



Plenary sitting

A9-0119/2020

16.6.2020

*****II**

RECOMMENDATION FOR SECOND READING

on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council on electronic freight transport information
(05142/1/2020 – C9-0103/2020 – 2018/0140(COD))

Committee on Transport and Tourism

Rapporteur: Andor Deli

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council on electronic freight transport information (05142/1/2020 – C9-0103/2020 – 2018/0140(COD))

(Ordinary legislative procedure: second reading)

The European Parliament,

- having regard to the Council position at first reading (05142/1/2020 – C9-0103/2020),
 - having regard to the opinion of the European Economic and Social Committee of 17 October 2018¹,
 - after consulting the Committee of the Regions,
 - having regard to its position at first reading² on the Commission proposal to Parliament and the Council (COM(2018)0279),
 - having regard to Article 294(7) of the Treaty on the Functioning of the European Union,
 - having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure,
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Rule 67 and 40 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Transport and Tourism (A9-0119/2020),
1. Approves the Council position at first reading;
 2. Notes that the act is adopted in accordance with the Council position;
 3. Instructs its President to sign the act with the President of the Council, in accordance with Article 297(1) of the Treaty on the Functioning of the European Union;
 4. Instructs its Secretary-General to sign the act, once it has been verified that all the procedures have been duly completed, and, in agreement with the Secretary-General of the Council, to arrange for its publication in the *Official Journal of the European Union*;
 5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 62, 15.2.2019, p. 265.

² Texts adopted of 12.3.2019, P8_TA(2019)0139.

SHORT JUSTIFICATION

1. The need for electronic freight transport information

The overlarge majority of freight transport operations in the EU still require the use of paper documents. In fact, almost 99% of all cross-border transport operations in the EU still involve paper-based documents at one stage of the operation or another. This leads to inefficiencies for market players in the transport and logistic chains and to an unnecessary environmental burden. Since total freight transport movements are expected to grow by more than 50% up to 2050, this will become an even serious issue in the coming years. Parliament has been calling several times in the past for a stronger push towards paperless transport and urged for a more simplified, paperless, seamless, transparent, secured and trusted information flow between businesses, customers and authorities in this sector.

2. The Commission proposal

The Commission identified two main causes for the slow uptake of electronic transport documentation: a lack of recognition of the legal equivalence of e-documents by competent authorities and a fragmented IT environment without well-established and interoperable systems with generally applicable and binding rules on electronic transport documents.

The Commission proposal of 17 May 2018 required competent authorities to accept regulatory information (for certain legal acts) in electronic form, and set up a framework of certified platforms and service providers (by conformity assessment bodies).

3. Interinstitutional negotiations

Following the adoption of Parliament's first reading position on 12 March 2019, interinstitutional negotiations (aimed at an early second reading agreement) took place, from September to November 2019, under the Finnish Presidency of the Council. After three rounds of trilogues, Parliament's negotiating team reached a provisional agreement with the Council Presidency on 26 November 2019.

The text of the provisional agreement was presented to the Committee on Transport and Tourism (TRAN) and confirmed on 21 January 2020. On the basis of the Committee's approval, the Chair of the TRAN Committee, in her letter to the Chair of the Committee of Permanent Representatives (COREPER I), indicated that she would recommend to the Plenary to approve the Council's position without amendments, provided that it is in conformity with the provisional agreement reached between the two institutions. Following legal-linguistic verification, the Council on 7 April 2020 (by written procedure) formally adopted its position in accordance with the provisional agreement.

