

Fraudulent Contracting of Work: Road Haulage Sector

[Exploring the fraudulent contracting of work in the European Union](#)

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Introduction

This report covers the emergence, developments and rationales behind fraudulent forms of employment and contracting work in road transport. The research has been developed in the framework of the Eurofound project “*Inequalities in working conditions: exploring fraudulent forms of contracting work and self-employment in the European Union*”. (Eurofound, 2016). The analysis is based on country-specific information from Austria, Poland and France as well as from the EU-level sources¹.

1. Sectoral Background

1.1. Economic background

The transport and storage services sector², including postal and courier activities (NACE Code H) is a major contributor to Europe’s GDP, accounting for 633 billion Euro in 2014, 5,1% of total GDP and employing 11 Mio people, or 5% of the total EU labour force. The sector can be split up into passenger and goods transport by road, rail, sea, costal or inland waterway and air as well as storage and postal and courier services. This report will mainly focus on developments in freight transport by road (Nace Code H494: Freight transport by road and removal services). In addition, some of the transport services described in this report, i.e. parcel delivery, fall under the heading of “other postal and courier services” (Nace Code H532).

Road haulage is Europe’s most important form of freight transport, with some 49% of all EU freight carried by truck. (Union européenne & Commission européenne, 2016, p.19). According to structural business survey data provided by Eurostat³ the road haulage market in the EU comprises around 550.000 predominantly small enterprises, with an average size of 5,2 persons employed per company. This number has been stable over recent years with 90% of companies counting less than 10 employees, 300.000 with only one person employed.

This report will focus on fraudulent practices and consequences from such practices, businesses and drivers of vehicles encounter; “driver” is the quantitatively by far most relevant occupation in the sector “freight transport by road and removal services”⁴.

Development of Cross-Border Road Haulage

An important factor in the increase of road freight transport in terms of tonne-kilometres (tkm)⁵ observed since 2011 is the development of *international transport* within the European Union after a significant decrease between 2007 and 2011 in the aftermath of the economic crisis (see figure 1).

¹ Interviews with the EU road transport sector social partners (ETF and IRU).

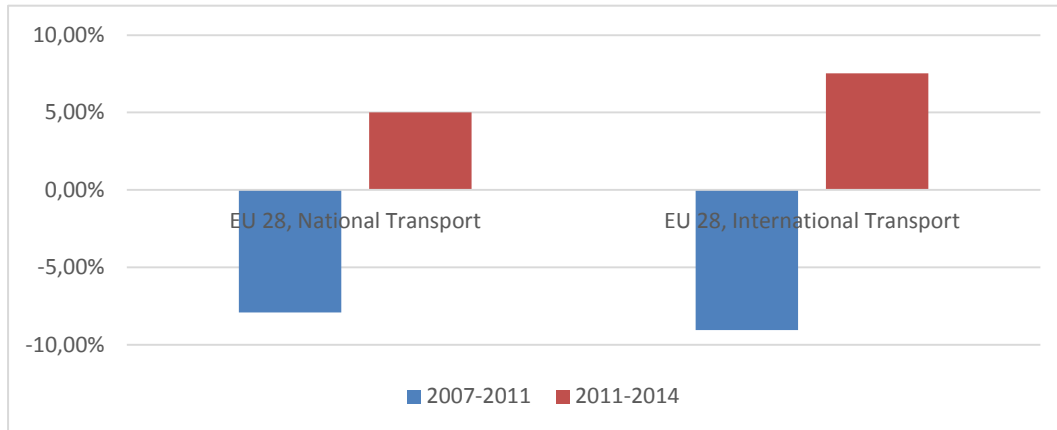
² http://www.statistik.at/KDBWeb/pages/Kdb_versionDetail.jsp?#4074241 , http://ec.europa.eu/eurostat/statistics-explained/index.php/Transportation_and_storage_statistics_-_NACE_Rev._2#Coverage

³ Annual detailed enterprise statistics for services [sbs_na_1a_se_r2], Freight transport by road and removal services (H494), Number of persons employed per enterprise

⁴ Data requested from Statistics Austria: ISCO sub-major groups crossed by NACE Code H49

⁵ It is a unit for the transport performance. It is a product of the distance and the number of tons of the goods moved expressed in ton-kilometers (tkm).

Figure 1: % Change in National and International Road Haulage by Vehicles Registered in the EU 28, 2007-2011 and 2011-2014, billion tkm



Source: (Union européenne & Commission européenne, 2016), author's own calculations

Taking a closer look at the performance of individual countries or group of countries, major differences between the EU 15 and the member states joining after 2004, in terms of national and international road haulage exist. Across Europe, countries like France, Austria and Finland but also Germany, Denmark and Sweden are registering downturns in *international* transport, whereas *Poland* became one of the biggest player and Bulgaria, Romania and Hungary more than doubled their share in international haulage by vehicles registered (Union européenne & Commission européenne, 2016, pp. 38–40). This development was the result of the opening up of European markets to services of Eastern European carriers. Among the other countries with an important road transport industry, *Spain* saw after a downturn until 2011 again an increase of its international transport performance. *France* on the other hand has been facing continuous decreases in international transport since 2007.⁶

Cross-trade (transport between two countries without driving through the country in which the truck is registered) was the fastest growing segment of the European road haulage market in the last decade (European Commission, 2017a, p. 11). For six MS (LT, BG, SK, LU HU, SI), three country traffic's shares in international transport within the EU was at more than 40%.⁷ *Polish* companies, play an important role as intermediaries in bilateral transport between other EU countries - their share of this segment increased between 2004–2015 from 8,8% to 34,1%. In addition, the participation of *Polish* carriers in the much smaller market of *cabotage* (transport within a single country provided by a company from another country) was growing. Between 2004 and 2015 the Polish participation in this type of transport increased from 4,1% to 36%, it is by far the most active caboteur in the EU (PWC, 2016, pp. 16–17). According to official statistics, the share of cabotage operations in the total road haulage market is currently a mere 3,3% in 2015, though it is growing quickly. Seven out of the EU15 MS (AT, BE, DE, FR, IE, LU, SE) have a cabotage penetration rate above this average (European Commission, 2017a, pp. 9–10). Experts criticize that cabotage numbers are highly underestimated by figures provided by the EC, cabotage operations do not have to be announced in advance, hence there are no administrative numbers of cabotage journeys available, only estimates based on questionnaires. An Austrian study (Kummer et al., 2016) estimates that between 18,52% and 23,68% off all domestic traffic in Austria is cabotage traffic (EU estimates: 7,9%).

⁶ http://ec.europa.eu/eurostat/statistics-explained/index.php/Road_freight_transport_statistics#Cabotage_and_cross_trade_continued_to_grow_in_2015

⁷ http://ec.europa.eu/eurostat/statistics-explained/index.php/Road_freight_transport_by_journey_characteristics

1.2. Employment characteristics and trends

Eastern European countries saw a significant rise in number of persons employed in freight transport and removal services between 2008 and 2014⁸: *Poland* recorded a plus of approx. 22.000, Romania of approx. 25.000 persons employed. At the same time, those countries affected most by the financial and economic crisis such as Spain saw incisive decreases of more than 100.000 persons employed. *France* and *Austria* also recorded declines of 27.500 (FR) and 2.550 (AT) persons employed⁹.

Broken down by size firm, we see noteworthy changes also in the composition of the market structure, where *Poland* is catching up with employees in medium and large-scale firms (Annex 1, figure A). Though, most employees are still found in small-sized companies with up to 9 employees (Annex 1, figure B).

The professional group “drivers” is almost exclusively male and dominated by workers aged 35-64. The ageing workforce and unattractiveness of the profession to younger workers is seen as one major labour market problem. Permanent and full-time contracts are the most common form of contracting, *Poland* being an exception with 27,1 % of drivers working on a temporary basis. A key concern for the sector are subcontracting arrangements, including bogus self-employment and letter-box companies, impinging on the working conditions of drivers (Broughton et al., 2015, p. 17), as will be laid down below.

The share of employees in the persons employed is at 85%, tendency rather on the rise. In most MS, the share is above 80%, only in the Czech Republic (75%), Italy (74,1%), Poland (72%), Spain (68,9%) and Greece (34,1%) it is below.

Drivers Shortages

All over Europe, a significant shortage of drivers is observed and foreseen due to an increasing demand for transport services (Ricardo Energy & Environment, 2016, p. 27). Consequently, more and more drivers from non-EU countries are becoming active in international road haulage. At the end of 2016, 76.000 driver attestations for non-EU citizens were in circulation, an increase of 46% compared to 2015 (European Commission, 2017a, p. 8). *Poland* is one of the countries most affected: the estimated shortage of drivers is around 100.000 drivers, in 2016 the number of Ukrainian and Belarussian drivers in Poland doubled (PWC, 2016, p. 11). For *France*, it is reported that almost a quarter of all vacancies are not or only with difficulties filled (Ricardo Energy & Environment, 2016, p. 369).

Reasons for this development are to be found in inadequate compensation for a highly discomfort work with long and frequent periods of stays abroad, and unattractive career opportunities. In addition, the high pressure of delivering freight on time, a practice resulting from the development of just-in-time management as well as the use of new technologies and increasing level of monitoring intensify the work load (Schneider & Irastorza, 2011). Principally, drivers in international transport are affected by very long driving times, insufficient rest and lacking appropriate facilities contributing to health and safety hazards. Although there is wide reaching regulation of driving and rest periods by European social legislation, “significant differences in the enforcement of EU legislation exist between Member States” (Broughton et al., 2015, p. 24).

⁸ It is not possible to break down this data according to occupations. However, respective national sources emphasise that drivers are the mainly affected profession of road haulage’s fluctuations in personnel.

