

The European Voice of Freight Logistics and Customs Representatives

Brussels, 28th of January 2010

**Draft report of the EP Committee on Employment and Social Affairs,
draft opinion of the EP Committee on Transport and Tourism
on the European Commission's proposal
for a directive amending directive 2002/15/EC on the organization of working time
of persons performing mobile road transport activities**

Introduction

CLECAT is the largest umbrella organisation of its kind in the EU. It represents the interests of the vast majority of EU logistics, freight forwarding and Customs service enterprises. In this light CLECAT has a first and foremost interest in the topic of the organisation of working time of the persons who perform mobile road transport activities. Although we have already expressed our views on this topic after the Commission issued its proposal, we are now faced with the draft reports of the Committee on Employment and Social Affairs (EMPL) and the draft opinion of the Committee on Transport and Tourism (TRAN) of the European Parliament that have recently been published.

Draft report of the EMPL Committee:

- **According to CLECAT Members, the proposition made by the Rapporteur to extend the provisions of the directive under revision to vehicles of less than 3,5 tons is ill at ease, at least from a logical point of view, with the principle of subsidiarity and may create unfair conditions for drivers.** Justification: vehicles of less than 3,5 tons are generally in operation for pick-up and delivery at local or regional level, very often limited to urban and suburban areas. These vehicles are seldom employed for long-distance trips. Whilst CLECAT is always in favour of harmonisation at EU level, we cannot blindly ignore reality in this case: different urban and suburban areas in the EU have different service requirements and often even different rules in place as regards the timing and the spacing of vehicles' access. These vehicles are mainly used in a stop-and-go manner consistent with a large number of short distance pick-up and delivery services. We therefore consider that there is no case for a homogeneous European regulation extending requirements typical of a different activity into the "last mile" area of the supply chain. To the contrary, the prevailing idea with the aim to boost efficiency and allow consistent savings in energy and emissions is to abate the regulatory constraints that create a redundancy of idle periods for vehicles and drivers. It is also worth taking into account the fact that mobile workers engaged in pick-ups and deliveries spend a lot of time filling forms or having them filled, packing and stowing, rather than driving their vehicles. This is sufficiently demanding. Applying the working time rules for

persons performing mobile road transport activities to them would considerably increase their workload for no avail.

- **CLECAT agrees with the rapporteur that a good definition of a “fake independent” is needed in order to protect employees and prevent unfair competition.** On that matter, we already expressed our support in the past to the Commission’s proposal to introduce three cumulative criteria to include false self-employed drivers in the category of mobile worker and we consider this initiative as a step in the right direction.
- **Concerning “night time”, CLECAT supports the Commission’s proposal as a practical solution** with the definition of “night work” as being at least two hours worked (during the nationally defined four hour “night time” period-to be set within the hours between 24.00 – 07.00 h.). We understand the position of the Rapporteur of the EMPL Committee is in line with the Commission’s (and CLECAT’s) since the “night time” issue is not explicitly discussed within his draft report.

Draft opinion of the TRAN Committee:

- Contrary to the position upheld by the Rapporteur of the TRAN Committee, CLECAT is of the opinion that self-employed mobile workers should be excluded from the scope of the directive, as is foreseen in the Commission proposal. The directive is not appropriate to regulate the working time of independents and the decision to include self employed drivers within the scope of regulation would be particularly unhappy for at least two reasons: it would appear to be at clash with a level-playing field within freedom of enterprise, which is enshrined in the treaties of the EU, by suggesting that a self employed driver is a person with less freedom to organise its own work than other self-employed service providers, e.g. consultants; or one could end up with a regulation that contributes to unwittingly instigate the perception that a self-employed driver is fake self employed even when the definition is perfectly matched. It must also be noted that the requirement of a definition for “fake” self-employed (see below) is in line with a clearly felt difference between employed and self-employed drivers.
- **CLECAT agrees with the Rapporteur that a good definition of a “fake independent” is needed in order to protect employees and prevent unfair competition.** On that matter, we already expressed our support in the past to the Commission’s proposal to introduce three cumulative criteria to include false self employed drivers in the category of mobile worker as we consider this initiative as a step in the right direction. It is however difficult to understand how this immaculate requirement for a definition can be conciliated with the desire to confuse self-employed with the others within the scope of the proposal.
- **Concerning “night time”, CLECAT supports the Commission proposal as a practical solution** with the definition of “night work” as being at least two hours worked (during the nationally defined four hour “night time” period-to be set within the hours between 24.00 – 07.00 h.). CLECAT therefore opposes the night time definition of six hours fixed between 00.00 and 6.00 h as proposed by the Rapporteur of the TRAN Committee as we consider this position to be too rigid and not in-line with Member States’ current legislation, as well as with long established prevailing social and business practice.

We kindly remind you that the CLECAT position paper to the Commission's proposal is available for consultation at the following link:

<http://www.clecat.org/dmdocuments/pp014oetro091002wkgtime.pdf>

CLECAT remains at the entire disposal of MEPs and other institutional interlocutors, should there be a need to clarify or explain the points made above.