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POSITION PAPER ON INTERNAL MARKET AND SOCIAL ISSUES MOBILITY PACKAGE

- I. Proposal for a directive amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector*
- II. Proposal for a regulation amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector*
- III. Proposal for a Regulation (EC) No 561/2006 as regards on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs*

Summary

1. As the Commission's legal proposals presented in the '[Mobility Package](#)' relating to access to the market, access to the profession, posting of workers and the driving and rest times are closely related, CLECAT addresses its positions and proposals in a consolidated position. The response to the Eurovignette proposal can be found in a separate [position paper](#).
2. The Posting of Workers Directive was never intended for a mobile workforce moving from one country to another country and therefore should not apply to the transport sector. CLECAT believes that it remains highly questionable whether European legislation on the posting of workers should be used as an instrument in international road transport to combat illegal practices, instead of better enforcement by increasing the frequency and coverage of controls.
3. The implementation of the Posting of Workers Directive to international road freight transport will have to strong negative impact on the logistics sector by adding costs and administrative burden. The intention of the Mobility Package to strengthen and deepen the internal market is not fulfilled by imposing these administrative requirements, which create in effect a restriction in the free movement of goods and services.
4. CLECAT remains of the view that the European Commission should have taken more care to ensure that the proposed legislative measures do not have a large disruptive impact on the transport sector and on the free movement of goods and services.
5. CLECAT supports on increased focus on fighting illegal practices in road freight transport through initiatives to enhance a (uniform) enforcement and cooperation between national authorities. Therefore, CLECAT regrets that the Commission proposal equally incentivises authorities to 'outsource' enforcement to freight forwarders through the introduction of a mandatory 'shared liability' regime.



Introduction

CLECAT is the Brussels based organization representing the interest of freight forwarders and logistics service providers. It has a collective membership of around 19000 members. The majority of freight forwarders and LSP's do not own assets but organize the logistics for their clients, the owners of the cargo. As such they heavily depend on reliable and efficient transport operations and have an interest in ensuring that carriers operate in a competitive and liberalized market.

CLECAT broadly welcomes the European Commission's Mobility Package and the ambition of the Commission to move towards transparent, clear and enforceable rules in the EU. The package of proposals addresses many issues that impact on the practical functioning of the European road freight transport in an internal market.

CLECAT is pleased that the Commission recognises the vital role of road transport for the EU economy, and the importance of multimodality. Road transport is the most used mode of transport, both in the initial and final stages of freight transport, as there is often no alternative. Statistics from the EU have shown that road transport accounted for 74.9% of all trade between EU countries, with trucks travelling 2,200 billion tonne-kilometres a year along the main roads and motorways.

European road transport policy should seek to achieve a competitive and liberalised market, in the interest of guaranteeing the best possible service for the users, whilst respecting the applicable legal framework which should ensure not only harmonization and common ground but also a system which is predictable and foreseeable.

CLECAT is concerned about the incomplete and incorrect implementation of existing rules which is hindering the free movement of goods in the single market. We do not support existing diverging national measures (on posting, cabotage, resting time etc) leading to an increase in the bureaucratic minimum wage patchwork that exists in Europe. For freight forwarders it remains essential to have regulation in place which seeks to improve the overall efficiency and quality of road freight services, without adding to the burden of bureaucracy associated with regulating an industry.

1. Proposal for a directive amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector - COM(2017)0278

CLECAT remains of the opinion that the Posting of Workers Directive is not suitable for the international (road) transport sector as it does not take into account the sector's highly mobile workforce, transnational character nor the administrative burdens and enforcement difficulties of applying it to road transport operations. Drivers in international transport are not posted in the sense of the definition of a "posted worker" (Directive 96/71/EC) which refers to an employee who is sent by his employer to carry out a service in another EU Member State on a temporary basis.

The Commission proposal on the application of EU rules on the posting of workers introduces a threshold of 3 days, as a total per calendar month spent in the territory of a host Member States, beyond which the host Member States' rules on minimum pay rates and annual paid holiday apply to a foreign operator. This will have a large negative impact on the logistics sector:

- **Administrative jungle** - Applying the Directive to road transport would entail the application of different national legislations and minimum wages per Member State (depending on the truck, goods transported, age of the driver etc.). On top of this, there are different schemes in different countries with regards to paid holidays. The application of the posting of workers rules will be neither enforceable nor controllable for
- **Compliance costs** - This proposal comes at a high cost for the operator and the greater supply chain. The annual compliance costs for operators under the 3 day threshold (EU 13) has been estimated at 464 million euro per year and 75 million euro in case of a 9 day threshold (as outlined in the Commission's impact assessment). CLECAT had expected that the Commission would come out stronger in the defence of a competitive internal road freight market. It should also be noted that the gap in wages between Member States is narrowing, and in view of the shortage of drivers on the market, this process will continue. This trend is making the introduction of new burdensome legislation redundant.
- **Impact on the market** - Assessing the impact of the regulation introduced by Member States (France, Germany and Austria) CLECAT has noted that more and more transport companies are avoiding or minimising their operations in some countries and this has had a substantial impact on capacity availability and market rates in the past year. Introducing the Posting of Workers Directive to road transport will increase the costs of transport operations in the EU, making the EU less competitive, reduce cross border trade and as such reduce growth in the EU.
- **Increase of self-employed drivers** - The application of the Posting of Workers Directive international transport will most likely result in an increase in self-employed drivers that do not need to comply with the rules on minimum wages and minimum paid holidays, and therefore distort competition in the market.
- **Increased liability** - The freight forwarder and the operator are jointly responsible for ensuring 100% compliance with national legislations and will also be jointly liable for penalties in case of infringements. Penalties can be between €10,000 and €30,000 per infringement. It should be noted that freight forwarders are already conducting due diligence to ensure their transporters have taken all possible measures to register according to national requirements and comply with all legislation in all affected countries.
- **Discriminatory for road transport** - CLECAT also questions on the discriminatory nature of the proposal towards other modes of transport. Would posting of workers apply in similar ways to other modes including air, inland waterways and rail transport? "Mobile staff" includes of course drivers, but also train drivers (excluded in France, included in Germany), river ship staff, pilots (excluded in France, included in Germany despite the fact that their salaries are many times the minimum wage).

- **Restriction in the free movement of goods and services** - The Commission started legal procedures against Member States including France and Germany as it considered that the systematic application of the minimum wage legislation by France and Germany to all transport operations touching their respective territories restricts in a disproportionate manner the freedom to provide services and the free movement of goods. The Commission proposal resembles to a large extent the 'Loi Macron'. CLECAT recognizes that a European solution would be better than further fragmentation and a patchwork of national regulations with slightly different requirements. Although the 'representative' of a company is not required in another Member State, it should be noted that if the Commission's current proposal becomes a reality, every international transport operation in Europe will need to become pre-notified and the driver will still need to bring a lot of documents.
- **More workable alternatives** - If the Commission, Council and EP remain convinced that the EU rules on the posting of workers should apply to the transport sector, subject to sector specific rules, CLECAT will in the most constructive way seek to make proposals which will address the current proliferation of different national rules and regulations and seek to make some sort of level playing field through measures which are enforceable without generating high administrative burdens.

The Commission should consider a mechanism of cooperation between Member States which would allow for the removal of the administrative burden for the operators. In such a system, the employment contract of the driver should be governed by the legislation of one Member state and it will be the responsibility of enforcement authorities to check whether the salary of the drivers complies with the minimum wage. In such a situation, the enforcement of the rules should be checked at the premises of a company's country of establishment to avoid the rule on 'pre-notification.' This would reduce the cost of the operator to enforcement and equally reduce administrative costs to the authorities on enforcement. It should be noted that a number of Member States are working on systems which would allow for the checking on the wages of the drivers. Under these conditions, CLECAT could accept the application of the Posting of workers for cabotage operations only.

II. Proposal for a regulation amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector

Review of Regulation (EC) No 1072/2009

- **Internal Market for Road Freight Transport** - The overarching goal of EU policy as outlined in the White Paper on transport is to create a European Single Transport Area where road hauliers from different Member States are free to access the transport profession in different countries as well as to undertake transport operations across the EU. Currently, the internal market for road transport services is not fully completed.
- **Environmental and supply-chain benefits of cabotage** - As 'cabotage' has evolved into a politically negative term, CLECAT would want to underline that cabotage allows for better planning of supply chains, better use of available capacity, a decrease of the number of empty vehicles on the road and with this a reduction of GHG emissions. However, cabotage operations should be linked with international transport operations and not have a systematic character.