4. Main elements of the agreement

The overall agreement that Parliament reached with the Council aimed at further strengthening the proposed system. In particular, the following was achieved:

- Minimising costs for economic operators and competent authorities, by, among others, base the certification system on existing international standards, models and agreements and ensure that certification is done in an independent manner;
- Gaining and keeping the trust of operators and competent authorities in the safety and the security of the system by enhancing the procedure for the setting of the precise standards, specifications and access rules, with the proper involvement of the co-legislators and of all relevant stakeholders;
- Encouraging all communication, including any follow-up requests, between the competent authorities and operators to take place electronically, where possible;
- Clarifying the scope: indicating exactly what type of regulatory freight transport information, if sent in electronic form by the economic operator concerned through a certified platform, needs to be accepted by the competent authorities. After the system is up and running, the Commission is required to assess whether the scope could be further enlarged to include other relevant regulatory information in the field of transport, for example those relating to the vehicle or driver;
- Towards a complete digitalisation: while competent authorities are under this system required to accept regulatory freight transport information, when sent electronically, economic operators are still free to decide whether they “go digital” or not. However, it is clarified that the use of electronic means should become the predominant way to exchange regulatory information between the economic operators and competent authorities. Therefore, the Commission has to assess possible initiatives in order to establish in the future an obligation for economic operators to use electronic means to make regulatory information available to competent authorities;
- Making the use of this system as attractive as possible for economic operators, by, inter alia, encouraging existing IT systems to certify themselves as platform and by ensuring interoperability;
- Timing: while the setting up of a certification system needs to be done carefully, the different deadlines were set in such a way that the system is up and running as soon as possible, so that the market uptake could follow soon.

5. Recommendation

As Council’s position is in conformity with the provisional agreement reached during the interinstitutional negotiations, the Rapporteur recommends endorsing it without amendments.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Ms Karima Delli
Chair
Committee on Transport and Tourism
BRUSSELS

Subject: Opinion on the legal basis of the proposal for a Regulation of the European Parliament and of the Council on electronic freight transport information (COM(2018)0279 – C8-0191/2019 – 2018/0140(COD))

Dear Chair,

By letter dated 13 November 2019¹, your Committee requested pursuant to Rule 40(2) of the Rules of Procedure the opinion of the Committee on Legal Affairs concerning the appropriateness of the legal basis of the Commission proposal for a Regulation on electronic freight transport information².

The committee considered the above question at its meeting of 9 January 2020.

I - Background

The Commission proposal is based on Articles 91, 100(2) (transport) and 192(1) TFEU (environment). In its general approach, the Council amended the legal basis by deleting the reference to Article 192(1) TFEU.

II - The relevant Treaty Articles

The relevant provisions of the Treaty on the Functioning of the European Union read as follows:

Article 91

(ex Article 71 TEC)

1. For the purpose of implementing Article 90, and taking into account the distinctive features of transport, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, lay down:

(a) common rules applicable to international transport to or from the territory of a Member

¹ D 315856/ JURI opinion on legal basis regarding the Commission proposal for a Regulation of the European Parliament and of the Council on electronic freight transport information (2018/0140(COD)).

² Proposal for a Regulation of the European Parliament and of the Council on electronic freight transport information [2018/0140 (COD)], COM/2018/279 final.

State or passing across the territory of one or more Member States;

(b) the conditions under which non-resident carriers may operate transport services within a Member State;

(c) measures to improve transport safety;

(d) any other appropriate provisions.

2. When the measures referred to in paragraph 1 are adopted, account shall be taken of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities.

Article 100

(ex Article 80 TEC)

1. The provisions of this Title shall apply to transport by rail, road and inland waterway.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may lay down appropriate provisions for sea and air transport. They shall act after consulting the Economic and Social Committee and the Committee of the Regions.

Article 191

(ex Article 174 TEC)

1. Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,

- protecting human health,

- prudent and rational utilisation of natural resources,

- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

(...)

Article 192

(ex Article 175 TEC)

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.

(...)

III – CJEU case law on the choice of legal basis

The Court of Justice has traditionally viewed the question of the appropriate legal basis as an issue of constitutional significance, guaranteeing compliance with the principle of conferred

powers (Article 5 TEU) and determining the nature and scope of the Union's competence³.

According to the Court's settled case law, the choice of legal basis for a Union measure must rest on objective factors which are amenable to judicial review, including in particular the aim and the content of the measure⁴.

