

Cabotage and combined transport in Europe



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niwo

Introduction

Given the increase in traffic flows and consequently increasing problems of road congestion, the environment and road safety, it is in the public interest to further develop combined transport (rail, inland waterway and maritime) as an alternative to road transport, avoiding as many (administrative) constraints as possible.

While the further liberalisation compared to cabotage under Regulation (EC) No 1072/2009, has been beneficial in promoting combined transport and should, in principle, be retained, it is necessary to ensure that it is not misused. Experience shows that, in certain parts of the Union, that provision has been used in a systematic manner to circumvent the temporary nature of cabotage and as the basis for the continuous presence of vehicles in a Member State other than that of the establishment of the undertaking. Such unfair practices risk leading to social dumping and jeopardise respect of the legal framework relating to cabotage. It should therefore be possible for Member States to derogate from Article 4 of Directive 92/106/EEC and to apply the provisions relating to cabotage in Regulation (EC) No 1072/2009 in order to address such problems by introducing a proportionate limit to the continuous presence of vehicles within their territory.¹

From the perspective of harmonisation and in the formation of national policy, it is interesting to see whether other Member States apply cabotage rules to combined transport. In close consultation with the Ministry of Infrastructure and Water Management, it was agreed that NIWO will approach its European sister organisations to find out which Member States apply cabotage rules to combined transport and the reasons for this. In addition to European Union Member States, Switzerland and Norway were also surveyed.

Where a Member State has decided to apply cabotage rules to combined transport, Member States may provide for a longer period than the seven-day period set out in Article 8(2a) of Regulation 1072/2009 and may provide for a shorter period than the four-day period set out in Article 8(2) of Regulation 1072/2009. Given the short survey period, European sister organisations were not asked whether they made use of this. This may still be included in any follow-up survey.

Furthermore, NIWO limits itself to the factual findings of the study and does not comment on the desirability of declaring cabotage rules applicable to combined transport. In the NIWO's opinion, this is reserved for the policy department of the Ministry of Infrastructure and Water Management.

¹ Consideration 22 of Regulation 2020/1055.

Management summary

- NIWO has written to a total of 29 European sister organisations asking them to answer two questions:
 - Does your country apply cabotage rules to combined transport?
 - Why are cabotage rules applied or not?
- 90% of the countries have responded to our question(s)
- Results of the investigation (see Annex I):
 - Sixteen countries don't apply the cabotage rules to combined transport (56%)
 - Seven countries apply the cabotage rules to combined transport (24%)
 - Three countries didn't respond (yet) to the questions (10%)
 - Two countries that have not yet taken a decision (7%)
 - One country that have prohibited cabotage (3%)
- Further details of the study can be found in Annex II