⁹ Annual detailed enterprise statistics for services, [sbs_na_1a_se_r2], Freight transport by road and removal services (H494)

Labour costs

Wages and overall costs of drivers vary substantially throughout Europe. According to a comparative study of employment and pay among European lorry drivers (Comité National Routier, 2016), the gross yearly income (basic salary, overtime pay and bonuses as the basis for the calculation of social security contributions) range between 3.636 Euro in Bulgaria and 39.702 Euro in Luxembourg. The respective numbers for *Poland* are 7.224 Euro, for Spain 19.878 Euro, for *France* 29.736 Euro. For *Austria*, gross yearly income for the category drivers of heavy vehicles (occupational group 8332 according to ÖISCO-08) amounted 31.132 Euro (without overtime pay) in 2015¹⁰. In addition, travel allowances – officially intended to cover travel expenses by the drivers – often top-up the drivers' wages. Travel allowances are highest in countries with the lowest salaries, i.e. in Eastern European countries they make up between 55% (Slovakia) and 76% (Bulgaria) of drivers' total remuneration (ibid., 16). This means that social security contributions are calculated only on the basis of 45% (SK) or 24% respectively (BG) of drivers' remuneration. A research carried out by PWC (PWC, 2016) shows that 96% of drivers in *Poland* employed under a contract of employment, had a salary corresponding to the minimum wage. The rest of the compensation, constituted by per diems and lump-sum payments per night, is not part of the basis for social contributions calculation.

1.3. Industrial Relations in Road Transport

The organisations listed by the European Commission as social partners' organisation' in road transport consulted under Article 154 of the TFEU are, on the employees' side, the European Transport Workers' Federation (ETF) and, on the employers side, the International Road Transport Union (IRU) (Sanz de Miguel, 2015). *Austria* as well as *France* have a high coverage rate of collective agreements in road freight transport. In *Austria*, mainly the union Vida (union of service and transport workers) negotiates collective agreements with a number of employers' organisations¹¹. No national minimum wage is in place but collective agreements have a binding effect for the whole sector. In *France*, employees' representatives consist of five unions¹² negotiating with six employers' organisations¹³. In *Poland*, collective agreement coverage is low and collective agreements are not mandatory, remunerations are established by both company-level agreements and employment contracts. Currently, employers' organisations¹⁴ and unions¹⁵ representing the sector are discussing the

¹⁰ http://www.statistik.at/wcm/idc/idcplg?IdcService=GET_NATIVE_FILE&RevisionSelectionMethod=LatestReleased&dDocName=021670

¹¹ FVGB (Federal Association of the Freight Operation Trades), FVALS (Federal Association of Bus, Airline and Shipping Companies), FVSL (Federal Association of Hauliers and Logistics), FGWMK (Vienna Regional Association of Advertising and Market Communication), AISÖ (Austrian Working Group of International Road Hauliers)

¹² CGT Transports (National Federation of Transport Unions – General Confederation of Labour), CFTC des Transports (General Federation CFTC Transports), FGTE CFDT (General Federation of Transports and Equipment – French Democratic Confederation of Labour), FO Transports et logistique, UNSA Transports (National Union of Autonomous Trade Unions – Transport)

¹³ AFTRI (French road haulage Association), FEDIMAG (French Federation of General Warehouse Stores), FNTR (National Federation of Road Transport), OTRE (Organisation of the European road transporters), TLF (Union of French transport and logistics' companies), Unostra (National Union of Road Transport Organisations)

¹⁴ KSTD NSZZ 'Solidarność' (National Road Transport Section of the Independent Selfgoverning Trade Union 'Solidarity'), NZZZ (Independent Trade Union of Drivers), OZZKiM (All-Poland Trade Union of Drivers and Motormen), Federacja Federation of Trade Unions of PKS and Automotive Transport Employees in Poland, The Federation of Trade Unions and Bus Motor Transport Workers in Poland (OPZZ)

¹⁵ ZMPD (Association of International Hauliers in Poland), Pracodawcy RP (Employers of Poland), Transport and Logistics, National Union of Road Transport Employers, Central Association of Road Carriers and Freight Forwarders,

introduction of a minimum wage for the road transport sector in the newly established Tripartite Team for Road Haulage Transport¹⁶.

2. Fraudulent practices, challenges, drivers and impacts

2.1 Main fraudulent practices

The intrinsically mobile character of road haulage services triggers specific challenges when carried out across borders giving opportunity to fraudulent business practices: *first*, the issue of abusing off-shoring of transport services to countries with lower labour costs although economic activities are mainly performed elsewhere in Europe (via letter box companies), *second*, non-declared posting for example in the context of cabotage, and *third*, bogus self-employment rather identified in domestic road transport than in international road haulage.

The phenomenon of letter-box companies

Letter-box companies are companies which have no operating resources at the registered location. These companies do not actually perform any real economic activities in the country of registration, although claiming to do so, and are often involved in transnational activities. The company's true owner and operator, located in another country, set up the letter-box company as a 'foreign subsidiary'. Such artificial arrangements are used as a way of substantially cutting costs and circumventing legal and conventional obligations, such as taxation, social security, value-added tax and wages (Cremers, 2017; McGauran, 2016). There are no comprehensive statistics on this phenomenon in the road haulage sector. Official infringement rates, against the requirement of a "stable and effective establishment"¹⁷ (as % of total authorisations granted) when setting up a transport company in the EU, are rather an insufficient indicator because infringements could be under-reported (if letterbox companies evade detection) or over-reported (if companies infringe the criterion for other reasons). Anyhow, they are very small, ranging from 0,20% (UK) to 0,80% (Slovenia) (Ricardo Energy & Environment, 2017, p. 33).

Experts' assessment and existing research on the prevalence of letter-box companies identify the transport sector as one of the sectors most affected by the phenomenon (Cremers, 2014, 2017; ETUC, 2016; McGauran, 2016). McGauran (McGauran, 2016, pp. 33–43) cites dozens of examples where mostly big haulage companies from Western Europe established subsidiaries as letter-box companies in Slovakia, Hungary, Poland or even the Philippines. Europe wide, authorities have lodged several court cases against European hauliers using letterbox companies for violation of Article 5 of Regulation 1071/2009 regarding "substance requirements for establishment" and social fraud. Evidence is provided through several cases of companies, creating subsidiaries abroad in view to pay drivers the wage of the country where the subsidiary is located. Following workers' complaints, labour inspectorate actions or criminal procedures, most of the cases address taxation and social contributions losses for the country of the parent companies. Restating workers' rights still remains difficult. Examples of fraudulent practices involving letter-box companies or artificial arrangements with foreign subsidiaries are listed in two boxes below.

¹⁶ <http://www.dialog.gov.pl/aktualnosci/art.808.posiedzenie-trojstronnego-zespołu-ds-transportu-drogowego.html>

¹⁷ EC Regulation 1071/2009 stipulates common rules for pursuing the occupation as road transport operator. For details, see section 4.1

Using foreign subsidiaries –letter box companies

Making control even more difficult

Scandinavia – Slovakia – Romania: In a BBC documentary¹⁸, the Dutch union FNV made public with the testimony of former drivers the case of IKEA’s hauliers delivering throughout Europe. One of these hauliers is Brings; it recruits drivers mainly from Romania, employed on Slovak contracts, despite not having any activity in Slovakia and Romania. The subsidiary in Slovakia is used as a dispatcher centre with administrative staff. This means, the operating centre where drivers receive their orders is in Slovakia. However, drivers work particularly from and in Scandinavia. They work for the minimum pay of the country of origin, i.e. Romania, receive per diems that top up their pay. The ETF (European Transport Workers’ Federation) explains this particular case: “[Brings] opens a subsidiary in a low cost labour country, it recruits workers from there without being active there. To complicate and to make things untraceable and even less controllable these workers are employed on contracts in another MS. This means two MS are involved: the driver’s country of origin, and another where the labour contract is based.” Relying on regulations of two different countries, instead of multiplying opportunities, makes the eventual control very difficult. “That’s why they follow this schema. Recruit from country A and employ them on contracts in country B.”

Complicating the burden of proof

Austria – Czech Republic, Poland, Bulgaria: In Austria, one of the biggest court cases in road haulage involving the use of foreign subsidiaries was the “Stadler Case”¹⁹. Infringements against criminal law but also against the social security act, employment of foreigners’ act, the labour contract law were prosecuted. Based in Upper Austria, the company set up subsidiaries in the Czech Republic, Poland and Bulgaria for registering foreign employees, while the Stadler Group in Upper Austria acted as employer. External audits concluded that the Stadler Group owed some 90 Mio Euro in social security contributions and taxes. The tax and social security authorities based their demands on Stadler’s practice of paying its more than 1.000 truck drivers under the wage provisions of Bulgaria, Romania and Slovakia, and paying the relevant taxes and social security contributions in those countries. In the court proceedings, the authorities argued that all Stadler companies in Eastern Europe were controlled from the group’s headquarters in Upper Austria, and for that reason the group had to pay its taxes and social security contributions in Austria. The drivers’ habitual place of work was Upper Austria, as they were being shuttled by bus from their home countries to Upper Austria, the base from where they started their week-long journeys throughout Europe. Any alleged damage, late arrivals or excessive motorway kilometres were systematically docked from their wages. Such circumstances determine a personal and economic dependency and thus a subordination relationship with the Austrian haulier²⁰. The criminal and administrative penal procedures against Stadler lasted for more than 10 years. In the meantime, Stadler was convicted for serious fraud and other crimes with 6 years of prison. However, the enforcement of claims by the public authorities is still pending. The burden of proof in such a sophisticated system is very difficult. What happened to the workers’ claims remains unknown.