The choice of an incorrect legal basis may therefore justify the annulment of the act in question. In this context, an institution's wish for more active participation in the adoption of a given measure, the circumstances in which a measure was adopted as well as the work that has been done in other aspects within the scope of action covered by a given measure are irrelevant for the identification of the right legal basis.⁵

If examination of a measure reveals that it pursues a twofold purpose or that it has a twofold component one of which is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, that measure must be based on a single legal basis, namely that required by the main or predominant purpose or component⁶.

However, where a measure has several contemporaneous objectives or components, which are indissociably linked, without one being secondary and indirect in relation to the other(s), such a measure will have to be based on the various corresponding legal bases⁷, provided that procedures laid down for the respective legal bases are not incompatible with and do not undermine the right of the European Parliament⁸.

³ *Opinion 2/00*, ECLI:EU:C:2001:664, para 5.

⁴ See Case C-411/06 *Commission v Parliament and Council*, 8 September 2009, EU:C:2009:518, paragraph 45

⁵ Judgment in *Commission v Council*, C-269/97, ECLI:EU:C:2000:183, para 44.

⁶ Judgment in *Commission v Council*, C-137/12, EU:C:2013:675, paragraph 53; C-411/06 EU:C:2009:518, paragraph 46 and the case-law cited therein; *Parliament v Council*, C 490/10, EU:C:2012:525, paragraph 45; *Parliament v Council*, C 155/07, EU:C:2008:605, paragraph 34.

⁷ Case C-211/01, *Commission v Council*, ECLI:EU:C:2003:452, para. 40; Case C-178/03 *Commission v European Parliament and Council*, ECLI:EU:C:2006:4, paras. 43-56.

⁸ Case C-300/89 *Commission v Council* ("Titanium dioxide"), ECLI:EU:C:1991:244, paras. 17-25; Case C-268/94 *Portugal v Council*, ECLI:EU:C:1996:461.

IV – Aim and content of the proposed measure

The proposal is about a regulation harmonising the use of electronic means for the exchange of information in the freight transport (eFTI).

It follows from the explanatory memorandum that the aim of the proposal is to enhance the wider use of electronic freight transport documents in order to strengthen the single market by removing some of the barriers to digitalisation in this area. The main drivers for the proposal are the fragmented legal framework setting out inconsistent obligations for authorities when accepting electronic documents, and the fragmented IT environment characterised by a multitude of non-interoperable systems⁹.

Hence, the provisions aim to achieve in essence two main policy objectives: (a) to establish a uniform binding legal framework for the acceptance of electronic information or documents by relevant national public authorities; and (b) to ensure the interoperability of different IT systems currently used with regard to implementation of existing relevant Union legislation¹⁰.

The same considerations are further explained in recitals 1 to 4 to the proposal as well as under Article 1 thereof. According to the latter, the Regulation “establishes a legal framework for the electronic communication of regulatory information related to the transport of goods on the territory of the Union [...]”. It lays down “the conditions under which Member States’ competent authorities are required to accept regulatory information when made available electronically by economic operators concerned” and the “rules for the provision of services related to making regulatory information available electronically by the economic operators concerned”.

As to the content, Chapter I defines in particular the material scope by shortlisting (by reference to an Annex) the already existing Union acts providing for regulatory information requirements relevant for the purposes of the proposal. Chapter II of the proposal entitled “*Regulatory information made available electronically*”, sets out the obligation on public authorities to accept transport documents in electronic format, as well as the technical requirements for processing electronic information. Chapter III entitled “*eFTI Platforms and services*” provides for detailed rules on the functionalities and certification requirements of the eFTI platforms allowing the treatment of electronic information. Chapters IV and V concern respectively delegated and implementing acts, and final provisions.

V – Analysis and establishment of the appropriate legal basis

In the explanatory memorandum, the Commission justified the choice of the legal bases as follows:

“The legal basis is provided by Article 91, 100(2) and Article 192(1) of the Treaty on the Functioning of the European Union (TFEU).

Articles 91 and, respectively 100(2), which must be understood in light of Article 90 requiring Member States to pursue a common transport policy, set out the requirement that common rules applicable to international transport to or from the territory of a Member State or

⁹ Explanatory memorandum, page 2.

