

POSITION PAPER

Social legislation in Road Freight Transport

CLECAT is the Brussels based organisation representing the interests of freight forwarders, transport and customs related services in Europe. Freight forwarders are agents or contractual carriers that use all transport modes and are not limited to road transport; they utilise the entire and complex logistic infrastructure with a totally unprejudiced and cost-efficient approach.

General comments

CLECAT is pleased to provide comments on the review by the European Commission on social legislation in road transport and other road freight initiatives with regards to market access. The majority of freight forwarders do not have their own assets. They have therefore an interest in ensuring that carriers operate in a competitive and liberalised market, in the interest of the best possible service for their clients, the shippers, whilst respecting applicable legal framework which should ensure not only harmonization and common ground but also a system which is predictable and foreseeable.

The objectives of the users of road freight transport - freight forwarders being in the first place users of road freight services - differ slightly with those of the road haulage industry. For the latter, it appears the focus is on creating a level playing field; for the forwarders as the customer - it is about measures that improve the overall efficiency and quality of road freight services, without adding to the burden of bureaucracy associated with regulating an industry, and without increasing the costs of road freight services.

It might reasonably be assumed that the Commission's objectives to enhance the clarity, readability and enforceability of rules combined with creating a level playing field can derive benefits for the logistics industry. As this is not clearly stated in the public consultation, CLECAT has some concern that the conclusions and actions resulting from this consultation might not sufficiently take into consideration the impact on the logistics sector. We therefore reiterate that CLECAT's position is governed on the basis that measures taken:

- do not create shortages of road freight services
- enhance the quality of road freight services
- increase the efficiency of road freight services rather than adding bureaucracy
- strengthen the internal market
- do not inhibit innovation in the road freight and logistics sector
- improve reliability through more certainty of compliance with future environmental and security regulations and standards

Social legislation in road transport is largely about:

- EU social rules in road transport (driving, resting and working times)¹
- Issues related to the posting of workers as regards their implementation, functioning and possible improvements.

These are issues CLECAT has so far not been largely involved in as users of road transport services. But as new legislation relating to social legislation is increasingly impacting on users, in terms of their liability and compliance with national legislation we are increasingly engaged in debates on social legislation.




Better Regulation in Road Transport

As noted in a recent Position Paper on [access to the Road Transport Market](#), CLECAT fully supports the conclusions made by the European Commission at the end of the Road Transport Conference in March this year, noting that new legislation has been proposed too easily and that the Better Regulation Agenda should be pursued instead. We support the need to clarify and simplify existing regulation with the ultimate aim to have a better functioning internal market.

However, CLECAT has observed that a large part of regulation in force or new interpretation planned by some Member States seem to originate from the desire to limit, restrict or even ban competition on the market place. Old Member States continue to argue that the 'competitiveness gap' as it stands is not compatible with an internal market in which all of Europe's national road freight transport sectors can participate.

The international road transport sector has to deal with a number of challenges such as strong competition amongst business and driver shortages. CLECAT is of the view that in a market where competition is fierce, because of the structure and number of players in the market, all players need to become smarter and more innovative. For freight forwarders to be certain of partaking in growth there is a necessity to be efficient, competitive and cost effective. Therefore, we would not support new legislation that will add to additional bureaucracy and costs, as it will not serve the European economy, nor will it serve the road transport sector.

It follows from the above that we believe that in an open market transport service providers should be committed to offer the best possible and most cost effective service to their customers. This does not lead to lower compliance levels; on the contrary, it may equally lead to increased efficiencies and more sustainable logistics solutions.

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- ¹the **driving time** [Regulation \(EC\) 561/2006](#)  establishes minimum requirements on daily and weekly driving times, breaks, daily and weekly rest periods, which must be observed by drivers and operators.
 - the **working time** [Directive 2002/15/EC](#)  lays down the rules on the organisation of the working time of persons performing mobile road transport activities. It complements the Regulation's provisions by introducing the requirements on the maximum weekly working times, minimum breaks in work and on the night work.
 - the **enforcement** [Directive 2006/22/EC](#)  sets out minimum requirements for Member States to check **compliance** by drivers and operators with the Regulation's provisions.