¹⁸ “Ikea drivers living in trucks for months” (March 2017), <http://www.bbc.com/news/business-39196056>, “I feel like a prisoner in my own lorry” (March 2017), <https://www.youtube.com/watch?v=gGISkzHXEMY>

¹⁹ Information about the Stadler case is retrieved from: Großfrächter Gerhard Stadler festgenommen, News, 5.5.2015, <https://www.news.at/a/gerhard-stadler-festnahme>, Das Ende des Geschäftsmodells Stadler, OÖN, 4.12.2015, <http://www.nachrichten.at/nachrichten/wirtschaft/wirtschaftsraumooe/Das-Ende-des-Geschaeftsmodells-Stadler-6-5-Jahre-Haft-fuer-Firmengruender:art467,2049784>, Dimensionen der Stadler-Pleiten: Gläubiger fordern 140 Millionen Euro, 8.5.2015, <http://www.nachrichten.at/nachrichten/wirtschaft/wirtschaftsraumooe/Dimensionen-der-Stadler-Pleiten-Glaebiger-fordern-140-Millionen-Euro:art467,1788279>, Wir kämpfen das durch, OÖN, 13.05.2015, <http://www.nachrichten.at/nachrichten/wirtschaft/wirtschaftsraumooe/GKK-zu-Fraechter-Stadler-Wir-kaempfen-das-durch:art467,1796713>

²⁰ 2012/09/0082, https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2012090082_20130523X00/JWT_2012090082_20130523X00.pdf

Using foreign subsidiaries –letter box companies

French central management but Slovakian salaries

France-Poland, Romania, Slovakia: A prominent example from France was Norbert Dentressangle who established two subsidiaries in Poland (788 employees) and Romania (639 employees). These two companies have developed their own clientele within the countries where they are based (40% of their operations) and subcontract to the French parent company for international journeys and cabotage operations (60% of their operations). 43,5% of the company's transport from France is subcontracted to foreign subsidiaries of the group or to other companies (Bocquet, 2014, pp. 22–25). The figure of ND drivers working regularly in France is just over 5.000. The majority of ND's foreign subsidiaries are not only providers of drivers for abroad, but also have material haulage undertakings there, with drivers operating to and from those countries. In March 2016, a criminal trial, however disclosed that 1.200 drivers from the Polish, Portuguese and Romanian subsidiaries of the ND Group used to work in or from France (McGauran, 2016, p. 37). Another French haulier company, Jeantet, located in Besançon (Doubs), faced a conviction in March 2013 for concealed work and illegal work. The company had set up a company in Slovakia, SJT-SK, whose planning was managed from France and which had no autonomy with regard to the choice of suppliers. The management was French, but the salaries paid were Slovak (2,70-2,96 Euro per hour), whereas the minimum French equivalent is at 9,43 Euro. The offices of the company in Bratislava were limited to 20 m2 premises, the Slovak trucks were parked in Besançon (Bocquet, 2014, pp. 22–25).

Social partners' cooperation against letter box companies

Poland – Netherlands: The focus group discussion in Poland revealed some specific examples where unions denounced enterprises that they suspected to be letter box companies to the labour inspectorate. The cases were then pursued by the National Polish Labour Inspectorate, finally the rules of employees' remuneration were changed from the Polish terms to the remuneration terms of the state where the work was actually provided, namely in the Netherlands. The following companies were mentioned: AB Texel PL, FARM TRANS. Proceedings are currently underway regarding the following companies: Butter PL, DON TRUCKING and Jost. According to the Polish trade union, authorities' experiences and competences in pinning down letter box companies is insufficient while both Polish trade unions and employers' organizations consider the phenomenon of letter box companies as widespread.

Abusing Cabotage, non-declared posting and questions around the habitual place of work

Cabotage has retained a lot of attention recently. Cabotage is a specific term referring to transport services performed within an EU MS by a truck not registered in that country. Its scope is defined in the EU regulation 1072/2009²¹: every haulier is entitled to perform up to three cabotage operations with the same vehicle within a seven-day period starting the day after the unloading of an international transport. Cabotage is intended to avoid empty runs of vehicles being on their trip home, and thus limit transport and environmental costs. The current regulation specifies that this number shall not be exceeded to avoid distortion of competition. The respective national implementation of this regulation differs from country to

²¹ Regulation (EC) No 1072/2009 of the European Parliament and the Council of 21 October 2009 on common rules for access to the international road haulage market. <http://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX%3A32009R1072>. In the EC new proposal to revise this regulation, cabotage is defined as “the national carriage for hire or reward carried out on a temporary basis in a host MS, involving the carriage from the picking up of the goods at one or several loading points until their delivery at one or several delivery points”, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017PC0281&from=EN>

country since the EU regulation's wording leaves room for interpretation (Ricardo Energy & Environment, 2015). Countries being more affected by cabotage have introduced stricter regulations. For instance, in *France* and *Austria* additional requirements for documenting cabotage journeys in the vehicle²² are requested, penalties are high, and it is explicitly declared that workers performing cabotage operations fall under the posting regulations.

Two thirds of all cabotage operations are carried out in Germany and *France*, other important host countries are Belgium, Sweden, *Austria* and the Netherlands (European Commission, 2017a, p. 10). However, controlling the number of cabotage operations per vehicle is tricky and staff-intensive (AECOM, 2014, pp. 104–106). In *France*, between 2010 and 2011, 7% of vehicles stopped for cabotage controls were issued an infringement, a relatively high number owed to the fact that over 7.000 control officers were deployed. Infringements with regards to cabotage regulations are a very small issue in *Poland*: 12 infringements out of 233.118 inspections were reported in 2013. This low infringement rate might be due to the Polish transport market not being appealing for undertakings from other countries (Ricardo Energy & Environment, 2015, 2017, p. 80). For *Austria*, a study by Kummer (Kummer et al., 2016) estimated the incidence of illegal cabotage at, at least, 3.28% of national transports in the Austrian commercial freight traffic with trucks over 3,5t.

Current practice of circumventing the existing cabotage rules used by companies is to “restart cabotage cycles”; hauliers engage in repetitive international haulage, to then qualify for as many cabotage ‘slots’ as possible. The problem with such circumvention of regulations is that it becomes a carte blanche for non-domestic hauliers, encouraging them to perform more transport operations abroad than actually permitted (Bocquet, 2014, p. 22).

Moreover, the issue of *workers’ status* in performing cabotage operations, is to be considered: Are these workers ‘posted workers’ falling under the provisions of the posting and enforcement directive²³? If yes, fraudulent contracting comprises of the non-declaration of their posting and the withholding of the host country’s wages and labour rights. If they are not posted workers, what then is the worker’s habitual place of work and what social and remuneration rules apply?

Up until recently (2016/2017) providing road haulage cross-border services, including cabotage operations, were seldom regarded as posted work. Only lately have some MS explicitly subsumed the provision of these services under “posting”. Numbers will surge in the coming years. Up until now, portable documents A1 for persons active in the transport sector of two or more MS, were mainly issued to *Polish* workers (85.986 PDs A1). Four out of 10 of these forms from Poland are issued to persons employed in the transport and storage industry. All in all, around a third of these forms apply to persons employed in transport (Pacolet & De Wispelaere, 2016, pp. 10, 34).

In *Austria*, during the revision of the “Anti Wage and Social Dumping Act”²⁴, the transport sector, including cabotage, was explicitly mentioned as being covered by this Act’ provisions²⁵. This means that drivers performing cabotage are considered ‘posted workers’

²² <https://www.ecologique-solidaire.gouv.fr/sites/default/files/Cabotage%20routier%20de%20marchandises%20%20la%20r%C3%A9glementation%20en%20France%20version%20anglaise.pdf> , <http://kabotage.at/news/>

²³ DIRECTIVE 96/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 1996 concerning the posting of workers in the framework of the provision of services, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0071:en:HTML> and Directive 2014/67/EU

²⁴ Main information for posted workers and for posting employers summarising among other aspects Austrian minimum wage requirements and employment regulations and the steps required to ensure compliance with these laws, can be accessed on a multilingual website: http://www.entsendeplattform.at/cms/Z04/Z04_10/home.

²⁵ Information on the posting of transport sector workers from the EEA and Switzerland - Labour law provisions, http://www.entsendeplattform.at/cms/Z04/Z04_10.999_15/lcd-bg-current-information-for-the-transport-sector

and, therefore: 1) have to be notified with the financial police; 2) are entitled to minimum remunerations following the collective agreement for road haulage sector and subject to the Austrian labour law; 3) a series of documents have to be provided in case of control by the authorities (e.g. notification, A1 form, pay documents). In *France*, similar regulations apply. All transport operations involving goods or persons (including cabotage operations) carried out by a company established outside France are subject to the Loi Macron²⁶. This means, international hauliers operating in France (except in case of transit) have to pay the French minimum wage to their drivers (9,76 Euro per hour as for 2017); the law also foresees that international hauliers install a French representative and register online in order to manage the *posting attestation (certificat de détachement)* of workers in France²⁷. As in Austria, specific documents have to be carried along in the vehicle for road inspections. Additional information (e.g. payslips, proof of payment of the French minimum wage) can be asked by French authorities, afterwards. In both countries, if these requirements are not met, administrative penalties can follow. In *Austria*, most charges are issued on the basis of infringements against documentation obligation and notification requirements and against the obligation to hand over the relevant documents to the authorities. In *France*, coordinated controls of public authorities regularly inspect trucks on international journeys at road side checks, revealing multiple infringements related to social dumping and unfair competition, including breach of the weekly resting time, breach of cabotage regulations as well as breaches of notification and documentation requirements²⁸.

Circumventing Cabotage requirements

The focus group discussion in *Austria* revealed few practices of how these requirements are circumvented.

Presenting different contracts

It was mentioned that two contracts are carried along in the truck, one with the direct employer displaying the wage they negotiated with this company and another one displaying the wage they should receive as posted workers in the respective host countries.

Easy manipulation of the A1 form

The A1 form is a paper document that is an important proof of the worker's social security status. For instance, even if national control authorities have proof that the worker's habitual workplace has been in Austria (i.e. he/she is not a posted worker) it is almost impossible to overrule the binding character of the A1 form in the context of social insurance law: *"This means, I must persuade the foreign social insurance fund to withdraw their 'old document' to prove that this employee was not registered with this fund at time X."* (financial police, Austria).

In this respect, the obligatory online documentation of the social insurance status of the driver would be decisive allowing checking immediately his/her status in the country of origin.

²⁶ Loi n° 2015-990 du 6 août 2015 pour la croissance, l'activité et l'égalité des chances économiques

²⁷ Since 1 January 2017, transport undertakings must complete the posting of workers' attestation via the "SIPSI" online service. Declaration by post, email or fax is not accepted. (Ministère du Travail, „Analyse des déclarations de détachement des entreprises prestataires de service en France en 2015“, Sept. 2016, http://travail-emploi.gouv.fr/IMG/pdf/prestations_de_services_internationales_2015_-_valide.pdf, Ministère de l'Environnement, de l'Énergie et de la Mer – circulaire “Foire aux questions :sur les nouvelles dispositions relatives aux modalités d'application du droit du détachement des travailleurs aux salariés roulants ou navigants des entreprises de transports terrestres, http://www.e-tlf.com/wp-content/uploads/2016/06/FAQ_DETACHEMENT_15_JUIN_2016.pdf, <https://www.sipsi.travail.gouv.fr/SipsiCasFo/login?service=https%3A%2F%2Fwww.sipsi.travail.gouv.fr%2FSipsiFO>, <https://www.macron-fr.eu/>)

²⁸ <http://idf.directe.gouv.fr/Communique-de-presse-Operation-de-controles-coordonnes-en-faveur-d-une>, <http://www.prefectures-regions.gouv.fr/ile-de-france/content/download/34622/234591/file/CP%20controle%20routier.pdf>

Bogus self-employment

A study prepared for the EC Employment Committee identified the transport sector, in particular road haulage, as one where (bogus) self-employment is common (Eichhorst, 2013, p. 58). According to a calculation of the EC, 31% of drivers were self-employed in the EU-27 of whom up to 50% may be false or bogus self-employed.