¹⁰ Explanatory memorandum, page 6.

passing across the territory of one or more Member States and, respectively, appropriate provisions for sea and air transport, be laid down by the European Parliament and the Council.

Article 192(1), which must be understood in light of Article 191, establishes that the European Parliament and the Council shall decide on the action to be taken by the Union in order to achieve the objective for protecting inter alia human health and the environment.”

(a) The appropriateness of Articles 91 and 100(2) TFEU

Articles 91 and 100(2) TFEU provide for legal bases in the transport policy field respectively for transport by rail, road and inland waterway, on the one hand, and transport by sea and air, on the other hand.

It is manifest from the aim and content of the proposal that Articles 91 and 100(2) TFEU should be considered as relevant legal bases for the proposal and it is concerned with enhancing the functioning of the internal market in the transport sector.

It is also to be underlined that having recourse simultaneously to both Articles 91 and 100(2) is justified insofar as the Commission proposal follows a multimodal approach.

(b) No necessity to add Article 192(1) TFEU as a legal basis

Although the above quoted section of the explanatory memorandum is supposed to justify the recourse to Article 192(1) TFEU as a legal basis, it does not, however, state explicitly why the addition of this legal basis would indeed be necessary.

It is true that various mentions in the explanatory memorandum contain indications according to which replacing paper-based documents by electronic ones seems to be beneficial for the environment¹¹.

That said, despite the possible positive effects of the proposal on the environment, it is apparent that the main objective of the proposal is not relating to environmental protection. The latter may thus merely be an incidental effect of the legislative instrument. For that reason, it is not necessary to add Article 192(1) as a legal basis.

In the alternative, one may consider that the scope of the proposal captures information requirements set out in various existing Union acts (cf. Article 1(2) of the proposal). Those acts are based on the transport legal basis, with the exception of Union legislation on shipment of waste that is based on [now] Article 192(1) TFEU¹². Whilst this is obviously true, the proposal itself contains elements indicating that this fact is not relevant for the choice of the legal basis. Indeed, according to recitals 5 and 6: “(5) Member States’ authorities should therefore be required to accept information made available electronically whenever economic operators are obliged to make information available as proof of compliance with requirements laid down in Union acts adopted in accordance Title VI of Part Three of the

¹¹ See e.g. the explanatory memorandum, p. 11: “with an average of 1-5 copies of each document per shipment not printed anymore about 2-8 billion sheets of paper would be saved, or the equivalent of 180-900 thousand trees annually”.

¹² Regulation 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1–98).

Treaty or, given the similarity of the situations, with Union legislation on the shipments of waste [...]. (6) Since this Regulation is only intended to facilitate the provision of information, specifically, by electronic means, it should not affect the provisions of Union or national law determining the content of regulatory information and, in particular, should not impose any additional regulatory information requirements [...]". Thus, the proposal does not amend any act based on the environmental legal basis, but focuses on the transport aspect of the shipment of waste. Therefore, the environmental elements, if any, are without any doubt ancillary to the predominant transport component of the proposal¹³.

In the light of the foregoing, Article 91 and 100(2) TFEU appear to be the right legal bases for the proposal. It is not necessary to add Article 192(1) TFEU. Consequently, it is correct to delete the reference to the latter article in the citation.

The amendments adopted further to the inter-institutional negotiations on this file do not put into question the above conclusions.

VI - Conclusion and recommendation

At its meeting of 9 January 2020 the Committee on Legal Affairs accordingly decided, by 21 votes in favour, none against and 1 abstention¹⁴, to recommend to the Committee on Transport and Tourism to retain Articles 91 and 100(2) TFEU as the only legal basis of the proposed regulation.

Yours sincerely,

Lucy Nethsingha

¹³ N.B. according to the case law, even a formal amendment of an act based on a given legal basis does not necessarily require that the legislator base the amending act on the legal basis of the amended act.