Better enforcement in Road Transport

The social legislation was subject of an assessment of its functioning and effects in the context of the policy objectives and recent market developments in the framework of the ex-post evaluation. The [study](#) comes to the conclusion that there are certain difficulties in application and enforcement of this legal framework that prevent the achievement of the road transport objectives.

From what we have observed over recent years, it appears there is room for different interpretation of Regulation 561/2006 (daily and weekly driving times, breaks, daily and weekly rest periods). Certain provisions are unclear, leading to different interpretation by Member States. A recent example is the way France has been seeking to enforce rest periods in case there are two drivers on a truck. Thanks to the guidance notes² from the European Commission road hauliers have not been fined unnecessarily. Also, an increasing number of Member States (France, Belgium, Austria) do not allow for drivers to spend their weekly rest period on board of the truck.

CLECAT is of the opinion that there may be scope for measures to improve enforcements, as highlighted often by national enforcement officers, but current legislative framework provides a good base without a need for additional legislation. A European register of road transport undertakings was established in 2013 to provide a platform for the exchange of information of infringements by non-registered undertakings. CLECAT is of the opinion that a strengthened European Register of Road Transport Operators (ERRU) should enforce the mutual cooperation between Member States. It has been observed by many that there is currently not sufficient cooperation between the authorities responsible for the enforcement of the rules in different Member States. The Commission has proposed to use this register in the future to enable enforcement authorities to carry out targeted roadside checks using real time information. These initiatives should bring about faster checks and a reduction in the administrative burden for compliant firms.

An internal market for Road Transport

The free movement of workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market in the Union enshrined in the Treaty on the Functioning of the European Union (TFEU). The implementation of those principles has been developed by the Union aimed at guaranteeing a level playing field for businesses and respect for the rights of workers.

CLECAT considers that the market will continue to decide whether to make use, when legally allowed, of the competitive advantage of operators from certain parts of Europe with lower operating costs (e.g. employment costs and fuel costs). We recognize that in view of the large number of players in the road sector (and the relatively low productivity linked to this) and the pressure on the prices through an unbalance in supply and demand, service differentiation has not largely occurred in the sector. However, creating additional barriers to the free movements of goods and services within the EU will lead to additional problems in the road freight sector and the EU economy at large.

² guidance notes on the implementation of Community rules on driving times and rest periods of professional drivers
http://ec.europa.eu/transport/modes/road/social_provisions/driving_time/guidance_notes_en

In this respect we noted that the national measures prevent the internal market from functioning properly. Following the introduction of minimum wages in Germany with regards to the application of the German Minimum Wages Act (MWA) to all types of transport operations carried out within or through the territory of Germany, CLECAT has expressed its deep concern on the scope of the application, the additional bureaucratic burden and the enforcement requirements to the road transport sector.

CLECAT has equally expressed concern on the *Loi Macron* which became operational on the 1st July, albeit that there were many questions as to its application. We publicly supported the investigation and infringement procedures initiated by the European Commission to determine whether such national provisions can legitimately be applied to international transport operations, including cabotage and transit, and whether they can be considered effective and proportionate. Both the *Mindestlohngesetz* and the *Loi Macron* add significant uncertainty, administrative and financial burdens to operators and the forwarders/logistics service providers.

On 8 March 2016, the Commission proposed a revision of Directive 96/71/EC on the posting of workers.³ DG MOVE has noted that forthcoming initiatives for the road transport sector should contribute to more clarity and better enforcement of the rules applicable to employment contracts in the transport sector and may address the specific challenges the application of the provisions of the Posting of Workers Directive raises in this specific sector.

We have learned that the Commission is considering a number of options for regulating minimum wages for drivers involved in international transport. CLECAT remains of the opinion that the current Posting of Workers Directive is not suitable for the international (road) transport sector as it does not take into account the sector's highly mobile workforce, transnational character nor the administrative burdens and enforcement difficulties of applying it to road transport operations.

Seeking to regulate the industry on the basis of a 'day-based' approach will be difficult to enforce. It has been suggested that if a driver stays in a Member State more than X amount of calendar days in a calendar month 96/71 will apply - retroactively for that calendar month.

We recognise that cabotage transport operations in which the various parts of the journey take place within the borders of the same Member State, fall within the scope of Article 1(3)(a) of the Directive.