In the countries studied and in contrast to the two features of fraudulent practices in road haulage described above, bogus self-employment does not have a strong international component. Self-employment in international road haulage with HCVs (heavy commercial vehicles) is not regarded as a viable option by employers because the company must maintain liability over the goods and the vehicle assets (Ricardo Energy & Environment, 2016, p. 26).

Not to say that the international component does not exist. Research from Sweden found evidence of bogus self-employment in international road transport with HCVs. Swedish social partners estimated that in 2012 around 1.000 bogusly self-employed drivers, mainly from Eastern Europe, were formally engaged as sub-contractors in the Swedish transport industry [(Thörnquist, 2013,) Thörnquist, 2015]. Thörnquist describes the case of a firm hiring nominally self-employed drivers (mainly from Poland) through its own recruitment agency. However, these drivers worked directly under the management and control of the haulier since they had no own trucks, tools or other work equipment, nor were they contracted for specific consignments.

In the countries studied, contractual ambiguities are mostly related to transport services with vehicles below 3,5 tons (light commercial vehicles – LCV) in local transport for parcel delivery²⁹ [(Haidinger, 2012) (Commission nationale de lutte contre le travail illégal, 2016, p. 20)]. With respect to cross-border activities of couriers, experts supposed that couriers from neighbouring countries distribute parcels from distribution centres close to the borders in *Austria*. In *France*, a study found out that there is an increased presence of LCVs especially from Poland and Romania in France, although numbers are still low compared to HCVs (Ministère de l'Écologie, du Développement durable et de l'Énergie, 2016). Business arrangements minimising tax burdens, social insurance contributions and exploiting maximum working hours are more often a perfectly legal strategy of this trade than a fraudulent practice.

Nevertheless, fraudulent practices can occur in terms of false classification of employees as self-employed (see examples below) allowing for evasion of tax and social insurance contributions. Cargo transport activities are also shifted from heavy vehicles to light vehicles, in cross-border transport to circumvent usually stricter regulations in place for the first ones. While the shift is legal, it only makes sense from an entrepreneur's perspective, and potentially saves costs, under specific circumstances.

According to several court cases and confirmed by the field experiences of labour inspectors interviewed, detecting and consequently checking bogus self-employment in parcel delivery are complicated challenges. Depending on the country, different authorities are competent to verify if a person is considered as employed or self-employed: in *Austria* the competent authority is the one in charge of the health insurance; it is supposed to assess in advance which social insurance scheme is applicable. In cases of alleged bogus self-employment, a court decides about the nature of the employment relationship. In *France*, the labour inspectorate or the social security inspectorate can prepare a file to prove a "link of subordination" between the employer and the worker, and go to court (*conseil des prud'hommes* for labour law issues, or *tribunal de la sécurité sociale* for social security

²⁹ Parcel delivery can be subsumed under the Nace code H494 (freight transport by road and removal services) as well as under Nace code H532 (other postal and courier services).

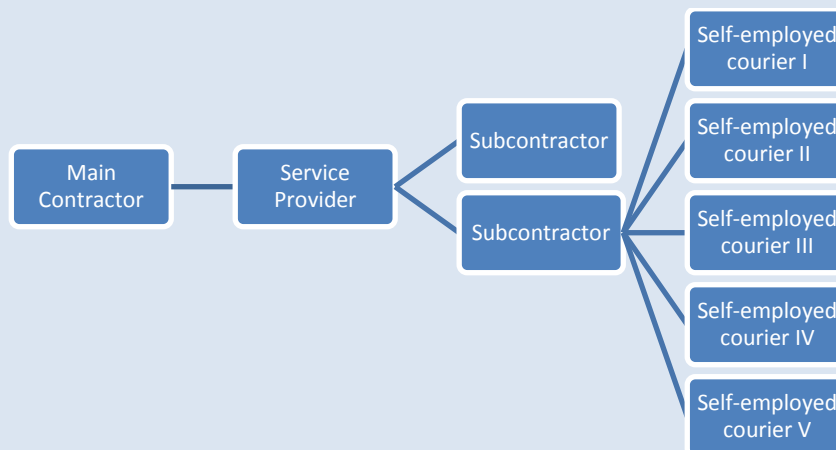
issues) for a decision. A judge then decides if a self-employed worker is really self-employed or ‘bogusly’ in case of a ”link of subordination” exists. The worker is then regarded as a salaried worker, protected by the labour code and covered by compulsory social security rules. In *Poland*, similar regulations apply. If the national labour inspectorate suspects a self-employment contract to bear the characteristics of subordination, and therefore to be false, an action with the labour court must be filed to convert the contract. Currently, it is debated to give the labour inspectorate competences to convert civil-law contracts into employment contracts, by way of administrative decision³⁰.

Often the classification of a person’s employment status depends on the specific circumstances in which his/her tasks have to be performed and on the nature of the services delivered. Court cases in *Austria*³¹, contemplating queries to re-classify couriers’ employment status, from self-employed to employed, come to quite different decisions, although the couriers perform the same tasks under similar circumstances. (Box topical case)

Austrian Case -Topical example

Couriers holding a trade licence, were contracted by a transport company to deliver parcels on its behalf (see below). This transport company itself was subcontracted by a service provider for a main contractor.

Subcontracting chains in parcel delivery



Main arguments to qualify the couriers as employees and not as self-employed, include: the subcontractor maintains its own fleet of vehicles tagged with the of the subcontractor and the main contractor which are rented to the couriers; couriers are not able to choose their own customers or reject customers; couriers work exclusively for the subcontractor and are paid per parcel; couriers have little or no room for deciding the routes they take, and the prices they charge for the parcels but the price of the parcels is determined by the subcontractor without the couriers’ possibility to negotiate the price.

All these arguments expose the lack of autonomy and decision power the alleged self-employed had and the subordination they experienced.

³⁰ <http://msp.money.pl/wiadomosci/prawo/artukul/panstwowa-inspekcja-pracy-zyska-nowa-bron,245,0,1992437.html>

³¹ W178 2003948-1, https://www.ris.bka.gv.at/Dokumente/Bvwg/BVWGT_20140826_W178_2003948_1_00/BVWGT_20140826_W178_2003948_1_00.pdf, LVwG-7/487/14-2016, https://www.ris.bka.gv.at/Dokumente/Lvwg/LVWGT_SA_20160111_LVwG_7_487_14_2016_00/LVWGT_SA_20160111_LVwG_7_487_14_2016_00.pdf, RV/2100844/2009, <https://findok.bmf.gv.at/findok?execution=e1s4>

2.2 Main drivers and enabling factors

Road haulage faces several challenges, including increasing international competition, contracting profit margins (especially in the wake of the economic crisis), an ongoing liberalisation and harmonisation of transport markets and business practices exploiting wage differentials between European countries and regulatory loopholes. Given the economic situation on European transport markets, as well as in each member state of the sector, seeking for reducing labour costs and tax burdens, extending working hours and maintaining a flexible workforce remain the principal drivers, enabled by four sector-specific developments.

Increasing subcontracting practices

First, less profitable operations have increasingly been subcontracted down to small businesses, driving the number of links in the transport chain upwards. In Europe, the practice of outflagging (registering lorries or trailers abroad) and establishing subsidiaries abroad are perfectly legal and popular strategies (Kummer et al., 2014); they aim at finding the most cost-efficient way to run an international road haulage business. Although subcontracting in the transport industry is considered quite normal from an operational and legal point of view, such corporate arrangements aiming at reducing labour costs only, open opportunities for fraud: “[I]nternational road transport operators conduct transport in many countries, so it is natural (for them) to consider where it is most appropriate to register their trucks and hire their workers based on the lowest costs – which creates incentives to set up letterbox companies.” (Ricardo Energy & Environment, 2015, 2017, p. 33)

Integrators development

Second, freight forwarders and integrators (a company that organises shipments for third parties) play a growing role. Recent years have seen the rise in both the size and importance of European logistics integrators such as DHL, Schenker and Norbert Dentressangle (AECOM, 2014). Freight forwarders exert high cost pressure on hauliers, bringing down prices to unsustainable levels. This tendency is aggravated by using freights internationally traded via “on-line freight exchanges”. These are platforms that bring together those who want to transport goods and those who can offer freight space. The business transactions stay between the two partners, the freight exchanges receive flat-rate amounts or reimburse per freight. TimoCom³², the European market leader, records 750.000 freight and loading space offers in a single day. Reservations about freight exchanges platforms are often formulated³³ given the tense price pressure the industry is therefore subjected to, as the IRU representative concedes: “To put it very bluntly, if you don't take that price, there are five other companies who would take it. There is big pressure on the price from shippers, freight forwarders and from the clients. This is really the predominant factor that is influencing a lot of things in the sector and not many people talk about it.”

Strong legal uncertainties

Third, many revisions of legislations on EU and national level in the road transport sector as such and in related spheres such as the Posting of Workers' Directive (PWD) have triggered legal uncertainties among hauliers what regulations and how to apply them and challenged the man-power capacities of authorities in charge for controlling the legislation in place. In its most recent policy proposals on road haulage (see section 4.1), the European Commission

³² <https://www.timocom.de/TimoCom/Wir-%C3%BCber-uns>

³³ Drei, zwei, eins – deins! Industriemagazin, 13.08.2012, <https://industriemagazin.at/a/drei-zwei-eins-deins>

regard cabotage operations as being subject to the posting of workers' regulations (i.e. statutory minimum wage, and other minimum standards). However, for many EU-countries, including *Austria*, Germany, *France*, the Netherlands or Italy, *not only cabotage but all international traffic -except of transit transport- must be subject to the posting of workers' regulations*. This is not accepted by all MS, and moreover, the EC launched infringement procedures against some MS that are consequently applying the PWD to international road transport scrutinising these regulations against the Treaty principles of freedom to provide services³⁴. Hence, the industry is waiting with tension for a clarification regarding the binding standards of employment in international transport. The focus group interview in *Poland* showed that hauliers are unsure in which international transport operations workers are subject to the PWD and if they are not, what law they are subject to. The respective regulations have been interpreted differently from MS to MS. In addition, employers complain about the vast administrative and bureaucratic requirements associated with treating all road transport drivers as posted workers (Patorska & Katarzyna, 2015).

