



# Intention and reality of “Combined transportation” – insights from Sweden

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## Foreword

THIS REPORT IS an attempt to give an understanding of how the EU Combined Transport Directive<sup>1</sup> (“CT Directive”) is used in practice in Sweden.

The aim of the EU directive is to promote intermodal transport in order to increase the proportion of goods transported by rail or sea instead of on Europe’s congested roads. Intermodal transport means that a freight unit is transported using several different modes of transport. For example, a container which is transported by rail through Europe and then further transported by roadtransport.

However, the fact that a law is theoretically correct is not enough, it must also function in reality. This report shows that the combined transport directive, as it stands today, contributes to unfair competition and social dumping on the European labour market.

The report uses available data and expert input to give a brief overview of the current framework and studies on combined/intermodal transportation. But we hope that the main added value is the case study of Sweden that outline how the directive works in practice and its effects on the roads.

A large share of the information in this report has been collected in the Swedish Transport Workers’ Union project “Ordning och reda i åkeribranschen” (“Law and order in the road haulage industry”). The Law and Order project was launched in January 2015 and involved a full-time main investigator, from 2015 to 2017, and one senior expert on half time, from January 2015 to October 2016. Their work has made the compilation of this report an easy task and we are very grateful for the impressive and important work conducted by Tommy Jonsson and Göran Nilsson.

We are also indebted to Henrik Sternberg and his team and the research they have performed on road transport in, primarily, Sweden but also Scandinavia and other parts of Europe. The work with the now famous Cabotage study is ground breaking and a huge reason that transport research in Europe is really moving forward. Without that work this report would have lacked the necessary scientific support.

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<sup>1</sup> Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States

We hope that this report will play a role in the ongoing revision of the directive. The ambition of the current directive was good. But its usage is both marginal and in practice promotes low-cost hauliers and the externalities associated with them. The case study of Sweden shows that the directive has even contributed to a shift from rail to road, the opposite to what the legislator intended. We therefore urge for abolishing the Combined Transport Directive in order to ensure a more sustainable future for transportation in Europe. Subsidies to promote rail and modal shift are likely to have better effect if invested in the actual rail links, rather than in promoting low-cost carriers for the last-mile transportation.

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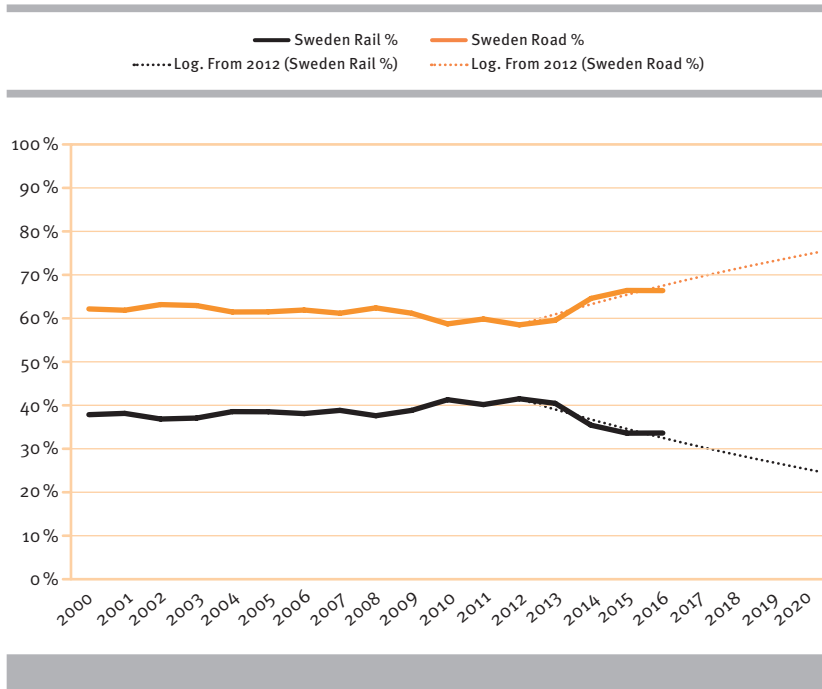
EU-coordinator

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## Introduction

IN FREIGHT TRANSPORTATION, trucking offers superior flexibility and start-to-end transport at low cost. However, the efficiency and flexibility comes at a cost – trucking of today is unsustainable, both from an environmental perspective (Stern, 2008, Stanley et al., 2011) and, to a large extent, from a social perspective (Hilal, 2008). Despite the numerous road transport externalities, e.g. pollution and drivers living in their trucks for months at a time (COWI, 2015), road transportation continues to grow and is projected to continue to grow. In particular, the relative ratio between road and rail transportation is a reason for concern (Figure 1 and 2):

