

POSITION PAPER

Market Access and Social issues in Road Freight Transport

CLECAT issued a detailed position on the review of Regulation (EC) No 1072/2009 in October last year, when the Commission's consultation started with the various stakeholders in the road transport sector. This position remains valid. To accompany CLECAT's response to the online Consultation of the European Commission on this review, this paper summarizes the position of the Association representing freight forwarders and logistics service providers on the key questions of the consultation.

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. Some freight forwarders have their own fleet, but the large majority 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.

CLECAT considers that it is appropriate for the Commission to come forward with proposals to make the European road transport sector perform better within the context of a Single European market. CLECAT has witnessed initiatives at national level which further distort the situation of the international road transport market and which has raised concerns of our members. While we feel that regulation is often justified, for reasons of safety and security, we are observing that the existing regulation as it is currently applied and enforced, seeks to limit competition on the market.

In this respect CLECAT supports the legal action against the systematic application of the French and German minimum wage legislation to the transport sector. CLECAT is extremely concerned by the application of the minimum wage to certain international transport operations having only a marginal link to the territory of the host. The application of the transport minimum wage legislation creates disproportionate administrative barriers, for freight forwarders and carriers, which prevent the internal market from functioning properly.

It is highly important that the Posting of Workers legislation does not lead to disturbances of the free movement of goods and services and that the Commission comes forward as soon as possible with clearer sector specific legislation. The current situation creates further discrepancies between Member States which is not acceptable.

CLECAT is aware of the fact that the revision of Posted Workers Directive is only linked to the ongoing review of the road transport legislation. However, the reality that the new legislation in Germany (MILOG) and France (Loi Macron) brings administrative and financial burdens to the freight forwarding industry and impacts the possibility to perform cabotage and international road transport operations. We would therefore recommend the European Commission to take further initiatives without further delay.

Internal Market for Road Transport

CLECAT continues to support the creation of a Single European Transport Area as it will bring substantial benefit to Member States in terms of market efficiency, thereby enhancing economic growth. From the perspective of forwarders, the EU road haulage market is dealing with a series of problems such as:

- Hauliers are not entirely free to carry out transport operations, which can force them to travel with empty vehicles, or stop them from loading their vehicles in an optimal way, which creates efficiency losses. This is a constraint on the overall efficiency of the road haulage and logistics sector in the EU.
- Operating conditions vary from one Member State to another, meaning that the conditions for carrying out cabotage also vary from one operator to another.
- The existing rules have proved challenging for Member States to control in practice, particularly regarding the number of cabotage operations.

For this reason CLECAT continues to support EU initiatives to make the regulation easier to enforce and simplified. This would entail:

- Lifting the number of cabotage operations which may be carried out within a 7-day period, facilitating enforcement by national authorities. By removing certain restrictions on cabotage, the focus of legislators' attention may fall on compliance regulations that ensure safe operation.
- These rules should enable operators to make as many intra-EU journeys as they require, undertake cabotage when possible, and stay in any one Member State (other than the country of registration) for no more than a week in order to perform its legitimate business operation.

As such a legal revision will take time, the Commission should now issue a guidance note outlining:

- That cabotage operations are not restricted to the fulfilment and completion of an international transport, but also to allow cabotage operations as soon as the vehicle has entered the host country. This should ensure a better utilization of capacity, reduce empty runs and represent a clearer and better understandable definition of cabotage.
- that it is allowed to start a new 3/7 period immediately after finishing one
- that supporting documents can be introduced within 48 hours - and not "on the spot" and very importantly - to make absolutely clear that a combined transport operation is not a cabotage operation.
- Further digitalisation will support enforcement in the sector; the above rule could initially be applicable to those HGVs which are equipped with a smart tachograph which has a GNSS function, to make enforcement possible.

In addition to this we would note that an analysis of the levels of empty running in different market segments shows that segments which are exposed to competition, namely international transport

(cross-trade and bilateral international haulage), have much lower levels of empty running than market segments still subject to operational restrictions. Therefore, we would not be in favour of reviewing this part of the Combined Transport Directive, as it provides further incentives for combined transport.

Enforcement of the legal framework

CLECAT is of the view that the Commission should make further data available on the problem of 'letter box' companies, prior to seeking to amend the definitions as the problem may be over-estimated. From what we observe, there are companies that establish subsidiaries in another member state and perform activities, such as but not limited to, cabotage through that subsidiary. This is legal outsourcing as long as the subsidiary has some level of activity in its registration Member State.

We consider an improved cooperation between Member States for the purposes of law enforcement to be extremely important. We would support Commission initiatives aimed at harmonising enforcement mechanisms and the European Register of Road transport Undertakings (ERRU) for roadside checks and as a platform to check and record data about infringements of EU transport companies.

Coverage of vehicles of less than 3.5 tonnes

It has been suggested that more and more operators use light duty vehicles for cross-border operations creating unfair competition between LCVs and HGVs in the international transport market. Some Member States consider the use of these light duty vehicles (under 3.5 tonnes) performing several operations in another Member State as 'cabotage.' CLECAT considers it important to have a uniform interpretation on this. Depending on the nature of the transport, international operations with LCVs, these vehicles may need a 'lighter' license from a Member State with regards to some of the provisions of Regulation 1071/2009. CLECAT calls for a comprehensive and sound impact assessment based on an integrated approach, which analyses the benefits, costs and potential social implications.

Joint liability

There have been discussions over the last couple of years on the development of joint liability regimes involving freight forwarders and shippers in order to encourage compliance and to encourage cooperation and dialogue.

It is perhaps most important for the current rules to be properly and evenly enforced across the EU. Then freight forwarders would have confidence that they are contracting reputable, competent and legally compliant road freight service providers wherever they were from in the EU. Nevertheless, we support greater awareness of these issues amongst all parties in the logistics chain, and respect of due diligence, as this would enhance the relationship between all those involved in the chain.

It is also important to point out that it must always first be the party who actually violated a rule that is penalized. This means that for legal reasons, it must be made clear in EU law that only if it can be



proved and established by a court that the shipper or forwarder was indeed aware of the unlawful nature of the transport can he be liable for it.

Whilst acknowledging that the principle of 'co-liability' has already been established in Regulation 561/2006 (relating to drivers' hours rules), there has been some debate as to whether the customer ought to be made more responsible for an operator's actions in other areas of their business. While we recognise that it is good business practice to enquire about certain issues, such as social conditions being met, the freight forwarder should not be under liability to ensure these social conditions are met. However, on issues where it can be proved that the forwarder knowingly commissioned services involving infringement of the regulation – on issues which he has been able to check – there could be scope for co-liability.

Conclusion

CLECAT is of the opinion that the review should clarify and simplify the legislation on access to the market with the ultimate aim to have a better functioning internal market. The overarching goal is to create a European Single Transport Market Area where road hauliers from different Member States are free to access the transport profession in different Member States as well as undertake transport operations across the EU. This is in the interest of better operational efficiencies from the haulage sector through reduced empty running and unnecessary fuel consumption.

CLECAT remains of the view that unfair competition should not be a deterrent to further market opening, but rather suggests the need for a gradual, managed process where liberalisation and harmonisation of the rules are carried out together.

CLECAT remains at the disposal of the European Commission and any other interested parties for any further information about our views.