This position was also addressed by the Commission in earlier communications noting it would be difficult to manage the practical consequences of applying different national laws to the existing relationship between the international transport undertaking (operating on its own account or on

³ For international road transport the proposal (8 March 2016) notes in Recital 10 that '*because of the highly mobile nature of work in international road transport, the implementation of the posting of workers directive raises particular legal questions and difficulties (especially where the link with the concerned Member State is insufficient). It would be most suited for these challenges to be addressed through sector-specific legislation together with other EU initiatives aimed at improving the functioning of the internal road transport market.*'



behalf for hire or reward) and *its mobile staff*, depending on the country to which the passengers/goods were being transported.⁴

It should be recognised that the issue of Posting of Workers and cabotage are closely interlinked. By extending local labour law to cabotage activities, in other words, applying the Posting of Workers Directive with minimal wages, paid leave, health, safety and registration of cabotage activities, CLECAT is of the opinion that the rules that restrict cabotage activities is no longer needed and would become obsolete.

Since if the Commission confirms that the Posting of Workers Directive applies to cabotage operations, it then also needs to pursue its policy to eliminate the remaining restrictions on cabotage.⁵

Recognising that this is not an easy issue, CLECAT is of the opinion that the Commission should take a long-term and holistic position on these issues. The ultimate aim of the Common Transport Policy is to achieve a market where registration in one Member State will allow unrestricted operations throughout the Union as this will improve the overall efficiency and quality of road freight services, through increased load factors.

We recall that CLECAT in its response to the *consultation on access to the market* recommended the European Commission to *take a step* towards opening up domestic markets by simplifying the conditions for establishment, while lifting the main uncertainties which currently exist in the application of cabotage rules; including the definition of cabotage operations. CLECAT calls on the lifting of the current restriction of cabotage operations to be carried out within 7 days, facilitation enforcement by national authorities. The time limit on cabotage operations would be made more enforceable by starting from the crossing of a border.

Finally, we would like to address the issue of whether there is a need to define the 'return to home/base.' The issue of cabotage is sometimes wrongly addressed by those that refer to illegal working practices, such as staying for a longer period of time in a Member State. It is clear that when a period of stay would indicate a more permanent business arrangement this would require registration by the enforcement agencies seeking to regulate road freight operations within each Member State.

Co-liability

Whilst acknowledging that the principle of 'co-liability' with the shipper and forwarder has already been established in Regulation 561/2006 (relating to drivers' hours rules), there had been some debate as to whether the user to be made more responsible for an operator's actions in other areas of their business: such would have required the attainment of far higher, and unreasonable levels of knowledge road freight operations than most users (shippers and forwarders) possess.

⁴ Commission staff working document on the implementation of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services SEC(2006) 439

⁵ White Paper on Transport (COM(2011)144) identifies the need to further open the road transport market in its initiative 1.2.6 on road freight



CLECAT is mindful of the fact that freight forwarders should apply a number of practices when contracting a carrier for moving cargo for their customers. They should have practices in place that avoid contracting carriers offering services which are not compliant with national and EU regulation. CLECAT recognises that freight forwarders should, before contracting a service from a carrier, go through a checklist of issues that can reasonably be controlled by them to avoid carriers to commit, offenses, whether intended or unintended. However, we believe that freight forwarders should not be held liable on issues on which they have no control or which they can't check.

The professional competence of the operator remains important and remains a formal means of ensuring operators and drivers understand the laws and legal requirements of road transport. However, good track record, trust, and high standards of performance, are all far better judges of competence than any certificate might deem to be. Rather than extending regulations on liability, CLECAT invites the road haulage industry to work in coordination and in partnership with freight forwarders to strengthen and enhance integrity, compliance, innovation in the road transport sector in respect of sound business relations, safety and sustainability.

Conclusion

CLECAT supports the need to clarify and simplify existing regulation with the ultimate aim to have a better functioning internal market. The Posting of Workers Directive should not apply to drivers in transit and international transport as these drivers as they are mobile workers.

A strengthened European Register of Road Transport Operators (ERRU) should provide the basis of a practical and harmonised system of enforcement. It is up to enforcement authorities to find the loopholes of those that perform activities that go beyond what is legally allowed.