Figure 1. Road vs Rail Sweden

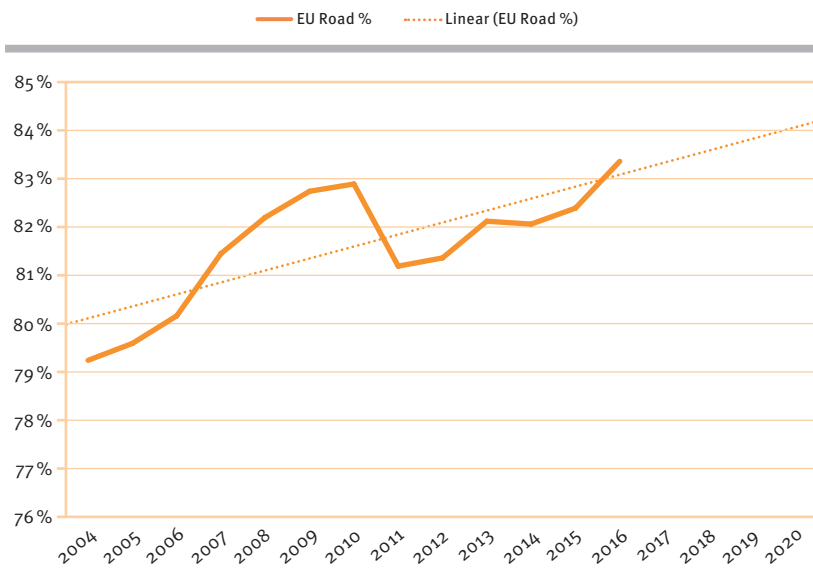


Development of the road vs rail shares in Sweden. Trend is extrapolated based on observations starting in 2012 (the first year all EU member states gained access to the Scandinavian freight market).

Source: Eurostat.

Hence experts and policy-makers alike agree that promoting a modal shift, i.e. from trucks to rail/sea, is an important component in reducing the CO<sub>2</sub> of transportation (Hoen et al., 2017, Pålsson et al., 2017). According to the official figures of e.g. NTM, a semitrailer combination produces 5 to 30 times more emissions than an electrical train (www.transportmeasures.org). However, most transportation is still reliant on trucking for the first and the last mile and combining transport modes (“combined transportation”) has several disadvantages compared to the flexibility of road transportation. Hence to ease and promote a modal shift and combined transportation, the EU institutions adopted the Combined Transport Directive (hereafter “the CT Directive”) that will be elaborated in this report.

**Figure 2.** The share of road transportation in the EU



Source: Eurostat.

Despite the importance of policy measures to enable a modal shift and the good intentions of the directive, the effects of the directive have resulted in some unintended consequences. Ill-designed policies are important to revise in the light of existing knowledge. Given the importance of combined transportation on the European arena and the environmental and social sustainability issues of the European trucking industry, the purpose of this report is to elaborate on findings of the state of combined transportation, using Sweden as a case.

The outline of this report is as follows: The remainder of this introduction gives a brief overview of the CT Directive. That is followed by an elaboration on combined transportation in Sweden. We used available data, expert input and the case of Sweden to outline how the directive works in practice and its effects. This approach is necessary, as data on combined transportation is not published by Eurostat and limited freight data is available from other sources (McKinnon and Leonardi, 2009, de Jong et al., 2016).

A large share of the information in this report has been collected in the Swedish Transport Workers' Union project "Law and order in the road haulage industry". The project investigated over 80 companies, with in-depth investigations (including, but not limited to, taxation, permissions and driver conditions) of 50 companies. The project resulted in filed complaints for legal violations (taxation, worker posting, etc.) in 40 companies.

### ***The Combined Transport Directive: 92/106/EEC***

The CT Directive seeks to promote combined transport operations through liberalisation of road cabotage, the elimination of authorisation procedures for combined transport operations, as well as financial support through fiscal incentives for certain combined transport operations. In order to be eligible for the provisions within the CT Directive, the movement of goods must meet a number of criteria, including:

1. Goods must be moved in a load unit which is more than 20' (6 m) long; and
2. Goods must be moved by rail or inland waterway or maritime transport, where this section exceeds 100 km as the crow flies; and
3. Goods must be moved by road transport on the initial and/or final leg of the journey either:



- between the point where the goods are loaded and/or unloaded and the nearest suitable rail loading station; or
  - within a radius of 150 km as the crow flies, from the inland waterway port or seaport of loading or unloading.
4. Requirements on transport documents according to Council Regulation No 11 of 27<sup>th</sup> June 1960.

