

Brussels, August 6th 2006

Discussion Paper

Who we are

CLECAT was established in 1958 in Brussels, where it represents today 29 national organisations of European multinational, medium and small freight forwarders and Customs agents. In terms of representation CLECAT represent up to 19,000 companies that employ in excess of 1 million people.

Why we are talking about this

Freight forwarders and logistics service providers are part of the entire supply chain in providing services to their clients and consequently any proposal designed to enhance the security of the supply chain is of paramount interest to CLECAT members.

What is our position?

Although governments of the EU Member States have decided to enhance security in the transport and logistics sector, the question is if a system for surface transport operations within the EU or on domestic level as proposed by the Commission can be effectively established as it has been established for sea and air transports and as it is planned for customs clearances. At least, however, existing security regimes address economically sensitive sectors and interfaces (airports, seaports, EU external borders, the carriage of dangerous goods) which are potentially at risk and for those, in this respect; at least regulations partially are justified. The proposed Regulation in contrast is indiscriminate.

The Commission underestimates that many companies already maintain appropriate security management systems that are tailored to their individual risk potentials like theft, robbery and industry espionage. If there should be insufficient risk awareness for surface transport in freight forwarding, logistics, transport and shipping in terms of terrorism it is predominantly due to the fact that politicians as well as the Commission have not identified precisely which terrorist threats to European, national and regional surface freight transport exist. An effective protection against terrorism from the industry's viewpoint must be orientated on the risk potentials that companies and infrastructures actually face and offer appropriate measures. Only real – as opposed to abstract – criteria should be the basis for calculating the risk of a terrorist attack.

After risk potentials have been detected and communicated how the industry can really contribute to enhance security, the question is what kind of scheme (voluntary or mandatory) should be adopted. In the DNV¹ study into this question it was found that a mandatory system

¹ The report by DNV consulting entitled “Study on the impacts of possible legislation to improve transport security” was conducted on behalf of the European Commission. The report can be accessed through the following link:
http://ec.europa.eu/dgs/energy_transport/security/intermodal/doc/2005_finalreport_impact_assessment_transport_security.pdf#pagemode=bookmarks

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would cost 60 billion for all the companies in the supply chain to implement and a further 235² million for member states to inspect. It is clear from these figures that a mandatory scheme would be unworkable and CLECAT is in favour of the adoption of a voluntary scheme. However, any voluntary system is based on incentives for those who shall participate to the system. CLECAT therefore asks for a specification which actual incentives and benefits are foreseen for companies who want to award the "secure operator" status."

The Cost factor:

The estimated cost of implementing the voluntary 'secure operator' scheme as proposed by the Commission has been estimated at 2.1 billion over 5 years³. The findings of the Commission report on the funding of transport security are of obvious relevance to the 'secure operator' proposal. The report has found that;

*"the financing of transport security measures which are imposed by law and which are connected with the exercise of powers which are typically those of a public authority do not constitute economic activities. This position has recently been re-affirmed in the Community guidelines for State aid to regional airports. The financing of these measures must, however, be strictly limited to compensation of the costs to which they give rise and may not be used to fund other economic activities"*⁴

Under the proposal the 'secure operator' scheme is intended to be voluntary for companies but mandatory for the Member States. For companies who wish to participate in the schemes it would then be a legal requirement to implement the security measures laid on in the annex which relates to their activities. Companies participating in the scheme are assisting in improving security and in doing so are incurring expenses which do not in any way contribute to improving their economic performance. As improving security is the competence of the public authority it is only fair that companies providing assistance in improving security **be compensated at least in part** for the costs that they incur in doing so.

It may be considered unlikely that the member states will agree to foot the bill for the implementation of the 'secure operator' scheme and that ultimately it will be the operators themselves that bear the cost of its implementation but this is not acceptable. CLECAT is of the view that a voluntary scheme is the only workable solution. However the only way that the scheme will prove effective is if, as envisaged within 5 years, 75⁵ per cent of all intra EU freight flows are carried out by operators participating in the scheme. In order for such a large number of companies to participate in the scheme a way will have to be found to make it attractive or at least feasible for them to do so. Otherwise the scheme will be a failure. If no financial assistance is provided, the cost of participating in the scheme could jeopardise trade competitiveness. Unsurprisingly it would be understandable that companies would elect not to participate in the scheme. This is one of the reasons why, whilst being in favour of improved security, CLECAT is struggling to find reasons to support the proposal.

