

Commission's Consultation
***Revision of the Community legislation on the access to the road transport market and
on the admission to the occupation of road transport operator***
August 2006

CLECAT was established in 1958 in Brussels, where it represents today 28 national organisations of European multinational, medium and small freight forwarders and Customs agents, thus representing the largest and oldest institution of its kind. Freight forwarders and logistic service providers¹ master the entire supply and value chain on behalf of their clients. Their logistic solutions satisfy both production and consumption, both supply and demand and make sure their expectations are satisfied, ensure that goods move from the point of origin to reach their final destination at the right place, at the right time and in good shape. For this purpose, they utilise the entire and complex logistic infrastructure with a totally unprejudiced and cost-efficient approach.

Freight forwarders and logistics service providers do not privilege any means of transport or transport infrastructure as such, although some may own a great many equipment and infrastructure.

CLECAT is replying to this questionnaire as representative of users of road transport services. CLECAT membership also includes some organisations whose members own vehicles fleets. Although these organisations are in agreement with this reply, they may add a national reply that reflects their specificity.

¹ See official description of « freight-forwarding and logistics services » as adopted by CLECAT & FIATA :
http://www.clecat.org/index.php?option=com_content&task=view&id=42&Itemid=9
CLECAT, aisbl (n° 0408301209)

PART A: ACCESS TO THE ROAD TRANSPORT MARKET

1.2- Merging of the current acts

Question 1 – *Is the merging of goods transport and passenger transport a real simplification? Which option is the preferred one?*

In the event the present situation is substantially objected to by operators and users, option 2 seems the best. This said, CLECAT does not see the present diversity of legal acts as an obstacle in its work.

In any case, option 1 is to be ruled out, goods and passenger transport being much too different.

2.2- Requirements for access to the market

Question 3 - *Should higher qualitative requirements be imposed to carriers engaged in certain types of road transport? If yes, which ones?*

Quality is not an element that can be imposed on business. Market forces are generally able to set the quality level suited to the contractual requirements involved. This being said, an EU-wide obligation to take out adequate insurance to cover professional liability would be an additional security. In this case, considering intervening risks, foreign carriers should be required to take out similar arrangements with insurers based in the EU or covered by a bilateral agreement. Such arrangements could become part of the negotiations on bilateral agreements.

2.3- Community licence

Question 4 – *Should Member States be required to verify whether the haulier/operator still satisfies the conditions for maintaining the licence at shorter intervals on a regular basis?*

Regular verifications at shorter intervals than every 5 years would have an administrative cost that few Member States might be ready to bear. However, some random checks could be carried out, in such a way that, for instance, any road haulage company would be checked at least 3 times (2 regular checks at the time of licence renewal and 1 random inspection) over a period of 10 years.

Question 5 - *Should the validity of the licence be reduced to a shorter period than 5 years? If yes, to how many years should it be reduced?*

We believe that the 5-year validity period is satisfactory. With random checks, as proposed above, there would be no need to make this validity period any shorter.

2.4- Certified copies

Question 6 - *Should the Regulation provide more detailed specifications for certified copies, i.e. standardize them in order to avoid confusion during an inspection? If so, what specifications or new (security) features should be introduced? Could a gradual shift to an on-line registry of the issued Community licences be envisaged?*

In principle, CLECAT supports harmonisation wherever possible. Since Community Licences are issued according to harmonised criteria, it seems logical that certified copies benefit from common specifications. In general Clecat recommends that bureaucratic choice be kept to a minimum; hence the specifications should be as simple as possible to remain manageable.

An online EU register of Community Licences would surely be a useful tool, as an easily and instantly accessible source for both authorities and road transport users. Such a register could

consist of a publicly accessible front-end and a backend restricted to competent national authorities, containing more detailed information about the licence holder (for instance, information about checks and their results). However, for such a register to be successful, one should make sure that Member States are ready to allocate the necessary financial, human and technical means.

2.5 - Driver attestation

Question 7 - *Should the driver attestation be made more uniform across the Community? Should the format of the current paper based document be changed? Should it gradually be made electronically readable?*

For the sake of simplification, the attestation should indeed be made uniform in order to avoid delays and difficulties due to the current disparities. We are also of the opinion that the attestations should be made electronically readable. This said, some of our Members drew our attention to the potential technical difficulties in the case of temporary workers.

Question 8 - *Should the current 5-year validity period be shortened?*

CLECAT does not see any reason justifying a reduction of the 5-year validity period.

Question 9 - *Are stakeholders of the opinion that the obligation to hold a driver attestation should be extended to drivers who are EU nationals?*

In principle EU drivers are already carrying their personal ID and their driving licence with them and we are under the impression the Schengen agreement provides for information exchanges where appropriate so as to enable local police to carry out instant controls. We are also under the impression that in some Member States an attestation is required. A pan-EU adoption of a common format for attestation might in fact contribute to quicker and easier controls. As long as this does not become an additional bureaucratic burden and provides operators with a benefit (for instance, quicker controls), it may be possible to see sufficient trade-offs to accept such a requirement.