The problem with the directive is that the land/road part of the transport is not covered by the cabotage rules and it is unclear concerning the application of the Posting of Workers Directive which means that posting rules are not applied on combined transport in Sweden and most other EU-countries. That means that companies in principle can run a permanent operation in a member state with working conditions as applied in the company's country of origin.

### ***The Posting of Workers Directive: 96/71/EC***

The Posting of Workers Directive regulates which working conditions should apply when employers, using the right to free movement of services, temporarily post a worker in another member state than the one where he/she normally performs work. The Directive provides that a 'hard core' of rules of the host country (country of destination) needs to be observed.

All foreign employers with employees in Sweden for more than 5 days must notify the Swedish Work Environment Agency. There has to be a named notifiable person who can receive a request to negotiate a collective bargaining agreement. As of today (21<sup>th</sup> of May 2018), the directive does not explicitly stipulate whether a foreign driver operating intermodal transports is to be regarded as posted, in line with the directive (96/71/EC). If the Combined Transport Directive is not abolished it is an absolute must that the proposed changes in the rules on posting in the transport sector makes it clear that the posted workers directive should apply to combined transportation.

## Combined transportation in Sweden

TO ILLUSTRATE HOW the CT directive is used, we provided the case of CT Operator X, which is a Dutch company specializing in intermodal transportation. The company has offices in + 20 European countries and a fleet of over 1,000 trucks. In Sweden the company operates several liner trains, i.e.:

- 6 per week to/from Katrineholm
- 6 per week to/from Göteborg
- 6 per week to/from Malmö
- 5 per week to/from Helsingborg
- 5 per week to/from Älmhult
- 5 per week to/from Nässjö

After the liner trains have been unloaded, the trailers are hauled to the customers/receivers. CT Operator X operates several truck areas, e.g. in Älmhult and Katrineholm. These areas host truck and driver facilities. Each of the areas also host an array of foreign private cars, testifying that the drivers are being brought to the facilities in Sweden for work. Hence, these operated facilities are to be considered permanent places of CT Operator X's business and serving as a temporary base for the drivers engaged. These facts speak in favor of applying the Posting of Workers Directive, meaning that Swedish rules and regulations apply.

Hence the Swedish Transport Workers' Union contacted CT Operator X to aid the company rectifying their non-compliance, however the company interpreted the CT Directive differently:

To our understanding, the rules set out in the Posted Workers Directive would only apply to the extent there is a contract concluded between the employer making the posting and the party for whom the services are intended (and which party is operating in Sweden). **CT Operator X** has not concluded a contract with the party for whom the services are intended.

Given the CT Operator X interpretation, drivers could be stationed in Sweden for years, neither enjoying workers' rights nor paying taxes in Sweden. In our view they are either posted workers or the company runs a national transport operation, in which case they should be established in Sweden. The current directive on combined transports gives the company a loophole to explore.



As mentioned in the introduction, The Law and Order Project (Swedish Transport Workers' Union) investigated over 80 companies. Some, just like CT Operator X, are operating mainly from intermodal terminals. However, when questioned about the Posting of Workers Directive and/or called to negotiation, many of them state their haulage operations are categorised as either international transportation or cabotage, rather than combined transportation. This shows the connection to other directives, mainly the rules on cabotage (1072/2009) and posting of workers (96/71 EC). We certainly hope that the revisions of those two directives and the CT directive effectively will close all loopholes.

### ***The Swedish Work Environment Authority***

The Swedish Work Environment Authority oversees work environment and working hours legislation, as well as the provisions concerning the notification obligation and registration of a contact person in connection with posting.

Several factors complicate the work of the Authority, and according to a Government Inquiry (Ministry Publications Series Ds 2017:22) there is “ample evidence that the posting register does not currently provide an accurate picture of posting in Sweden, leading among other things to the employee organisations finding it difficult to satisfactorily fulfil their mandate to monitor the pay and conditions of employment of posted workers”.

There are numerous factors behind the problems.