It must be noted that this proposal will involve participants in the scheme making expensive investments in order to meet its criteria. Some CLECAT members have voiced objections to the

² Commission impact assessment for supply chain security proposal, p.3. The impact assessment can be accessed at, http://ec.europa.eu/dgs/energy_transport/security/intermodal/doc/2006_02_27_impact_assessment_sec251_en.pdf

³ Ibid, p.3

⁴ Commission Report on transport security and its financing, p6/7. The report can be accessed at the following link: http://ec.europa.eu/dgs/energy_transport/security/financing/doc/com_2006_0431_en.pdf

⁵ Commission impact assessment for supply chain security proposal, p.3.(see footnote 2)

scheme on the ground that compliance would be prohibitively expensive. One estimate of the cost of the scheme stated that a company with 250 employees would have to spend 135,000 in the first year of the scheme and 131,000 each subsequent year on constructional adaptations and personnel training.

The scheme as this example shows will involve huge costs for participants and while CLECAT's members are in favour of enhancing security they cannot be expected to appropriate a level of funding for security measures that would compromise their economic competitiveness. This issue of costs will have to be resolved not only for CLECAT to clearly support the proposal but for the proposal to have any chance of success with other stakeholders.

On these grounds some have argued that this scheme cannot be considered voluntary because customers may enforce these requirements onto their service providers, who would then be obliged to comply. On the other hand one could argue, as others have done, that this reference standard, if introduced, could discourage the introduction of a variety of more stringent requirements, whether imposed by the market or by national governments (be they EU or non-EU).

Are there already too many different security standards?

There is concern in the industry about the multitude of security standards being developed and the duplication of work being undertaken. Currently there are CEN, ISO, WCO and US standards being developed or in place. Within the EU there is a security scheme for aviation which has led to the creation of the statuses of regulated agent and known consignor and there is also a security aspect to the customs procedures contained within the AEO concept. Suggestions on how compatibility between the various security legislation and standards could be improved are suggested later in this paper. Some in the industry are of the view that the security risk to freight transport is being overestimated and that all major terrorist attacks to date have focussed on passenger rather than freight transport. Whilst the former is probably a debatable concept, the latter is an obvious observation.

The remainder of this paper will concentrate on suggesting possible trade-offs that may make this proposal more attractive.

Mutual recognition between security systems

The main way of convincing companies to bear the expense of participating in the scheme would be for participation to provide a certain 'competitive advantage'. In business decisions are obviously made with the express intention of gaining an advantage over competitors and this fact could be used to make the scheme more attractive. The following are some measures that could help in this regard.

Facility for integration of the following statuses

- 1. AEO security (proposal can cover all types of AEO no need to distinguish between them all reference to AEO security have consequently between deleted and replaced with just a reference to AEO) and secure operator*
- 2. Regulated agent and secure operator*
- 3. Known consignor and operators referred to Annex 1 of the SCS proposal*

Between the customs, aviation security and prospective secure operator regimes in the EU there are being developed a variety of statuses designed at least in part to enhance security. The problem that will and is emerging for businesses in the EU is that they are required to go

through repeated application processes to achieve all these statuses when much of the criteria for the different statuses are either identical or at least broadly similar. In the context of the better regulation agenda not to mention the Commission's appeal to business, "you tell us where to cut the red tape", CLECAT feels that this process should be simplified for operators.

1. AEO and secure operators

The secure operator scheme has been designed for internal EU supply chain. However many of the requirements laid out in the SCS proposal are similar to the requirements to obtain the status of Authorised economic operator. The requirements for AEO are laid out in the draft implementing rules for regulation 648/2005 and further detailed in draft guidelines. It is quite clear that many operators with the secure operator status would also require the status of AEO due to the nature of their business.

