

Position Paper

The European Voice of Freight Logistics and Customs Representatives

Brussels, 2nd of October 2009

RE: Proposal from the Commission for a directive amending directive 2002/15/EC on the organisation of working time of persons performing mobile road transport activities

CLECAT represents the interests of the vast majority of EU enterprises which offer logistics, freight forwarding and Customs services both within and outside Europe. CLECAT has therefore a first and foremost interest in the topic of the organisation of working time of persons performing mobile road transport activities.

Given the newly established Parliament, the complexity of the topic and the narrow vote in Plenary rejecting the Commission proposal in May 2008, CLECAT considers that a plain rejection of the Commission proposal as advocated by the report drafted by the Parliamentary Committee on Employment and Social Affairs (EMPL Committee) seems to be a too simple solution. We consider that an opinion should also be heard from the Parliamentary Committee on Transport and Tourism (TRAN Committee), which is regrettably not foreseen at the moment. **CLECAT therefore believes that the report made by the EMPL Committee should be rejected** by MEPs in order to re-discuss, in the newly elected Parliament, all of the issues touched upon in the Commission proposal. The most important of these being the following:

- In regard to the content of the proposed directive, **CLECAT holds the position that self-employed mobile workers should be excluded** from the scope as foreseen by the Commission proposal. In no other sector are independents limited by a working time legislation which is meant for the social protection of employees, as the structure of the directive 2002/15/EC shows. The proposal contains the possibility to deviate in a more favourable way from the standard rule by way of social dialogue or collective labour agreements, but CLECAT wonders with whom an independent driver should agree on such a deviation, and believes that including independents in the directive would in fact mean rating them lower than employed drivers. Likewise, the question arises as to whether the activities of independents that are not related to driving should be taken into account when calculating working time, such as client contacts, marketing, administrative tasks. To include such activities in the directive without providing guidance on them does not seem reasonable and would particularly hit small enterprises. To sum up, there is no precedence for regulating the working time of independents, and the directive as it now stands is quite inappropriate to do that.
- In addition, **CLECAT feels that a good definition of a "fake independent" is needed** in order to protect employees and prevent unfair competition. In practice, the employment status of a driver cannot be determined on the basis of a single criterion. In fact, Member States competent bodies weight several criteria and indicators according to

the *de facto* situation to identify “false self-employed” drivers. Therefore, we consider that the proposal of the Commission to introduce three cumulative criteria is, in principle, a step in the right direction.

- **Concerning “night time”, CLECAT considers 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.). This would contribute to prevent drivers whose work accidentally falls for a short time into a night time period, become subject to night time work provisions, as foreseen under the Directive 2002/15/EC currently in place. However, CLECAT would prefer to see the number of hours reduced to only 6 if possible (for instance from 11pm to 5am). Our Members notice that a lot of shifts finish at midnight and commence between 4 and 5 am, therefore it would be more judicious to change the hours as it would reduce the administrative burden and the early morning shift workers to become subject to night time work provisions.

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.