In the first place, there are particular challenges in oversight, since the entities subject to oversight are mobile and it may be difficult to identify the actual workplace. This, in combination with the fact that the Swedish Work Environment Authority is not allowed to stop vehicles, means that in practice it is impossible to exercise oversight without the help of the Swedish Police Authority.

At the same time, unlike many other EU countries, in Sweden there is some uncertainty as to whether cabotage operations are to be counted as posting, though it should probably be clear that they are covered. All in all, this means that the Swedish Work Environment Authority's inspections are for the most part geared to national enterprises and the inspections carried out together with the police on roads are mainly

geared to the drivers' work environment, the condition of the vehicle, the load securing and whether the vehicle's load is too heavy. Whether the driver is to be considered as posted is not usually checked.

### ***The Police***

Checks on heavy goods vehicle traffic must be increased. The current Government has given the police additional resources<sup>2</sup> to control the illegal traffic with foreign-registered vehicles. This is welcome, but not sufficient.

Control of wages and working conditions is a matter for the employee organisations, but official controls must function so as to force enterprises to be entered in the Swedish Work Environment Authority's register, otherwise it will be very difficult to detect these enterprises.

The checks that are made of a vehicle train should be as complete as circumstances permit. Apart from checking sobriety, seat-belt use and driving licence, an inspection is also made of driving and rest times, the Community licence and driver attestation, dangerous goods, load securing, the weight of the vehicle and the state of the vehicle.

The current oversight procedures do not include the police checking whether it is a matter of posting and whether notification has been made to the Swedish Work Environment Authority.

The police are already obliged to check whether it is a matter of cabotage operations and in that case that the requisite documentation exists. This should be supplemented by verification of whether a company has registered the posting and then sending that information to the Swedish Work Environment Authority. If this is not done the Swedish Work Environment Authority's posting register will continue to be unusable.

### ***The Swedish Tax Agency***

Other authorities also target the transport industry as part of their control activities, including the Swedish Tax Agency. The Agency's control activities address suspected tax avoidance, for example. The Swedish Tax Agency also conducts some control activities based on tips and may

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<sup>2</sup> SEK 25 million annually, 2017–2020

in some cases audit a company without prior notice. The Swedish Tax Agency has also implemented specific control measures aimed at the road haulage industry concerning companies' reporting of taxes, social security contributions, wages and value added tax. The Swedish Tax Agency's report "Åkeriverksamhet i Sverige 2015"<sup>3</sup> (Haulage Business in Sweden) makes bleak reading. Suspected cheating and fraud was found in as many as 80 per cent of the cases examined. A total of SEK 44 million in extra taxes and charges was levied from 40 businesses and about 1,000 drivers are being investigated to establish in which country they are liable to pay tax.

The checks were made above all on Swedish haulage firms that engaged drivers resident outside Sweden, and on foreign staff agencies conducting haulage business in Sweden.

The Swedish Tax Agency has noted among other things that foreign workers engaged by haulage firms are not reported to the Swedish Work Environment Authority's posting register.

The problem linked to the haulage services carried out by foreign haulage firms, either as cabotage operations or as part of combined transport operations, is that when there is uncertainty about whether this should be regarded as posting and there are exemptions from Swedish tax for temporary activities, it is difficult for the Swedish Tax Agency to scrutinise that type of activity.

### ***Data and studies on combined/intermodal transportation***

Though the intention of the CT directive was to enable increased adoption of intermodal transportation, the directive as of today is only causing a loophole for systematically using low-cost drivers and increasing the share of low-cost road hauliers. Even industry associations that promote the EU internal market (and further deregulate the market), such as International Transport Denmark (ITD), are stating that the posting of worker's directive should apply to combined transportation (Jessen, 2018).

In January 2017 the European Commission launched an open consultation on possible amendments to the CT Directive. The report of the consultation identifies the following problems with the directive

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3 <https://www.skatteverket.se/download/18.361dc8c15312eff6fd2462/1456912629128/Åkeriverksamhet+i+Sverige+2015.pdf>

([https://ec.europa.eu/transport/themes/urban/consultations/2017-CTD\\_en](https://ec.europa.eu/transport/themes/urban/consultations/2017-CTD_en)):

- *Problematic definition: The definition of combined transport is complex and somewhat ambiguous creating problems with the implementation. Furthermore, the definition is limited in scope.*
- *Non effective incentives: The economic incentives (reimbursement of or exemption from road vehicle tax) foreseen are not effective.*
- *Problems with implementation and monitoring.*
- *The provisions relating to transport documents are outdated making it difficult for industry to prove and authorities to control eligibility.*

Our view is that no effective market monitoring exists (no EU wide common terminology based statistics gathering nor reporting of all national measures) making it difficult to ensure appropriate systematic assessment on the need of the economic support.