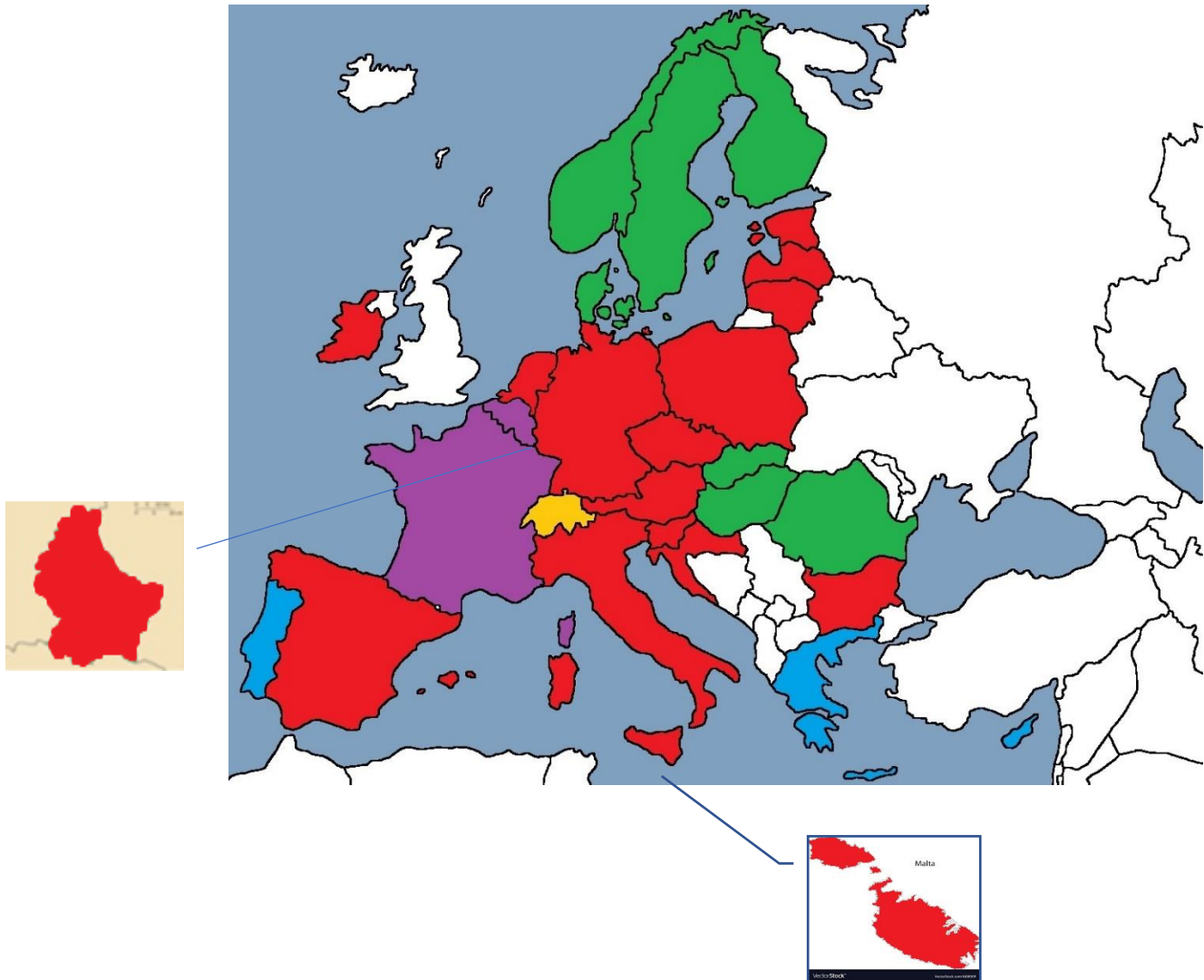
Legal framework

According to **Article 4 of Directive 92/106/EEC** all hauliers established in a Member State who meet the conditions of access to the occupation and access to the market for transport of goods between Member States shall have the right to carry out, in the context of a **combined transport** operation between Member States, initial and/or final road haulage legs which form an integral part of the combined transport operation and which may or may not include the crossing of a frontier.

While the further liberalisation established by Article 4 of Council Directive 92/106/EEC, compared to **cabotage under Regulation (EC) No 1072/2009**, has been beneficial in promoting combined transport and should, in principle, be retained, it is necessary to ensure that it is not misused. Experience shows that, in certain parts of the Union, that provision has been used in a systematic manner to circumvent the temporary nature of cabotage and as the basis for the continuous presence of vehicles in a Member State other than that of the establishment of the undertaking. Such unfair practices risk leading to social dumping and jeopardise respect of the legal framework relating to cabotage. It should therefore be possible for Member States to derogate from Article 4 of Directive 92/106/EEC and to apply the provisions relating to cabotage in Regulation (EC) No 1072/2009 in order to address such problems by introducing a proportionate limit to the continuous presence of vehicles within their territory.

The possibility of derogation is laid down in **Article 10, paragraph 7 of Regulation 1072**. According to this Article Member States may, where necessary to avoid misuse of the latter provision through the provision of unlimited and continuous services consisting in initial or final road legs within a host Member State that form part of combined transport operations between Member States, provide that Article 8 of this Regulation apply to hauliers when they carry out such initial and/or final road haulage legs within that Member State.

Annex I Overview of countries (not) applying cabotage to combined transport



Annex II Overview of the received answers of European sister organisations

	1) Austria	2) Belgium	3) Bulgaria	4) Croatia
<i>Application of the cabotage rules to combined transport?</i>	Cabotage rules are not applicable to combined transport	At this moment the cabotage rules are not applicable to combined transport, but it is up to the regional authorities to decide if the cabotage rules will be applicable (or not) to combined transport. A decision hasn't been taken yet	Cabotage rules are not applicable to combined transport	Cabotage rules are not applicable to combined transport
<i>Reasons of (non) application</i>	No information available	No information available	The position of the Republic of Bulgaria is that the carriage of initial and/or final road haulage legs in a host Member State which form an integral part of combined transport operations between Member States should not be considered cabotage operations	There have been no serious disturbance of the national transport market that would have resulted in the adoption of safeguard measures
	5) Cyprus	6) Czech Republic	7) Denmark	8) Estonia
<i>Application of the cabotage rules to combined transport?</i>	No information available	Cabotage rules are not applicable to combined transport ²	Cabotage rules are applicable to combined transport	Cabotage rules are not applicable to combined transport
<i>Reasons of (non) application</i>	No information available	No information available	Denmark have chosen to apply the rules on cabotage to combined transport to ensure uniform rules for all national transport and thereby prevent the rules on combined transport from being used as a loophole for practicing systematic cabotage	On the one hand, Estonia opposed to the Mobility Package as a whole, including the possibility for Member States to have the option in their national law to apply cabotage rules to combined transport. Therefore, Estonia currently does not apply cabotage rules to combined transport. On the other hand, Estonia does not rule out applying the cabotage rules to combined transport in the long term, if the rules for combined transport currently implemented in Estonia are starting to harm the interests of Estonian companies

² According to TLN information.