2.6.2- A journey form for goods transport?

Question 11 - *What is the stakeholders' opinion on the use of a uniform, Community-wide journey form in goods transport by road replacing the variety of national documents?*

Since diverging national regulations could represent an obstacle to trade in the internal market, CLECAT generally advocates harmonisation wherever possible. Therefore, a uniform Community-wide "journey form" (possibly transmissible electronically) is to be supported, if this requirement is considered unavoidable. In addition, the possibility of using the CMR Note as a Journey Form (a solution already adopted by some Member States) could perhaps be examined further.

2.7- Road cabotage

Question 17 - *Do stakeholders perceive the varying rules as a problem? Do stakeholders consider that a clearer and more precise definition of road cabotage would be useful?*

The lack of an EU definition combined with the differences in national regulatory regimes on cabotage is a source of difficulties and legal uncertainties in the performance of cabotage operations. The EU Enlargement has further highlighted these problems. Although the share of cabotage in the total road freight transport market is still relatively modest, its growth and the extent to which it affects some Member States would call for clarification through an EU definition of road cabotage (and in particular its "temporary" character) and common rules on checks and controls.

However, CLECAT maintains its position that cabotage should be free and unrestricted within the entire EU.

Question 18 - *What are the stakeholders' views on these approaches? What alternatives could be proposed for a clear and easily enforceable definition of road cabotage?*

As stated, to make cabotage free and unrestrained in the entire EU. This would highlight social and fiscal disparities in the EU and compel Member States to tackle an important issue for fair competition in transport, as well as in other sectors.

Question 19 - *Which areas should be added to the list or deleted from the list contained in Art. 6 (1) of Regulation 3118/93?*

As long as the companies are in compliance with the safety and driving regulations, which should be strictly enforced, no other restriction of any kind should be prescribed.

Question 20 - *What is the stakeholders' experience with the application of Directive 96/71 to cabotage transport operations? What is their opinion on exempting cabotage operations from the scope of that Directive provided that cabotage is limited to a period shorter than one month?*

CLECAT is of the opinion that a fair balance should be found between fundamental social protection and a business-friendly legal environment. In view of the requirements to be fulfilled when the host Member State's social legislation applies, CLECAT would prefer to maintain the current system. In this situation stricter measures would contribute to making the applying MS transport market less competitive.

In addition, the concept of "posting" is ambiguous when applied to truck drivers. Indeed, transport services are mobile and because of this characteristic, the employer does not formally post an employee in a company in the hosting country. Moreover, the "recipient" of the service (according to Directive 96/71) is not always the consignor or the receiver of the transported goods. Finally, a transport contract is normally established between a carrier and a principal, in favour of the consignee. Therefore the actual beneficiary (i.e. the consignee) is not always established in the country where the cabotage operation is performed.

PART B: ADMISSION TO THE OCCUPATION OF ROAD HAULAGE OPERATOR

2.1- Level of standards

Question 1 - *Should there be higher minimum standards for admission to the occupation? If so, should they apply to all road transport professions or only to certain categories? Which ones?*

CLECAT is not in favour of creating excessive bureaucracy. MS's should be free to set their own rules. Clearly, more business friendly rules would show a competitive advantage over cumbersome regulations in the long run. The resulting competition between MS's systems would bring about enhanced efficiency.

Question 2 - *Should criteria other than good repute, financial standing and professional competence be included? If so, what should they be? For example, should criteria which prevent 'letter-box' companies from engaging in the occupation be included? If yes, how?*

No.

2.2- Exemptions and dispensations

Question 3 - *What exemptions and dispensations should be abolished?*

For the sake of coherence with other road transport regulations (e.g. road infrastructure charging), CLECAT believes that only vehicles of less than 3.5 tonnes should be exempted.

As regards the exemption of undertakings, which were authorised to operate before the Directive entered into force, it seems quite late to ask them to go through the admission process now. However, in order to safeguard fair competition between these firms and those who had to go through the admission process, some checks could be carried out to assess the fulfilment of minimum standards for those found in breach of safety and driving regulations.

2.3- Periodic checks and disqualification

Question 4 - *Do the requirements for admission to the occupation need to be checked more frequently? If so, should all or only some of them be checked? Which option do you prefer? If you prefer option A, what frequency do you propose?*

Making checks more frequent would entail administrative costs that Member States might have difficulties bearing. CLECAT would therefore favour random inspections in such a way that, for instance, any road haulage company would be checked at least 3 times (2 regular checks and 1 random inspection) over a period of 10 years.

