

Review of Regulation (EC) No 1071/2009 and 1072/2009 on access to the road haulage market

CLECAT represents the interests of the vast majority of logistics, freight forwarding and customs service enterprises (www.clecat.org) both within the EU and continental Europe. Freight forwarders are agents or contractual carriers that use all transport modes and are not limited to road transport; they utilise the entire and complex logistic infrastructure with an unprejudiced and cost-efficient approach.

Following extensive consultations and meetings CLECAT is pleased to submit some further comments in writing following the last and final stakeholders meeting which took place on the 21st January in Brussels.

The White Paper on Transport (COM(2011)144) identifies the need to further open the road transport market in its flagship initiative 1.2.6 on road freight, which also states that ‘the elimination of remaining restrictions on cabotage should be pursued.’ The ultimate aim of the Common Transport Policy is to achieve a market where registration in one Member State will allow unrestricted operations throughout the Union. The gradual development of cabotage is to be seen as the instrument through which this can be achieved, i.e. it is not a question of a ‘big bang’ but rather of a gradual development in line with harmonisation.

The key objectives of freight forwarders, as customers of the road freight and logistics industry, are to have rules that improve the overall efficiency and quality of road freight services, through increased load factors and improved economic efficiency. This should not add to the burden of bureaucracy associated with regulating an industry, and that can be delivered without increasing the costs of road freight services.

Discussions during the stakeholder consultation have revealed that the EU road haulage market is dealing with a series of problems such as:

- Hauliers are not free to carry out transport operations freely, which can force them to travel with empty vehicles, or stop them from loading their vehicles in an optimal way, which creates efficiency losses. This is a constraint to the overall efficiency of the road haulage and logistics sector in the EU.
- Operating conditions vary from one Member State to another, meaning that the conditions for carrying out cabotage also vary from one operator to another.
- The existing rules have proved challenging for Member States to control in practice, particularly regarding the number of cabotage operations.

In response to the Discussion Paper which the Commission circulated to stakeholders and Member States in preparation for the Final Stakeholders meeting, outlining five policy packages, CLECAT would like to make the following remarks.

CLECAT has long advocated the removal of restrictions on cabotage in order to establish a truly internal market for road transport services in Europe. However, CLECAT recognises that the political will may not be ready to accept such a move to full liberalisation. The voices of opposition to such deregulation use arguments suggesting that it would threaten the livelihoods of those employed in the haulage industry of certain member states which would be politically unacceptable. In view of these political ramifications we support Policy Package 1 which offers a step towards opening up domestic markets by simplifying the conditions for establishment, while lifting the main uncertainties which currently exist in the application of cabotage rules, including the definition of cabotage operations. This would entail the lifting of the number of cabotage operations to be carried out within 7 days, facilitating enforcement by national authorities.

Whilst recognising that this would give competitive advantage to certain operators from certain parts of Europe with lower operating costs (e.g. employment costs and fuel costs), we also believe that there are other benefits. By removing certain restrictions on cabotage, the focus of attention by the legislators falls on compliance regulations that ensure safe operation.

These rules should enable operators to make as many intra-EU journeys as they require, undertake cabotage when possible, staying in any one Member State (other than the country of registration) for no more than a week in order to perform its legitimate business operation.

In addition to the proposals outlined under the PP1, CLECAT calls on the Commission to complement this with following:

- Not to restrict cabotage operations to the fulfilment and completion of an international transport, but also to allow cabotage operations as soon as the vehicle has entered the host country. This should ensure a better utilization of capacity and reduce empty runs and represent a clearer and better understandable definition of cabotage.
- Allowing cabotage also whilst waiting for the complete discharge of international transport.

The Discussion Paper noted under the explanatory notes on PP1 that the competitions' conditions will continue to be harmonized through a parallel initiative on mandatory road charging. CLECAT is of the opinion that the issue of road charging should be dealt with separately and that it is not relevant in the debate.

If an operator wishes to operate on a more frequent basis or longer than the given period in a host Member State, they should acquire a license from this Member State according to Regulation 1071/2009. The fair implementation of Regulation 1071/2009 on the conditions for access to the profession of road transport operator should be well enforced across the EU in order to remove difficulties and discrimination for hauliers wishing to establish permanently in another Member State.

It is also considered important to establish a Community wide database on operators and drivers, and to improve cooperation between Member States for the purposes of law enforcement.

We would support Commission initiatives aimed at harmonising enforcement mechanisms and increasing cooperation between Member States. To that end, we would support the future use of



the European Register of Road transport Undertakings (ERRU) for roadside checks and as a platform to check and record data about infringements of EU transport companies.

CLECAT also sees benefits in the categorization at EU level of sanctions for infringement of social rules and also encourages Member States to provide their respective police authorities with a list of transport companies that are subject to repetitive infringements. If one has the necessary information and co-operation of all enforcement agencies in the EU, then effective targeting of rogue operators and perpetual offenders can be undertaken.

Joint liability / Access to the profession

The Commission has suggested in one of the policy options the development of measures and regulation on joint liability. CLECAT is of the opinion that the discussion on joint liability provisions falls outside the scope of the review of the directive. The issue of liability is a legal consideration best kept within the domain of commercial contractual agreements rather than EU legislation. Whilst acknowledging that the principle of 'co-liability' has already been established in Regulation 561/2006 (relating to drivers' hours rules), we do not believe this principle should be extended to other areas because it would place an unreasonable burden on the logistics profession and require the attainment of a far higher and unreasonable level of involvement in road freight operations than most freight forwarders are able to provide.

Nevertheless, CLECAT would advocate greater awareness of these issues among parties in the industry as it would enhance the relationship between customer and road service provider. It would also prove commercially beneficial to employ reliable, trustworthy operators and have a higher quality, more reliable and efficient road freight service.

CLECAT also believes that the issue of access to the profession of freight forwarder should be held outside the debate on access to the road haulage market as this would complicate the discussion and, therefore, also further delay the process of making the current rules on cabotage simpler and better enforceable.

Summary

Having considered the various options outlined by the European Commission, and following consultation with its members, CLECAT would support Policy Package 1 for a limited period of time. After this defined period, an evaluation should review how to further remove restrictions on cabotage. Also, we call on the Commission to investigate the possibility of allowing Member States to remove restrictions through bilateral agreements. Having noted this, we are of the opinion that a more rapid pan-EU harmonisation of the rules governing the sector would have been achieved with the complete removal of restrictions on cabotage.