Difficulty to identify Bogus Self-employment

Fourth, the detection of bogus self-employment in road haulage, specifically parcel delivery, is particularly difficult, given the mobile character of the activity. This difficulty enables the false classification of employees as self-employed couriers. In construction, the identification of bogus self-employment is much more straight-forward than in transport because inspectors can see dependency relationships between supervisors and workers, on the spot.

2.3 Impacts

In terms of economic and social impact and consequences for business competition, the first two phenomena (letter-box companies and non-declared posting) are closely intertwined. In both cases, labour regulations are circumvented either by non-declared posting of workers or by denouncing an incorrect habitual place of work. This means, competitive advantage is gained by (fraudulently) retaining wages, social insurance contributions and taxes based on a false registration of workers in their countries of origin and/or in the countries where they are performing transport services. Bogus self-employment conversely does not have a clear international component, contractual ambiguities are mostly related to courier services with vehicles below 3,5 tons (LCVs).

Consequences in terms of business competition – fierce price competition, East-West divide, competitive advantage on basis of labour costs

Hauliers are subject to fierce international price competition. Entering the market is relatively easy. While hauliers from countries with lower labour costs enter national markets and maintain their presence, for hauliers mainly from the EU 15, due to the cost structure of their undertakings, it becomes much more difficult to stay successful in a business where firms just compete on the basis of the lowest price. Especially in the aftermath of the economic

³⁴ The European Commission launched an infringement procedure against *Austria*, Germany and *France*. According to the commission, *“the application of the Anti-Wage and Social Dumping Act to all international transport operations with unloading and/or uploading on the Austrian territory restricts the freedom to provide services and the free movement of goods in a disproportionate manner (...) as it creates disproportionate administrative burdens which prevent the internal market from functioning properly”*. The procedure is pending. (Road transport: Commission requests Austria to ensure its minimum wage legislation does not unduly restrict the internal market, http://europa.eu/rapid/press-release_IP-17-1053_en.htm); Transport: Commission takes legal action against the systematic application of the French and German minimum wage legislation to the transport sector (http://europa.eu/rapid/press-release_IP-16-2101_en.htm)

downturn of 2008, competition increased due to vast idle capacity; hence - according to IRU - also the inclination to circumvent or misusing existing regulations increased *“simply to survive in the business. This is a business where the profit margins are very low, market entrance is easy. For those who want to play by the book, it is really difficult in this business.”* From the ETF’s perspective, the road transport industry failed in recovering from the flaws of the economic crisis. Road haulage and transport are in an upward trend, the service is urgently needed for manufacturing and freight forwarders. Hence, the transport industry would have the bargaining power to push prices to a fair level, i.e. reflecting full compliance with the law. *“Retailers or car manufacturers will not cease to prolong business contracts [with hauliers] only because prices are put up. This is hard to imagine.”* According to ETF, the industry – or influential parts of the industry – rather pursues a race-to-the bottom strategy of a ruinous price competition on the back of the workers, and on the back of law-abiding competitors.

Pressure on hauliers

In a German documentary³⁵, one representative of the Belgian controlling authorities emphasised that market-leading freight forwarders put high pressure on haulage prices, leading to prices around 20% below realistic calculations. Often, as was mentioned by an *Austrian* labour inspector, hauliers do not plan the routes themselves but this is done by the forwarding company following its schedule. The forwarding company directly disposes of the driver although the responsibility for the driver and the freight operation is with the haulier. Forwarding companies pass on risks and responsibility to the haulier.

In case of cross-border employment relationships, the cost advantage, that can be gained by picking and choosing a different regulation than the one applicable in the country, can be very high: Wages and overall costs of drivers vary substantially throughout Europe. As was indicated above (Section 2), labour costs for drivers in Western European countries are up to 10 times higher than in Eastern Europe. A study on working conditions of Romanian and Bulgarian drivers in Denmark (COWI, 2015) covering a sample of 225 drivers concludes that they earn between a third and a half of the wages earned by local drivers. On the other hand, the majority of respondents paid tax in Bulgaria or Romania but no one in Denmark, although 12% of drivers stated that their employer had his office and fleet management there.

Consequences in terms of employment conditions and workers’ rights – what regulations are applicable and how to enforce them?

From the perspective of workers’ rights, the most important issue is to identify the social and labour regulations applicable to their employment status.

Applicable regulations depend on the characteristics and qualification of their employment status. For instance, if drivers operating internationally are considered as posted workers, then rights stipulated in the PWD (see FN #22), the respective national labour legislations and collective agreements are applicable. Alternatively, if drivers operating internationally are *not* considered as posted workers, it is necessary to identify their ‘habitual place of work’ to find the applicable regulation. Are drivers suspected as being bogus self-employed, the characteristics of employment must be examined, to help identifying which regulation apply, regarding among others, social insurance coverage, minimum wages and working time.

³⁵ “Deutsche Post am Limit“ (July 2017), <https://www.zdf.de/dokumentation/zdfzoom/zdfzoom-deutsche-post-am-limit-100.html>, <https://www.youtube.com/watch?v=oHFjAYghXj4>

The labour and social (security) regulations *applicable to international haulage* are primarily set forth in three European items of legislation³⁶: the so-called ‘Rome I’ Regulation (593/2008/EC)³⁷ devising the law applicable to contractual obligations, the PWD (see FN#22), and specific sectoral social regulations³⁸ covering driving and rest times for drivers. These regulations are enforced nationally. The latter social regulations are widely harmonised European-wide, while the first two rules leave more room for interpretation.

It is not always easy to determine which statutory labour rights or pay provisions apply when workers cross borders permanently. Various key questions come up: Where is a mobile worker’s ‘habitual place of work’ (i.e. the place determining the labour and social (security) legislation applicable)? Which circumstances constitute a posting?

When the *driver’s habitual place of work* is in the destination state, he is entitled to the wage and special payment and working conditions (statutory or set by collective agreement) habitually awarded to workers at this place of work, even when the company employing the driver has its registered office in another country. In the *case of posting*, the worker concerned can claim entitlement to the host country’s minimum wage, leave, maximum working time, worker protection, maternity leave and non-discrimination provisions. Social insurance however remains in the sending country. A posting occurs when an employee works in another country than the country of origin, in the context of a contract between his employer and a foreign customer. In pure transit operations the posting criteria of the PWD is not met. Workers performing cabotage are in any case subject to the PWD.

According to the ETF, currently, the biggest issue of social dumping in international road transport is the situation where the *habitual workplace* is not in the country of origin of the driver, while the driver is paid the country of origin salary. Such business practices trigger unbearable working and living conditions for truck drivers, as was made public in a study covering interviews with more than 1.000 non-resident drivers (European Transport Workers’ Federation (ETF), 2013)³⁹. The results were alarming. Clearly all the features of employment and working conditions are at stake, from health and safety issues to underpayment.

³⁶ This paragraph is based upon (Gagawczuk, 2016; Windisch-Graetz, 2013).

³⁷ REGULATION (EC) No 593/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 June 2008 on the law applicable to contractual obligations (Rome I), <http://eur-lex.europa.eu/legal-content/de/ALL/?uri=CELEX%3A32008R0593>

³⁸ These include EC Regulation 561/2006 on driving hours and rest times, Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities, and Directive 2006/22/EC (the „Enforcement Directive“) which sets forth minimum conditions for the implementation of checks and extensive legal and technical rules for standard checking equipment (EC Regulation 165/2014 on tachographs) (European Commission, 2014b).

³⁹ ETF SURVEY ON WORKING AND LIVING CONDITIONS OF NON-RESIDENT DRIVERS IN THE EU. Brief overview of the methodology used for the survey, <http://www.etf-europe.org/files/extranet/-75/39267/Methodology%20of%20the%204%20year%20ETF%20survey.pdf>

“ETF survey on working and living conditions of non-resident drivers in the EU” ETF 2013 Study

- 60% of interviewees spent between three and 12 weeks thousands of kilometres away from home, after having been shuttled from their home countries by bus or low-cost flights to the country in which they are to work. Some 60% of the interviewed drivers stated that it was frequently not possible for them to take the required breaks, while 95% drivers spend breaks and rest periods in their lorries.
- On average, drivers work 11,5 hours a day or 57,5 hours a week. Regulations are foregone by using e.g. two driver cards⁴⁰ to trick the digital tachograph recording his driving hours and rest periods. Another common practice involves using a magnet to manipulate the control devices and simulate rest periods. This brings with it the danger that on-board truck safety systems can be switched off, thereby greatly endangering not just the truck driver but also other road users. Driver fatigue is a main issue.
- Some 40% of the interviewees report that they cover more than 75% of their health care costs.
- Drivers are subject to employment and payment systems that limit access to social and worker rights and entitlements. Using letter box companies as intermediary employers, deprive workers from the wage they could have received if legally declared as directly hired by the parent company. Moreover, all protections linked with the original status, such as adequate social insurance and the possibility to claim wages from the direct employer, are also denied. Performance-related compensation are commonplace, as was also reported in the ex-post evaluation of social legislation in road transport (Ricardo Energy & Environment, 2016, p. 195). Some 60% of the drivers interviewed by the ETF were paid by kilometre. Yet paying drivers by kilometre is prohibited according to EU regulation 561/2006⁴¹, when this has a negative impact on road safety. The majority of drivers receive 30% of their monthly remuneration in the form of a contractually fixed sum, while the remaining 70% is made up of per diem allowances and other “performance-related” payments.