Question 5 - *Is it called for that Community legislation prevents that an undertaking which has been disqualified establishes in another Member State? If yes, what should the solution be? (See also question 10).*

From a competition point of view, the fact that a company disqualified in one MS can obtain a licence in another MS seems commercially inequitable, all the more since this is only due to the absence of an information exchange system among national competent authorities. CLECAT would therefore advocate the setting-up of an EU database that would be updated and checked by national authorities when they revoke/grant a licence.

2.4- Simplification

Question 6 - *Are there any administrative burdens associated with measures considered useful in this questionnaire that could be alleviated or abandoned? If so, by what means could that be achieved?*

A number of administrative burdens stem unfortunately from translating the EU rules into national legislation. For this reason we suggest national organisations should be encouraged to reply to this specific question.

3- Good repute

Question 7 - *Should it be required that, to be deemed to be of good repute and granted admission to the occupation, an applicant must not have committed any repeat offences?*

No.

Question 8 - *Should the definitions of serious offences which constitute a barrier to admission to the profession be harmonised at European level?*

The lack of harmonised definition of "serious offence" entails the risk of a difference of treatment for the same offence. This has however to do with the ill harmonised EU legal environment and it would take greater political will than it takes here to achieve harmonisation of these concepts.

This situation seems at odds with fair competition. The same offence should have the same effects for an undertaking, regardless of the country where such offence is committed. CLECAT therefore in principle supports a harmonised definition of "serious offence", but is well aware of the difficulties that would be encountered in this pursuit.

Question 9 - *Should European legislation include a list of persons to whom the requirement of good repute applies? If your answer is yes, should the list include categories other than managers, directors and persons who have interests in the undertaking?*

This proposal seems at odds (or would create a number of complications) with the protection of the privacy of EU citizens. In addition it seems to produce a considerable increase in bureaucratic requirements where probably none are needed. In the end, if a MS is willing to create additional burden for its own industry, the result would be that its industry would be less competitive. This is a situation which has already been observed in a few MSs. Over time cumbersome procedures have been abandoned.

Question 10 - *Should the licensing authorities be given easier access to information about judgments and penalties which bar an operator from being granted admission to the occupation?*

CLECAT cannot contemplate national competent authorities' shortcomings, if they exist.

Question 11 - *Is the current information exchange system on infringements and sanctions sufficient? If not, what improvements do you suggest?*

In order to safeguard transparency and fair competition, CLECAT supports such a system being set up for serious offences.

4- Financial standing

Question 12 - *Should the methods for assessing financial standing be further harmonised? If your answer is yes, on the basis of what financial ratios should the assessment be made? What should the thresholds be? Who should evaluate them? At what intervals should this be done? ⇒ Should the methods be further harmonised? With which methods? Using which thresholds?*

Harmonisation is in our opinion a common good in setting simple common rules. It might have no value, or be counterproductive, when impinging on elements of business competitiveness. In principle a company able to pay its debts, meet its commitments and accepted by the banking system as a client should be considered reputable. Appropriate statements could be released upon request, which should be a satisfactory common criterion.

Question 13 - *Should the option of compulsory professional liability insurance be considered in greater depth? If your answer is yes, should the system supplement or completely replace the current system? What risks should such insurance cover and what minimum guarantees should it provide?*

As stated above (question 1), an EU-wide obligation to take out adequate insurance to cover professional liability would be an additional security. Provided foreign carriers are required to meet the same or equivalent criteria to gain access to the EU market, this proposal might offer additional security to EU operators.

As regards risks to be covered the following should be sufficient:

- A general error and omission cover;
- Evidence of insurance cover for carriers liability (e.g. CMR), according to the applicable liability regime.

Insurers should be EU based or offer equivalent guarantees by means of a bilateral agreement.

5- Professional competence

Question 14 - *Is further harmonisation of examinations necessary? What dispensations could be abolished?*

CLECAT would favour the first option, which is considered as a better harmonisation measure. However, we believe that the current exemptions should be maintained.

Question 15 - *Should the certificate holder be an employee of the company concerned and a permanent resident of the Member State in which the company is established?*

CLECAT does not think that the certificate holder has to be an employee of the company. Such an obligation would be too restrictive and exclude certain contractual relationships between an undertaking and persons working for it (e.g. service contracts).

In addition, we do not see any difficulty in the fact that a certificate holder may officially represent several companies, as long as:

- Each company is aware of this situation
- There are guarantees (and they are accepted by the contracting parties) that the confidential information in the possession of the certificate holder will not be deemed an aspect of unfair competition

Finally, CLECAT does not think that the certificate holder has to be a permanent resident of the Member State concerned as long as he/she is a citizen of the European Union or is legally established in one of the MSs.