In the SCS proposal there is a provision stipulating that an AEO automatically fulfils the conditions for secure operator. This provision is contained in article 8 of the proposal which deals with the awarding of the secure operator status. Article 8(3) stipulates the following;

"If an operator has been granted the status of "authorised economic operator" in accordance to article 5a of EC Regulation No. 648/2005, the competent authority for supply chain security shall consider the criteria described in paragraph 1 met, under the condition that the criteria for granting the "authorised economic operator" status are identical or comparable"

The section of article 8(3) that is underlined should be deleted as the criteria for becoming "AEO" are stricter than the criteria to be a secure operator so there is no doubt whatsoever that an AEO should automatically qualify for SC security purposes.

A secure operator does not however automatically fulfil the conditions for the status of AEO. This maybe due to the fact that the requirements to be secure operator are intended to be more basic. However secure operators would meet most of the criteria to be an AEO. To make it easier for secure operators to achieve the status of AEO CLECAT proposes the following:

1. That the requirements set out in the secure operator proposal be worded in a as close to identical manner as possible to the requirement for AEO that are laid out in the draft implementing rules for regulation 648/2005 and the detailed in draft guidelines;
2. An amendment to the SCS regulation stipulating that the accreditation process for AEO take into account that applicants with secure operator status automatically fulfil some of the required criteria.

This measure would have the effect of reducing the strain of unnecessary paperwork on operators. In addition the secure operator status could then be marketed as a stepping stone to other statuses and this would make it more attractive to operators. This philosophy may recall the rather popular "stairway" concept.

Clecat is however adamant that no measures should be adopted that even remotely attract more stringent criteria onto the concept of SC secure operator, as they are already very difficult to meet for a large number of operators and may claim casualties in some areas of logistics when applied.

2. Regulated agent and secure operator

Under the implementing regulation (regulation 622/2003) for regulation 2320/2002 the status of regulated agent is created. A regulated agent is essentially a freight forwarder who takes responsibility of the goods from the shipper (Known consignors under 2320) until they reach the airport for carriage by air. In order to receive certain facilitations air freight forwarders need to become regulated agents. The criteria for becoming a regulated agent may not be 100% the same as the criteria to become a secure operator, but again secure operators would meet many of the requirements to become a regulated agent. In keeping with our suggestion to use the 'secure operator status as a building block to other statuses the following amendments to the SCS could be introduced;

1. Provided no confusion on criteria is created, the language laid out in annexes 2-4 could be made as similar as possible to the language used in the text of the requirements for a regulated agent;
2. An amendment to the SCS regulation stipulating that the accreditation process for regulated agent take into account that applicants with secure operator status automatically fulfil some of the criteria;
3. As operators need to fulfil more stringent requirement to become regulated agents than they would have to become secure operators, regulated agents should consequently be automatically be given the status of secure operator.

3. Known consignor and the operators referred to in Annex 1 of the SCS proposal

Whilst in principle our companies would be interested by this point only indirectly, it must be noted that the evolution of modern logistics has asked many of our Members to provide the services connected with the preparation of the goods for shipment.

Under regulation 2320 and its implementing legislation the status of known consignor is also created. A known consignor is essentially a shipper who contracts a regulated agent to arrange the delivery of goods to the airport for the carriage of goods by air. The operators referred to in annex 1 of the SCS proposal are essentially involved in the same activity as known consignors except they may not necessarily arrange for the carriage of their goods by air and may use other modes. The process of making the secure operator scheme more attractive to operators can be continued here by introducing the following amendments:

1. The criteria laid out in annex 1 could be made as similar as possible in their language to the requirements for a Known consignor;
2. An amendment to the SCS regulation stipulating that the accreditation process for known consignor take into account that applicants with secure operator status automatically fulfil some of the required criteria;
3. As operators need to fulfil more stringent requirements to become known consignor than they would have to become secure operators, known consignors should consequently be automatically given the status of secure operator.

It is clear that not all operators would be interested in gaining all the statuses, some secure operators may have no interest in being regulated agents, but for many it would be an attractive option to have. While this proposal may extend beyond the area of security such a provision in the regulation, simplifying the process for 'secure operators' to attain the other statuses would make participation in the scheme immediately more attractive.