¹⁴ The following were present for the final vote: Lucy Nethsingha (Chair), Marion Walsmann (Vice-Chair), Ibán García Del Blanco (Vice-Chair), Raffaele Stancanelli (Vice-Chair), Franco Roberti (rapporteur for opinion), Gunnar Beck, Patrick Breyer, Geoffroy Didier, Angel Dzhambazki, Evelyne Gebhardt, Esteban González Pons, Jackie Jones, Mislav Kolakušić, Gilles Lebreton, Karen Melchior, Sabrina Pignedoli, Jiří Pospíšil, Liesje Schreinemacher, Marie Toussaint, Edina Tóth (for József Szájer pursuant to Rule 209(7)), Bettina Vollath and Axel Voss.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Electronic freight transport information
References	05142/1/2020 – C9-0103/2020 – 2018/0140(COD)
Date of Parliament’s first reading – P number	12.3.2019 T8-0139/2019
Commission proposal	COM(2018)0279 - C8-0191/2018
Receipt of Council position at first reading announced in plenary	17.4.2020
Committee responsible Date announced in plenary	TRAN 17.4.2020
Rapporteurs Date appointed	Andor Deli 3.7.2018
Legal basis disputed Date of JURI opinion	JURI 9.1.2020
Discussed in committee	28.4.2020
Date adopted	8.6.2020
Result of final vote	+: 46 -: 1 0: 1
Members present for the final vote	Magdalena Adamowicz, Andris Ameriks, José Ramón Bauzá Díaz, Izaskun Bilbao Barandica, Marco Campomenosi, Ciarán Cuffe, Jakop G. Dalunde, Johan Danielsson, Andor Deli, Karima Delli, Anna Deparnay-Grunenberg, Ismail Ertug, Gheorghe Falcă, Giuseppe Ferrandino, Mario Furore, Søren Gade, Isabel García Muñoz, Elsi Katainen, Kateřina Konečná, Elena Kountoura, Julie Lechanteux, Bogusław Liberadzki, Peter Lundgren, Benoît Lutgen, Elżbieta Katarzyna Łukacijewska, Marian-Jean Marinescu, Tilly Metz, Giuseppe Milazzo, Cláudia Monteiro de Aguiar, Caroline Nagtegaal, Jan-Christoph Oetjen, Philippe Olivier, Rovana Plumb, Tomasz Piotr Poręba, Dominique Riquet, Dorien Rookmaker, Massimiliano Salini, Sven Schulze, Vera Tax, Barbara Thaler, István Ujhelyi, Petar Vitanov, Elissavet Vozemberg-Vrionidi, Lucia Vuolo, Kosma Złotowski
Substitutes present for the final vote	Leila Chaibi, Roman Haider, Henna Virkkunen
Date tabled	16.6.2020

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

46	+
ECR	Peter Lundgren, Tomasz Piotr Poreba, Kosma Zlotowski
GUE/NGL	Leila Chaïbi, Kateřina Konečná, Elena Kountoura
ID	Marco Campomenosi, Roman Haider, Julie Lechanteux, Philippe Olivier, Lucia Vuolo
NI	Mario Furore, Dorien Rookmaker
PPE	Magdalena Adamowicz, Andor Deli, Elżbieta Katarzyna Łukacijewska, Benoît Lutgen, Marian-Jean Marinescu, Giuseppe Milazzo, Cláudia Monteiro de Aguiar, Massimiliano Salini, Sven Schulze, Barbara Thaler, Henna Virkkunen, Elissavet Vozemberg-Vrionidi
RENEW	José Ramón Bauzá Díaz, Izaskun Bilbao Barandica, Søren Gade, Elsi Katainen, Caroline Nagtegaal, Jan-Christoph Oetjen, Dominique Riquet
S&D	Andris Ameriks, Johan Danielsson, Ismail Ertug, Giuseppe Ferrandino, Isabel García Muñoz, Rovana Plumb, Vera Tax, István Ujhelyi, Petar Vitanov
VERTS/ALE	Ciarán Cuffe, Jakop G. Dalunde, Karima Delli, Anna Deparnay-Grunenberg, Tilly Metz

1	-
PPE	Gheorghe Falcă

1	0
S&D	Bogusław Liberadzki

Key to symbols:

+ : in favour

- : against

0 : abstention