In general, the practice of per-diem compensation in (international) road haulage is a problematic issue. Such payment systems have a direct influence on social security contributions and consequently on social benefits for workers. Currently in *Poland*, where this practice is common, a heated discussion is underway, on how to reform this mode of remuneration. As this structure of drivers' remuneration is fully compliant with Polish law⁴², the contractual use of it cannot –as such- be classified as a misuse of an employment relation. At the same time, it constitutes such a profound departure from the principles governing the determination of the basis of social insurance contribution, that one can ask whether this is not an attempt to conceal a typical employment contract under the peculiar form of an "employment contract for international transport drivers". In addition, since more and more states insist on including drivers in international road haulage into the category of posted workers, the question arises whether the remuneration components not subject to social insurance contribution (subsistence, allowances, business-trip related payments) must be

⁴⁰ (36 Stunden am Steuer: Lkw-Fahrer verursacht Unfall auf A1 (36 hours at the wheel: Trucker causes accident on the A1), Die Presse, 20.11.2015), <http://diepresse.com/home/panorama/oesterreich/4870563/36-Stunden-am-Steuer-LkwFahrer-verursacht-Unfall-auf-A1>

⁴¹ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006R0561&from=DE>

⁴² Art. 2. 15 of the Regulation of the Minister of Labour and Social Policy of 18 December 1998 on detailed principles of determining the base amount for the retirement and disability insurance

treated as part of the driver's remuneration. If foreign inspection services deny the treatment of such payments as an element of the minimum wage, the labour costs of the Polish employer would be much higher than the costs of the local employer because Polish employers would have to pay the minimum wage applicable in the country where transport services are provided plus the business-trip related payments Polish drivers are entitled to under Polish law. Hence, Polish employers' organisations plead for a reform of the structure of mobile workers' remuneration⁴³.

In case of alleged *bogus self-employment*, couriers have to bring forward a clear proof of their employment. Contractors save social insurance costs, do not have to pay minimum wages, they can pass on business risks (volatility of contracts) to the last link in the chain – the couriers. And finally, self-employed couriers are not subject to health and safety regulations and labour inspections. Neither in *Poland*, *France* nor *Austria*, self-employed couriers driving LCVs have to adhere to the specific driving and rest time regulations (Regulation (EC) No 561/2006) in place for drivers of HCVs (Ministère de l'Écologie, du Développement durable et de l'Énergie, 2016; Ricardo Energy & Environment, 2016, pp. 161–166).

For workers, even more than for authorities, it is a long and tedious process to claim their entitlements, especially if cross-border and multi-company arrangements are involved. Files of court cases give evidence about the actual amount of non-paid wages.

Austrian Court case

In a recently settled case of a Tyrolean haulier, the five lorry drivers were paid from 22% to 38% less than stipulated in the collective agreement of the hauliers' industry⁴⁴. The employer has been sentenced to pay a fine for this administrative offence of underpayment. Supposedly, the regional health insurance fund and tax authorities will claim payments based on the new basis of assessment. Workers, however must claim their wages individually, a lengthy and costly exercise.

3. Combating fraudulent contracting of work and employment

3.1 Sectoral regulations and social partner initiatives and measures at EU level

International road transport sector is governed by European-wide sector-specific rules covering working conditions of drivers, technical equipment of the vehicles (see FN#37 and #40), access to the transport market (Regulation (EC) No 1072/2009, see FN 20) or rules for the establishment as a transport operator⁴⁵. Enforcement of these rules depend on transposition in national regulatory frameworks, and is of responsibility of national control authorities, labour inspectorate and traffic police. In addition, Euro Control Route (ECR)⁴⁶ performs coordinated cross-border checks, as a group of European Transport Inspection

⁴³ https://www.facebook.com/TransportLogistykaPolska/?hc_ref=PAGES_TIMELINE

⁴⁴ https://www.ris.bka.gv.at/Dokumente/Lvwg/LVWGT_TI_20170328_LVwG_2016_28_2676_4_00/LVWGT_TI_20170328_LVwG_2016_28_2676_4_00.pdf

⁴⁵ Regulation (EC) No1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:300:0051:0071:EN:PDF>

⁴⁶ <http://www.euro-controle-route.eu/site/>, accessed 26 February, 2017

Services working together to improve road safety, sustainability, fair competition and labour conditions in road transport.

Sector-specific regulations are in place in addition to general employment and social regulations when performing cross-border services. The main challenges lie in applying existing laws, informing the workers concerned of their rights and upholding these rights in transnational contractual relations.

For the purpose of this study, we want to highlight some aspects of these regulations that aim to prevent fraudulent practices in road haulage referred to throughout this report:

Combatting problematic company structures and excessive working time

EC Regulation 1071/2009 (#fn 44) establishes common rules concerning the conditions to be complied with to pursue the occupation of road transport operator (i.e. effective and stable establishment, good repute, appropriate financial standing). Such requirements aim at achieving a higher level of professional qualification for road transport operators, an improved quality of service and road safety. It also aims at limiting the possibilities for letter-box companies becoming active in the common market. Despite this regulation, letter-box companies are a significant phenomenon in road haulage. Experts claim a need to clarify definitions and to make enforcement more effective (Ricardo Energy & Environment, 2015, pp. 194–196).

In addition, sectoral social regulations and access to the driver profession provisions for vehicles above 3,5 tons are preventing bogus self-employment. First, every driver of a vehicle above 3,5 tons providing goods transport – be he/she self-employed or employed - is subject to the social regulations stipulated in EU regulation 561/2006. This means, it is not possible to circumvent driving and rest times by switching from an employed to a self-employed contract. Secondly, the profession of ‘driver with HCVs’ is a licenced trade. The access to the profession is regulated in Regulation (EC) 1071/2009. This means this trade is subject to approval, and access is dependent on various preconditions, i.e. an “effective and stable establishment in a MS, a good repute, appropriate financial standing, and professional competence”. In *Austria* and *Poland*, the licence holder must even prove having appropriated parking spaces for the lorry fleet, for *France* such a requirement is not mentioned (European Commission, 2017b, pp. 4, 6). Hence, market access is restricted and exchanging employed with self-employed drivers implies some additional effort without any advantages.

In many MS, these conditions do not apply to operators of vehicles below 3,5 tons providing goods transport. Only in Belgium, Sweden, Finland, the Netherlands, Greece and Latvia operators with all vehicles above 3,5 tons are subject to the establishment criteria. Access to the LCV profession is not restricted in *Austria* and *Poland*. Anybody who is above 18 years, has a valid residence permit and is not excluded due to statutory reasons such as fiscal law charges, can open this trade. For driving a LCV, no truck-driving licence is required. LCV drivers are not obliged to meet social regulations such as the working time directive and rules on resting time. Neither, they are required to report their operations under the requirements of the tachograph directive. In *France*, requirements for minimum financial standing for LCVs (1.800 Euro for the first vehicle) as well as the proof of some professional competence are necessary to be accepted as a LCV-operator (Ricardo Energy & Environment, 2017, pp. 45, 172–177).

The Road initiative 2017 and social partner responses

At the end of May 2017, a new „road initiative“⁴⁷ encompassing several revisions of European road regulations has been presented by the European Commission concerning the posting of workers⁴⁸, the extension of cabotage journeys⁴⁹, a partly extension of regulation 1071/2009 to transport undertakings providing services with light vehicles⁵⁰, a better information exchange among authorities and registration systems. Experts worry that new proposals will make the already very complex landscape of cross-border provision of services in transport even more complicated, especially if the commission introduces new or amends existing directives that again must be transposed into national law (as is the case with the PWD). In addition, a new compromise on posting regulation and the liberalisation of cabotage will be very hard to attain since standpoints between Eastern and Western European states on these issues are divided. Social regulations for road haulage have been negotiated over ten years.

Assessments and critics of the new proposal differ in particular between ministries in charge, employers' organisations in the transport sector of EU15 countries and Member states joining after 2004, and partly between social partner organisations. In April 2017, Eastern European transport operators from four Visegrad countries, have adopted a joint declaration⁵¹ against what they see as “Western European protectionist measures and the incorporation of transport workers into the scope of the PWD” in view of restricting competition; they expressed also their position against the allegations by their Western European counterparts, ‘charging them of social dumping and unfair competition’. These apply to the outcomes of the initiative of the ‘Road alliance’, bringing together transport ministers from several Western European countries, in order to *“defend a road transport market for goods based on fair and healthy competition and guarantee of the social rights of workers.”*⁵²

The social partners' organisations develop some common paths. The ETF succeeded in formulating and bringing forward a common position of its member organisations. The ‘Warsaw Declaration’⁵³ was signed in April 2017 by all – Eastern and Western – member organizations. It develops the following proposals: social regulations shall be extended, cabotage rules restricted and international transport services be subject to the PWD from day 1 on. IRU presented a strategy paper⁵⁴ with an approval of extending regulations in place for HCVs to LCVs and a critical position towards the further liberalisation of cabotage. In these respects, social partners pursue a common policy. They are also agreeing upon a more efficient inspection practice and better information exchange among authorities in charge,

⁴⁷ https://ec.europa.eu/transport/modes/road/news/2017-05-31-europe-on-the-move_en

⁴⁸ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017PC0278&from=EN>, factsheet: <https://ec.europa.eu/transport/sites/transport/files/mobility-factsheet-road-initiatives-posting.pdf>

⁴⁹ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017PC0281&from=EN>, factsheet: <https://ec.europa.eu/transport/sites/transport/files/mobility-factsheet-road-initiatives-cabotage.pdf>

⁵⁰ <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017PC0281&from=EN>

⁵¹ „V4 haulage reps unite against ‘measures restricting competition’”, https://bbj.hu/economy/v4-haulage-reps-unite-against-measures-restricting-competition_131930

⁵² “Nine countries signed up to a “Road Alliance”, <http://nla.eu/news/nine-countries-signed-up-to-a-road-alliance/>

⁵³ [http://www.etf-europe.org/files/extranet/-](http://www.etf-europe.org/files/extranet/-75/47277/ETF%20Warsaw%20declaration%20original%20signed%20version%20EN.pdf)

[75/47277/ETF%20Warsaw%20declaration%20original%20signed%20version%20EN.pdf](http://www.etf-europe.org/files/extranet/-75/47277/ETF%20Warsaw%20declaration%20original%20signed%20version%20EN.pdf)

⁵⁴ https://www.iru.org/sites/default/files/2017-03/IRU_consolidated%20observations_EN.pdf, [http://www.etf-europe.org/files/extranet/-](http://www.etf-europe.org/files/extranet/-75/47273/ETF%20position%20on%20the%20EC%20measures%20March%202017%20EN.pdf)

[75/47273/ETF%20position%20on%20the%20EC%20measures%20March%202017%20EN.pdf](http://www.etf-europe.org/files/extranet/-75/47273/ETF%20position%20on%20the%20EC%20measures%20March%202017%20EN.pdf)

however, differences exist in a more flexible (IRU) or more worker-protection driven (ETF) approach how sector-specific social regulations shall be applied.