It should be noted on this point that the implementing rules for regulation 2320/2002 related to regulated agents and known consignors are now being reviewed in preparation for the adoption of a regulation replacing regulation 2320. The new implementing rules replacing regulation 622/2003 could include provisions making it easier for 'secure operators' to attain the statuses of both regulated agent and known consignor.

The customs code committee could also make the required amendments to the customs code legislation to make it easier for secure operators to gain the status of AEO.

Benefits in terms of Liability in the event of a terrorist attack

It is currently not possible for operators to cover themselves by insurance for their liability in the event of a terrorist attack. Operators consequently have no protection in the event of a terrorist attack regardless of what measures they have put in place from a security standpoint. Operators with a secure operator status should be able to insure against a terrorist event as they would clearly have taken measures to significantly reduce risk of such an event occurring.

If insurers do decide to insure secure operators against terrorist attacks the terms of these policies would need to be monitored. There is the question of what would happen if a secure operator who is insured against a terrorist attack is subject to one. Would the insurer then be in a position to impose penalties on the operator which would completely negate the benefit of being able to gain the insurance in the first place? It would be ridiculous if a company that had gone to expensive lengths to improve security would be subject to more penalties than an operator who didn't have the secure operator status. Not only would it be ridiculous but if this was the case it would be highly unlikely that operators would choose to sign up to the scheme as they would basically be spending a huge amount of money without actually any kind of additional protection.

While it may be understandable that the issue of liability cannot be dealt with directly in this supply chain security proposal, if the 'secure operator' scheme is to be successful then the liability issue would have to be dealt with in a separate piece of legislation to be discussed in parallel.

CLECAT proposes that:

1. The Parliament transport committee call on the Commission to produce a regulation which would ensure that proper liability limits are introduced in order for secure operators to be able to negotiate insurance covers for terrorists' attacks;
2. Any such regulation would have to protect 'secure operators' from being subject to unfair penalties from their insurers in the event of them being subject to a terrorist attack, if the required measures were implemented;
3. As has been made clear earlier in this paper, known consignors, regulated agents and AEOs should automatically be given the status of 'secure operators' as they already meet the criteria. This being the case regulated agents, secure operators and AEOs should also qualify for any access to insurance cover made available to secure operators⁶.

Why is there no provision in the proposal for an advisory group of stakeholders to be consulted, in the event of the stipulations laid down in the annexes being amended or added to?

In the area of civil aviation security the benefit of having an advisory group of stakeholders to consult on proposed new measures has been proven. As the SAGAS (stakeholders advisory group on aviation security) has proved a success, the failure to include a provision for a similar group to be consulted on supply chain security is a shortcoming in the proposal.

The importance of having an advisory group for aviation was acknowledged by the Parliament when an amendment was adopted formalising the role of SAGAS in the rapporteur's final report on the proposed new regulation in the field of civil aviation security.

In CLECAT's view a similar amendment should be added to the supply chain security regulation. Consultation with stakeholders helps avoid the introduction of measures that may be ineffective or that may hamper trade.

Conclusion

CLECAT reiterates doubts about the effectiveness of the measures proposed. The proposed Regulation offers no actual incentives to the industry to voluntarily implement the requirements. Incentives, however, are the decisive factors for a voluntary registration system. In its current form the proposal from the Commission runs the risk of failing in its objective of enhancing supply chain security, not because the measures proposed would not be effective, but because it would be unlikely that a sufficient number of operators would choose to participate in the scheme.

This being said, the measures proposed make sense if they are embedded into an evolutionary scheme of facilitations and if widely introduced would contribute to improving supply chain security.

Introducing them needs to show clear benefits for those bearing the costs, which seem excessive for our sector to be left alone to foot the bill. A voluntary scheme is clearly the only viable solution following the studies that have been carried out. CLECAT reiterates its commitment to improving security, but if the problems outlined in this discussion paper are not resolved by targeted amendments, CLECAT would struggle to find sufficient reasons to support it in its current form.