- **Simplification and clarification of the rules** - Currently, Member States interpret the provisions of Regulation 1072/2009 differently and that there is a clear need for guidance from the European Commission. CLECAT welcomes the Commission proposals on cabotage as they clarify and simplify the rules which should support better enforcement and control without further fragmentation or restrictions in the EU. The Commission proposes to lift the limit on the number of operations which may be carried out within a 7-day period, facilitating enforcement by national authorities, and to replace this by a limited number of days (5) in which operations are permitted. Operations start from the point the international transport has been finalised. Cabotage operations are to include not just the host country but neighbouring countries to the host which provides more flexibility to the operator.
- **Need for next generation tachograph** - CLECAT appreciates that these rules are potentially easier to enforce since the land-codes will need to be registered in the tachograph. However, cabotage will start after the fulfilment of an international transport operation so it may be difficult to estimate at what point in time the 5-day period starts and enforcement may only be practical when the next generation of digital tachograph having in-build geo-localisation is adopted by the market. Article 15 introduces simplification of the provision of relevant evidence and the use of proof in electronic format including eCMR which is welcomed.
- **Application of the Posting of working** - Extending local labour law to cabotage activities - applying the Posting of Workers Directive with minimal wages, paid leave, health, safety and registration of cabotage activities, could only be acceptable if there is a mechanism of cooperation between Member States which would allow for the removal of the administrative burden for the operators.
- **Shared liability provisions** - Following these observations, we regret that the Commission has introduced the principle of 'shared liability' to prevent abuses by undertakings contracting transport services. It is proposed that shippers and freight forwarders shall be subject to sanctions in case they knowingly commission transport services which involve infringements of the provisions of the regulations. (Article 14a is introduced with reference to consignors, freight forwarders, contractors and subcontractors). It should be noted that freight forwarders always seek to ensure, before contracting a service from a carrier, that rules are being respected, including the legislation with regards to the minimum wages and driving and resting times. There are however limits to what can reasonably be controlled by them to avoid carriers committing offenses, whether intended or unintended. For this reason, we fear that with shared liability this will incentivize enforcement agents to shift part of their responsibility onto those who contract the services.
- Freight forwarders should not be held liable for issues on which they have no control or which they can't check. The professional competence of the operator remains important and a formal means of ensuring operators and drivers understand the laws and legal requirements of road transport.

Review of Regulation (EC) No 1071/2009

- **Prevent letterbox companies** - CLECAT supports the objectives of the Proposal to introduce into Regulation 1071/2009 EC establishment requirements that will prevent the use of letterbox companies for road transport operations, review the good repute requirements and strengthen compliance monitoring, including through improvement of cross-border cooperation between authorities and implementation of the European Electronic Register of Transport Undertakings (ERRU).
 - The amendments proposed to the establishment criteria in Article 5 are directed against letterbox companies. The proposed requirements put more emphasis on the actual commercial and administrative activities at the premises of the undertaking in the Member State of establishment. Also, the requirement is added that the undertaking should hold assets and employ staff proportionate to the activity of the establishment. It should be noted that issues may still arise for large international companies or for companies that outsource part of their administrative activities.
 - **Better enforcement** - CLECAT recalls that it remains the task of national government to ensure enforcement of regulation and to exchange information and national control practices. Good enforcement will remain dependent on the efficiency of national authorities and cross-border cooperation.
 - **Enhanced cooperation between Member States** - CLECAT welcomes strengthened national control practices against fraud, including improved national risk rating systems, more structured and mandatory administrative cooperation between Member States and better information sharing between Member States. There is a longstanding need to enhance cooperation between Member States and between different authorities of the same Member State. Already by simplifying restrictions on cabotage, and the complexities of compliance, the focus of attention by the legislators falls on compliance regulations that ensure safe operation.
 - Having said this, CLECAT is of the view that a strong focus on enforcement (including reinforcement of the criteria on stable and effective establishment) and improving working patterns for workers, would have relieved distortions of competition, while reducing administrative burdens for national authorities and transport and logistics undertakings. Currently, industry sees that enforcement is increasingly replaced by national rules and an increased administrative burden on freight forwarders – to the level of taking over the role of enforcement.
- III. Proposal for a Regulation (EC) No 561/2006 as regards on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs - COM(2017)0277***
- **Rest time on board of the vehicle** - In response to national laws introduced by a number of Member States prohibiting spending the regular weekly rest on board of commercial transport

vehicles, the Commission's proposed solution to this issue is that the weekly rest shall be taken in a suitable accommodation and not in the cabin.

- **Lack of secured parking spaces in the EU** - The Commission fails to offer an adequate framework to make this happen in practice, given that the shortage of secured parking spaces, where truck loads could be left in a secure manner, has not been dealt with. There are large security implications which raise concern as loaded trucks left unattended during long rest periods could be subject to theft.
- **Practical consequences** - As a consequence of the introduction of these rules some Member States, many transport companies are re-routing their trucks and changing their operations to avoid resting in certain countries. In view of the lack of secure parking, trips are planned in such a way that drivers do not take their weekly rests in certain countries. This is restricting trade and adding operational costs.
- Legislation forcing drivers to spend their longer rest time out of their cabin may make the job less attractive which is a serious concern, given that the road haulage industry is already suffering from a shortage of drivers and is unable to attract sufficient new drivers.
- In view of these security concerns, it could be considered to make it mandatory for drivers to spend the longer weekly rest period in a secure parking area with adequate services to drivers, whilst allowing the driver to sleep on board of their trucks. CLECAT recognizes that the current situation in Europe would not accommodate for this in view of the shortage of secure parking areas and calls on the Commission and the Member States to deal with this as a priority.
- **Increased flexibility for the driver** - The requirement to enter a country code when crossing an international border, aimed at aiding enforcement, can be supported. Also, the 'reach home clause' in the driving and rest time rules can provide much-needed flexibility and will facilitate improved home life for employees.

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

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