European social partners, together with Euro Control route have launched and carried out several projects (e.g. *CLOSER* (2014) and *AFT-IFTIM* (Apprendre et se Former en Transport et Logistique)) aiming at a better cooperation of authorities in enforcing European road haulage legislation and produced training requirements in cabotage enforcement, cargo securing, extension of the trace results to drivers and operators as well as focus on company check.

3.2 Sectoral legislation at national level fighting fraudulent practices

In section 2, some of the national legislation combatting fraudulent forms of work have already been described against the background of emerging fraudulent practices in road haulage. These include the national handling of the posting of transport workers (Loi Macron in France, Anti Wage and Social Dumping Act in Austria) and country-specific regulations in place to detect bogus self-employment. This section highlights additional efforts on national level and enforcement practices.

Liability regulations in subcontracting chains

As was described above, the industry is subject to fierce competition. Since road haulage is a labour-intensive industry, price competition is exerted based on labour costs and labour productivity, often stretched beyond legality. Moreover, multiple subcontracting chains are typical for the transport industry, with forwarders and clients being in a dominant market position. The consequences of breaches of social regulation are borne by the last link in the chain – the drivers. Work instructions however come from “above”, i.e. from the forwarding companies and other stakeholders in the transport chain.

Theoretically, clients, the forwarders, can be made responsible to respect the social regulations in road transport according to the EU regulation 561/2006 (FN #40), Article 10, that stipulates liability of transport undertakings. There is a huge variation in how this paragraph is implemented practically. In *Austria* and *France*, following a claim, courts decide whether a forwarder can be held liable of infringements against social regulations in local transport. In *Poland*, “circumstances of the case and the evidence must clearly indicate that the contractor had an impact or agreed to the circumstances that led to the infringement”. In practice, the forwarders are never held liable for infringements (Ricardo Energy & Environment, 2016, pp. 96, 197, 212).

In addition, there are attempts in some national legislation either to sanction low prices for transport services or to put responsibility on customers to check conformity to various regulations that go beyond the social regulations stipulated in 561/2006, assuming that if rules are respected the price offered should be genuine.

In *France*, debates are underway to amend the ‘Loi Macron’⁵⁵ and extend the responsibility for compliance with social regulations to the French contractor of a service delivered by a foreign subcontractor. This amendment stipulates that the French customer is considered as the contractor and must check legal compliance of his subcontractor to three articles of the Labour Code; The customer can be held liable for: i) wages and social contributions of the subcontractors’ posted workers, if the subcontractor fails to pay them (article L3245-2); ii) the housing if their living conditions are inappropriate (article 4231-1), and iii) the core labour

⁵⁵ LOI n° 2015-990 du 6 août 2015 pour la croissance, l'activité et l'égalité des chances économiques (1), https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=E91F9F8DE2680178C183C56B9396241C.tpdila17v_3?cidTexte=JORFTEXT000030978561&categorieLien=id

legislation applicable to the posting of workers (article L8281-1). With respect to the adherence to cabotage regulations, the contractor must ensure that its contracted haulier does not carry out more than the three cabotage operations in the seven-day period allowed. Fines of up to 15.000 Euro can follow an infringement.⁵⁶

In *Austria*, regulations stipulated in the Anti-Wage and Social Dumping Act (LSD-BG)⁵⁷ intend to combat wage and social dumping in all sectors. Here, the issue of liability claims has been explicitly addressed for the construction sector and for public procurement. In addition, the so called *Social Anti-Fraud Act* (SBBG, Sozialbetrugsbekämpfungsgesetz⁵⁸) aims to eradicate bogus firms. Companies use such bogus companies to pay less social insurance contribution, taxes and wages. Among other provisions to detect social fraud, the Austrian federal ministry of finance is obliged to publish a list of companies that have been finally adjudicated as bogus companies (<https://service.bmf.gv.at/service/allg/lsu/>), most of them active in construction. This publication serves as a source of information for companies and is intended to protect them from possible liability for charges. In January 2017, the Austrian Freedom Party submitted a parliamentary query about the amount of social security contribution claims resulting from the detection of bogus companies and in how far liability claims have been enforced⁵⁹. The minister of social affairs and consumer protection answered that claims amount to approx. 2,34 Mio Euro, in only three cases liability claims could be enforced. In all other cases, due to lack of statutory requirements or detectability no liability claims could be made⁶⁰.

In *Poland*, an Agreement for Safety in the Construction Sector was adopted by the Chief Inspectorate, general contractors and the Polish Association of Construction Engineers and Technicians stipulating common guidelines that define minimum requirements towards subcontractors in relation to health and safety and staff qualifications. No such agreements are known for the transport sector.

Interesting initiatives can be reported from *Belgium and Finland*. *Belgium* prohibits hauliers, principals, dispatching agents or forwarding agents, to offer, perform or commission transport for “unacceptably low prices”. In *Finland*, customers of transport companies have to check whether the company they work with, has a valid transport permit and whether the personnel is treated properly and all fiscal obligations are observed (ABVV-BTB, 2014, pp. 85–86).

Enforcement: scattered control landscapes in road haulage

For controlling truck drivers, haulage companies and vehicles a variety of authorities are in charge. In *Austria*, the traffic police may check both the technical conditions of the vehicles, freight papers including cabotage and drivers’ driving and rest time, irrespectively of the country of employment. For checking the compliance with working and rest times at the premises, the labour inspectorate is in charge. For checking underpayment and infringements of the Anti-Wage and Social Dumping Act (LSD-BG), including compliance with the posting of workers’ directive, the financial police is in charge. They are authorised to check the notification for posted workers, documents showing social insurance registration, pay documents and employment permits for employees with third-country citizenship and

⁵⁶ <https://www.ecologique-solidaire.gouv.fr/sites/default/files/Cabotage%20routier%20de%20marchandises%20la%20r%C3%A9glementation%20en%20France%20version%20anglaise.pdf>

⁵⁷ Lohn- und Sozialdumping-Bekämpfungsgesetz, Version as of 04.07.2017,

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009555>

⁵⁸ Sozialbetrugsbekämpfungsgesetz, version as of 04.07.2017,

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009245>

⁵⁹ https://www.parlament.gv.at/PAKT/VHG/XXV/JJ_11521/imfname_612239.pdf

⁶⁰ https://www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_11037/imfname_625203.pdf

shipping documents. They may control on the street and at the premises of road haulage companies.

In *France*, the ministère de la transition écologique et solidaire (MEDDE) is the main responsible body for the implementation of road social legislation commanding around 700 inspectors for enforcement. Enforcement and compliance is ensured in France by different public bodies, including the MEDDE itself, the Ministry of Labour, Employment, Professional training and Social dialogue, the Ministry of the Interior as well as the Ministry for Economy and Finance and the National Police. Road side checks are ensured by the staff of the national police, agents of the customs authorities and by the MEDDE. They are not only checking adherence with social regulations but also compliance with cabotage rules and road safety. Checks at premises fall under the responsibility of social inspectors and social controllers of the Labour Inspection, as well as inspectors from the Fraud Control and MEDDE (Ricardo Energy & Environment, 2016, pp. 379–371). The enforcement of cabotage is regarded as a political priority, hence fines are relatively high, inspection budgets have been increased in recent years and manpower is adequate. In addition, specific information to document cabotage journeys are required (Ricardo Energy & Environment, 2015, p. 80). In addition, LCVs are also subsumed under cabotage regulations. This is not the case in Poland and Austria.

In *Poland*, the Road Transport Inspectorate monitors compliance with the rules on driving, rest periods and breaks. In addition, enforcement of tachograph regulations is secured by the Police, Border Guard and Customs Service. The National Labour Inspectorate has the authority to look into records on sheets and driver cards, and can also extend this scope to matters of proper salary calculation. All in all, around 400 road transport inspectors are responsible for performing roadside as well as company checks. In Poland, violations of the working time rules are one of the most frequent, and the imposed fines have a significant impact on SMEs (Ricardo Energy & Environment, 2016, pp. 413–416).

As can be seen from this listing, the detection of cross borders infringements makes information exchange and cooperation between authorities with different competencies in several countries, necessary. There is a need for intense cooperation not only between but also within countries. For this purpose, two registers (the "European Register of Road Transport Undertakings" (ERRU) and a risk assessment system) have been introduced on European level to improve information exchange among authorities in order to better monitor transport undertakings and their compliance with the sector-specific social regulations and suspicions of letter box companies.

The cross-border collectability of administrative penalties is another major problem from the experts' perspective. Besides better bilateral cooperation between authorities, an effective tool to enforce penalties is in specific cases, to impinge the material and means of production (e.g. the trucks) when penalties have not been paid.

3.3 Sectoral social partners' initiatives at national level

Currently, the *Austrian* chamber of commerce – aware of the dodgy image of light vehicle transport – launched a campaign to bring to the forefront reliable entrepreneurs of this trade and to encourage others to follow. A "quality seal" is awarded to entrepreneurs with transparent and lawful business practices who have attended a training course with basic qualification in cost calculation and other industry-relevant knowledge. Another social partners' initiative -supported by the Chamber of Commerce and the union Vida- addresses common infringements of cabotage rules.⁶¹ Recently, the initiative resulted in an amendment

⁶¹ <http://kabotage.at/news/>

of the Freight Transport Act, specifying documentation requirements for cabotage journeys and penalties in case of missing documents. Social partners in *Austria* agree upon many issues especially those aiming to establish a level playing field for competitors from different MS.

In *Poland*, conversely, the government is considering to agree to general amendments of the PWD in course of the recent debates on European level against a "deal" for abandoning the proposal to include international transport drivers into the directive⁶². At the same time, both employers' organisations and trade unions proposed to introduce more specific social regulations (next to the existing ones) that would apply only and exclusively to drivers as highly mobile workers. Moreover, both social partners agree upon reforming drivers' composition of wages and limiting the components not subject to social insurance contribution.