Shippers and logistics service providers can achieve cost efficiency by utilizing low-cost hauliers, but the true price of cheap transportation is paid by the workers, the environment and other companies. The Swedish Transport Workers' Union and the Swedish Trade Union Confederation (LO) wants to highlight four different problematic externalities:

- *Increased emissions from low-cost transportation: As showed in investigations, e.g., Hendrickx (2013) and Sternberg et al. (2015), transport emissions are increasing heavily due to low-cost transportation. One of the main factors is that intermodal transportation is becoming financially unsustainable. In Sweden most traffic are in freight corridors of around 500 km (E.g., Malmö<->Stockholm and Gothenburg<->Stockholm). Historically 500 km has been the tipping point when rail becomes the preferred alternative (Lumsden, 2006), but with the entrance of low-cost hauliers, that is rapidly changing. This has been confirmed by Green Cargo (the largest rail freight operator in Scandinavia), continuing to lay off people due to foreign low-cost hauliers (<https://www.svd.se/green-cargo-drar-ned-med-600-anstallda>). Yet another strong factor behind increasing emission (often neglected in non-scientific studies) is induced demand, i.e. when the cost of a resource declines, the usage (and pollution) of the utilization of that resource increases.*
- *Drivers suffering: Numerous news reports (e.g. <http://www.bbc.com/>*

news/business-39196056) as well as investigations (COWI, 2015) and research (Hilal, 2008) give strong indications that drivers and their families are often victims when cost pressure deteriorates conditions and forces drivers to stay on the road for 3–6 months at a time. The Swedish Transport Workers' Union and LO can only confirm the accuracy in these indications and observations.

- Accidents: Media is filled with reports of accidents involving ill-equipped drivers from low-cost countries. Even though most evidence is anecdotal, the high accident rates have been confirmed by the scientific investigation of Nævestad et al. (2014).
- Crime: Recently the International Journal of Logistics published an analysis linking adverse conditions (e.g. hauliers being paid less than the diesel cost for an assignment) to transport crime (Sternberg and Lantz, 2018).

As of today, Eurostat does not provide any information on combined transports. Sternberg et al. (2015) reported on their study of international transportation (including cabotage and combined transportation) in Scandinavia. As a part of their study, they collected data from road hauliers to validate their crowdsourced observations. None of the companies involved carried out combined transportation and according to industry experts, using the combined transportation is a fringe activity.



## *Conclusions and the road forward*

**EU POLICIES ARE** currently promoting a modal shift from rail to road. Cheap road transportation comes with large externalities, i.e. emissions, drivers suffering, accidents and crime. Whereas the combined transport directive was intended to promote intermodal transportation, it does provide a loophole for ignoring social sustainability, as shown by the case of “CT Operator X” and others. Though they may be environmentally better off, the companies applying the directive in practice are likely to cause three out of four types of identified externalities.

Due to the complexity of the CT directive (92/106/EEC), authorities in Sweden lack the necessary tools to ensure proper monitoring and enforcement. Hence, their hands are tied and externalities are hitting the society.

### ***Road forward***

New policies ensuring greening of the transport industry are necessary. To achieve this, increased sustainability and a decrease of the externalities of road transportation, existing policies need to be revised. The intention of the CT directive was good, but its usage is both marginal and promoting low-cost hauliers and the externalities associated with them. The cabotage directive (Regulation (EC) 1072/2009) already today makes it possible for foreign hauliers to operate short-term in Scandinavia. The issues identified by the European Commission ([https://ec.europa.eu/transport/themes/urban/consultations/2017-CTD\\_en](https://ec.europa.eu/transport/themes/urban/consultations/2017-CTD_en)) support the conclusions of this report.

This report has provided a short summary of the evidence of the effects of the regulations in place. We urge for abolishing the CT directive, in order to ensure a more sustainable future for transport in Europe. Subsidies to promote rail and modal shift are likely to have better effect if invested in the actual rail links, rather than on promoting low-cost carriers for the last-mile transportation. If not abolished the exemption from cabotage needs to be taken out of the directive and it is an absolute must that the proposed changes in the rules on posting in the transport sector makes it clear that the posted workers directive should apply to combined transportation.

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