	9) Finland	10) France	11) Germany	12) Greece
<i>Application of the cabotage rules to combined transport?</i>	Cabotage rules are applicable to combined transport	France has not taken a decision yet, because France wants to know the consequences of such a measure. France also wants to be able to justify any measure, also looking at the proportionality of the measure in relation to the importance of distortion of competition. Nor does France know whether this will have consequences for other stakeholders	Cabotage rules are not applicable to combined transport	No information available
<i>Reasons of (non) application</i>	One of the objectives of the first Mobility Package was to ensure that road transport hauliers have a real and continuous presence in that Member State in where the transport services are provided and conduct their transport business from there. Finland highlighted the importance of proper social conditions for drivers and a fair competition in a transport market during the preparation of the first Mobility Package. The poor social conditions for drivers and unfair competition are something to be avoided e.g. in the light of tools to promote the modal shift. The changes to the legal framework of Combined Transport road legs in Finland were also supported by the Finnish business industry	See remarks above	Germany indicated that the cabotage rules do not apply to combined transport because the guiding principle of the Directive is to encourage combined transport as much as possible. Imposing restrictions would be contrary to this guiding principle in the Directive	No information available

	13) Hungary	14) Ireland	15) Italy	16) Latvia
<i>Application of the cabotage rules to combined transport?</i>	Cabotage rules are applicable to combined transport	Cabotage rules are not applicable to combined transport	Cabotage rules are not applicable to combined transport	Cabotage rules are not applicable to combined transport
<i>Reasons of (non) application</i>	National carriers would be disadvantaged compared to foreign companies	In practice, Ireland has no evidence of any problems regarding cabotage practices in combined transport operations. This may also be due to Ireland's geographical location	Cabotage rules are not applicable to combined transport, because of the cost-effectiveness of the 'last leg'. It is not profitable moving one tractor only for less than 150K in an international transport of goods. The national operators would not be interested in doing that and imposing further limitation on an anti-economic activity means that will not be done by anyone. ³ In case of transport of waste the cabotage rules will be applicable to combined transport in Italy ⁴	No information available
	17) Lithuania	18) Luxembourg	19) Malta	20) Netherlands
<i>Application of the cabotage rules to combined transport?</i>	Cabotage rules are not applicable to combined transport	Cabotage rules are not applicable to combined transport	Cabotage rules are not applicable to combined transport	Cabotage rules are not applicable to combined transport
<i>Reasons of (non) application</i>	The existing rules are sufficient to avoid misuse	In practice there is almost no cabotage related to combined transport due to the exiguity of our territory. Therefore Luxembourg will not introduce cabotage restrictions for operators from other member states	The quantity of non-Maltese hauliers operation in Malta is minimal and, those that do operate in Malta are mostly involved in international carriage given the small size of our island	The Netherlands indicated that the cabotage rules do not apply to combined transport because the guiding principle of the Directive is to encourage combined transport as much as possible. Imposing restrictions would be contrary to this guiding principle in the Directive
	21) Norway	22) Poland	23) Portugal	24) Romania
<i>Application of the cabotage rules to combined transport?</i>	Cabotage rules are applicable to combined transport	Cabotage rules are not applicable to combined transport	No information available	Cabotage rules are applicable to combined transport ⁵
<i>Reasons of (non) application</i>	Norway doesn't want combined transport to be the way to	No information available	No information available	No information available

³ According to information received from The Department for Transport, Navigation and Information and Statistical Systems, Directorate-General for road transport and intermodal transport.

⁴ According to information received from the Ministry of Infrastructure and Water Management.

⁵ According to TLN information.

	circumvent the rules on cabotage as well as the rules on establishment			
	25) Slovakia	26) Slovenia	27) Spain	
<i>Application of the cabotage rules to combined transport?</i>	Cabotage rules are applicable to combined transport	Cabotage rules are not applicable to combined transport	Cabotage rules are not applicable to combined transport	
<i>Reasons of (non) application</i>	Slovakia applied the cabotage rules before the Mobility Package already. Slovakia applies the cabotage rules from an enforcement point of view	No information available	No information available	
	28) Sweden	29) Switzerland		
<i>Application of the cabotage rules to combined transport?</i>	Cabotage rules are applicable to combined transport	Chapter III of Regulation 1072/2009 doesn't apply at all on the basis of EU-Switzerland Treaty. Cabotage is not allowed with Switzerland by foreign registered vehicles and within European countries by Swiss registered vehicles		
<i>Reasons of (non) application</i>	Sweden has carried out several investigations which have shown that foreign hauliers provide unlimited and uninterrupted services consisting of initial or final road haulage in Sweden as a part of combined transport operations. The cabotage exception in the Directive has been systematically used to circumvent the temporary nature of cabotage operations. As a result, drivers are likely to be exploited by being in Sweden for long periods, with poor working conditions and wages	See remarks above		