operation. The

German Ministry of Transport is currently working on a study to look into the positive and negative implications of making craneable trailers mandatory for manufacturers, the rationale being that eventually this would lead to a take-up by the industry. However, as no data is currently available for such a requirement, CLECAT believes that a subsidy scheme at EU-level should be sufficient and quicker to incentivise interested operators.

2.4 Addressing Practical Implications in Capacity and Quality

In support of multimodality, the scarcity of transhipment infrastructure, and of inland multimodal terminals in particular, which is pronounced in certain parts of Europe, would need to be addressed, and missing links in multimodal infrastructure closed. In the short term, rail freight infrastructure needs to be improved and a **higher allocation of paths**, as well as **increased priority and flexibility**, must be given to freight trains.

In the medium term, the cost competitiveness of multimodal transport can be improved through the **optimisation of integrated site logistics** (24/7 operations), **increased efficiency of terminals** with further elimination of waiting times, and a **reduction of terminal costs**. More specifically, **terminals** should be sufficiently available, responding to the needs of the market. Prior to the construction of new terminals, the upgrading and optimisation of existing facilities and services should be considered. This includes the increase and improvement of terminal capacity across borders, taking into account existing missing links, as well as ensuring that the Rail Freight Corridors are serving the customers in the best way possible. Equally, the construction of new infrastructure should be based on demand and proper ex-ante evaluation of trade flows. As a general rule, such **terminals should be multimodal**, to allow for their widest use.

The ambiguous definitions within the CT Directive have also led to diverging interpretations of the '**nearest suitable terminal**'. CLECAT would suggest the removal of this provision, which has led to significant opposition from a number of Member States in the past. Instead of obliging Member States to set up terminals at fixed distances where they might not be needed, the location of terminals should be aligned with industry needs, as stated above. To that end, an analysis of the market's needs for terminals should be carried out along the TEN-T network, based on which terminals should be built and funded. However, in case the new proposal would include the notion, its definition should be clear and unambiguous. Moreover, it should be highlighted that such a terminal must be a suitable terminal for the actual operation, i.e. a terminal having the necessary operational transhipment capability for loading or unloading in terms of transhipment equipment, terminal capacity, appropriate rail freight services and time slots. Thus, it should be left to the operator to clarify why a certain terminal was chosen as the most suitable one, in case it is not the nearest.

Considering that the maximum length of the **road leg** has been problematic in the past, **flexibility** in determining it should be provided to Member States to allow an extension of the road leg in order to reach the nearest terminal with appropriate facilities. As a guideline, the suggestion made in the proposal of Mobility Package II of 150km or 20% of the total distance, whichever is the longest, could be taken into account. Moreover, this flexibility should be applied to all multimodal operations and not just road/rail transport. Additionally, the restriction of the minimum length of 100km as the crow flies on the non-road leg should be removed, to incentivise the broader use of multimodal operations.

Considering that rail freight transport becomes more cost-competitive on longer journeys, an improvement of the **connectivity for best use in East and South-East Europe** should be taken into

account. Extra-EU connections should be improved especially towards Russia and China considering the rising importance of the Silk Road and China's Belt and Road (BRI) initiative. Therefore, connections to the broad-gauge network should be increased and it should be analysed how those could be connected to the EU's TEN-T network.

CLECAT also welcomes the European Commission's efforts in the area of **digitalisation**, particularly concerning the Regulation on electronic freight transport information (eFTI Regulation), as well as the consultation of the Digital Transport and Logistics Forum (DTLF), of which CLECAT is an active member. Under the current system, providing a list of paper-based transport documents is burdensome and bureaucratic. The introduction of the eFTI Regulation, which requires Member States to accept freight transport information provided in an electronic format, will be a key-aspect to allow economic operators as well as Member States to reap the full benefits of digitisation in multimodal transport. In practice, the requirement for authorities to approve a multimodal transport operation by means of a stamp on a paper transport document can be replaced by **providing the necessary information in digital format through an eFTI platform**. Therefore, in line with the wider shift to electronic transmission of transport information, focus should be placed on the provision of the necessary data, rather than making mention of "documents" as the central element of compliance. This will require electronic data transmission to be available, legally-binding, and widely accepted.

3 Conclusion

To achieve the ambitions of the Green Deal and the Sustainable and Smart Mobility Strategy, the transport sector will be faced with significant challenges to achieve the Union's decarbonisation objectives in the coming decades. In support of greening freight transport, CLECAT continues to call for reliable and economically viable alternative solutions, as well as sufficient capacity in rail and inland waterways. Without them, modal shift policies will fail.

CLECAT therefore remains of the opinion that without significant expansion of the EU rail-infrastructure capacity and efforts towards a modernised, competitive and customer-oriented rail freight sector, a major shift towards rail freight will not happen. To that end, the revision of the Combined Transport Directive is essential to increase the mode's attractiveness.

To ensure a successful market-driven modal shift, CLECAT highlights the importance of an extension of scope away from merely including Combined Transport and instead to encompass the entirety of multimodal transport operations across the Union.

Improving quality, including in network- and terminal capacity are essential elements. Considering the increased cost of combined- and multimodal transport compared to monomodal road-freight transport, providing the right incentives will be a key factor. This should include financial incentives, provided these do not lead to a distortion of competition, as well as non-financial incentives, including an effective system for the authorisation of heavier loads in cross-border operations, and most importantly an EU-level support for mixed train operations, as these suit better the current market reality and bear the potential to significantly improve services.

Achieving Europe's modal shift ambitions will only be realistic if the right framework conditions are put in place. To that end, CLECAT is looking forward to supporting the European Commission in its efforts to ensure a successful multimodal transport framework in Europe, which will be key to green freight transport operations through a realistic and market-oriented approach.



CLECAT remains at the disposal of interested parties for any further information.

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