In *France*, social partners agreed to protect the national transport market. Therefore, they have negotiated with the public authorities on regional level agreements to fight fraudulent contracting of work and unfair competition. Recently, such agreement has been signed in the region Bourgogne-Franche-Comté between different inspection bodies (Labour inspectorate, social security inspectorate), road inspectorate (Dreal), the employers' organisations OTRE, UNOSTRA and the unions CFDT and CGT. The signatories are aware of the exponential use of fraudulent contracting of work in increasingly complex and organised forms, which destroy the economic and social model of this sector. The issues of 'non-declared posting' of workers and 'bogus self-employed' are also in the scope of the regional agreement⁶³.

The *ETF* supports several joint trade union initiatives between sending and host countries of drivers. As a key policy pointer, this strategy was pushed forward in past ETF congresses. As a result of these efforts, a cooperation office in Romania will open in September 2017, including the truckers' union from Romania (SLT), Danish union (3F), 2 Belgian unions (BB-UBT, ACV-Transcom, Swedish blue collar union and the Dutch FNV. Each union will financially support the office in Romania and contribute to capacity building of the Romanian trade union. The cooperation office will work on a mutual assistance pact. A driver member of the Romanian union will be assisted by the respective project partners in these countries when he experiences problems at the workplace over there; he will benefit from assistance in Belgium, Sweden, Denmark and the Netherlands. The support comprises legal assistance but also assistance in case of road side checks, seizure of the vehicle or imposition of fines the driver feels are not correctly applied.

4. Key policy pointers

Current EU legislation offers a number of regulation and enforcement possibilities against fraudulent contracting of contracting work and employment. The main challenges lie in applying existing regulations, informing businesses and workers concerned of their rights and obligations, and enforcing these rights in transnational contractual relations.

⁶²PAP, <http://www.pap.pl/aktualnosci/news,976228,polska-signature-mozliwosc-mozliwosc-compromisu-ws-friendly-friends.html>; Polska pójdzie na kompromis ws. pracowników delegowanych? W zamian za ustępstwa, <http://www.money.pl/gospodarka/wiadomosci/artykul/pracownicy-delegowani-placa-minimalna-firmy,20,0,2333972.html>

⁶³ Le Bien Public, "Lutte contre le travail illégal : les professionnels du transport et l'État s'engagent", 17.07.2017, <http://www.bienpublic.com/cote-d-or/2017/07/17/lutte-contre-le-travail-illegal-les-professionnels-du-transport-et-l-etat-s-engagent>

Still room for better enforcement and inter-authority cooperation

One of the key obstacles to enforce control is the scattered nature of nationally based inspection bodies falling each under different jurisdiction. In every single case, it has to be decided what the key legal issue, the infringement (fake establishment of a subsidiary, undeclared work, non-declared posted work, irregular cabotage etc.) is and who and how many control bodies can be considered ‘competent’ to address it.

Hence, the difference in coverage of transnational service provision in the transport sector and nationally regulated employment and wage systems, can lead to conflicts and definitively raise several questions. Are mobile transport workers posted workers when they cross borders with their trucks or trains? What is a “habitual place of work” for a mobile worker? Which minimum wage applies to mobile workers? Which employer is responsible, which jurisdiction is competent when contracts are awarded via transnational subcontracting chains? Also, very specific questions have to be addressed, such as: is a vehicle cabin a proper place to take the weekly rest or is this a social dumping practice?

Such questions emerge from a highly complex legal framework, where a wide range of European directives and national laws determine the day-to-day reality of transport workers working in a transnational capacity. In practice, this jungle of regulations and their differing national implementations and interpretations incentivise transnational transport companies to gain a competitive edge at the expense of their employees.

The Experts interviewed and assessments of the respective regulations and directives call for *more efficient enforcement*. On the one hand, the proposals that came along with the new „road initiative“⁶⁴ in May 2017, encompassing several revisions of European road regulations, are seen as including some clarifications and some steps towards stricter rules. On the other hand, they are considered “ambiguous” regarding the pursuit of decent working conditions for drivers throughout Europe.

An important way to come to better enforcement will be to strengthen bilateral and transnational cooperation among authorities but also within MS. In this vein, common registers such as the ERRU but also the internal market information system (IMI⁶⁵), will be useful tools for data exchange. At the same time, the initiation of common trainings among different authorities might be useful.

To prevent the circumvention of regulations valid for heavy vehicles, experts stressed the importance of extending regulations concerning the access to the market and to the profession to light vehicles that are used for commercial goods transports. This extension shall also encompass social regulations and training.

Pushing for liability claims in subcontracting chains

The issue of liability in subcontracting chains, to bring the responsibilities of the principal contractors more to the forefront, would be crucial. Enforcement of such provisions however is complicated. Another option than liability provisions is to limit subcontracting chains or to introduce paragraphs on minimum requirements contractors must adhere to. Prohibiting subcontracting of core tasks of a contractor is an option to shorten subcontracting chains. This regulation, for example, is in place for the contracting out of construction works in public procurement in *Austria* (Haidinger, 2015).

⁶⁴ https://ec.europa.eu/transport/modes/road/news/2017-05-31-europe-on-the-move_en

⁶⁵ http://ec.europa.eu/internal_market/imi-net/index_en.htm

Supporting workers to enforce their claims

One major problem is for workers to claim and gain redress for withheld wages, in cases of underpayment due to false classification of his/her employment status.

While Social insurance funds and the financial police have no issue to claim withheld contributions or taxes from companies that have paid too less, workers are left alone to face the redress claim. Indeed, workers must individually claim their wages, either in out-of-court proceedings or in front of the labour court.

Conversely, the inspection of rest and driving times entails immediate consequences for drivers and companies in case of non-adherence to the respective social legislation in road transport (EU regulation 561/2006): driving and rest time records must be provided to the inspecting authorities; drivers have to stop immediately when driving times are exceeded and severe penalties follow on the spot.

Hence, what is urgently needed is a strengthening of local representation, helping to enforce laws and making sure that worker protection mechanisms are complied with. Class action law suits instead of individual law suits of employees to take legal action against wage theft and misclassification of employment might be more effective. In addition, an intensified, sustainable and solidary cooperation among European unions to support mobile workers in claiming their rights in their workplace countries is a promising strategy.

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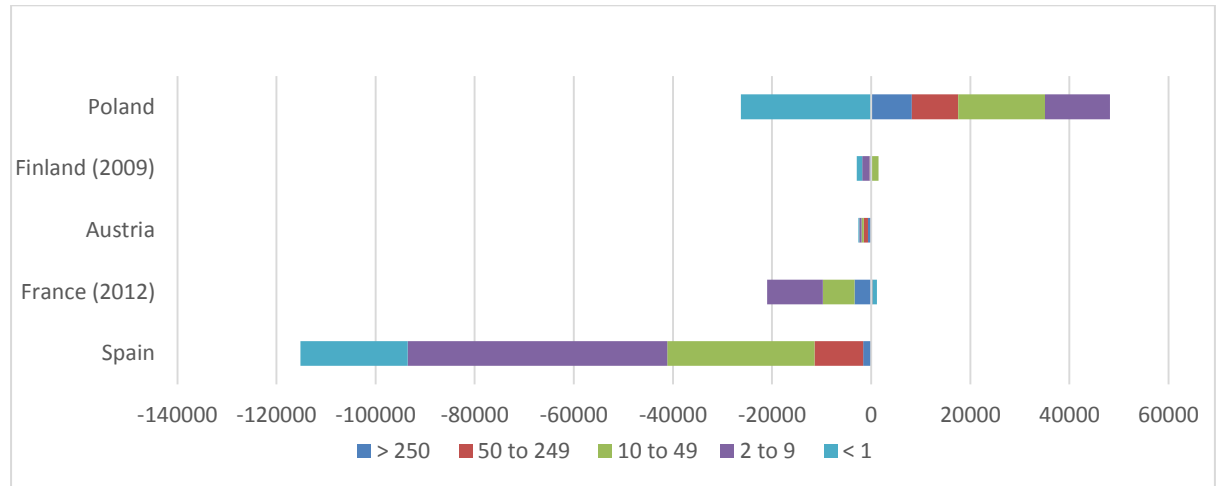
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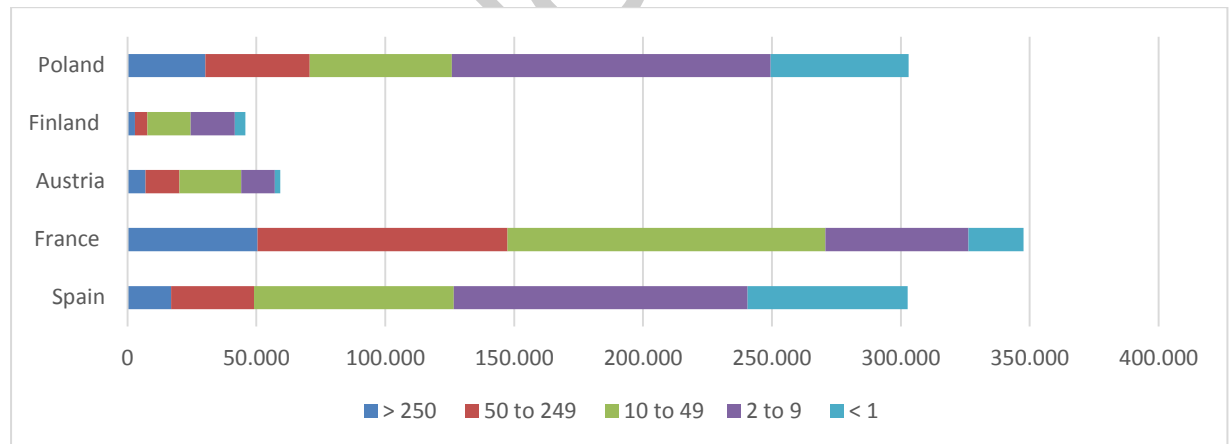
ANNEX 1

Figure A: Change in persons employed according to company size, selected countries, 2008 to 2014



Source: Annual detailed enterprise statistics for services, [sbs_na_1a_se_r2], Freight transport by road and removal services (H494)

Figure B: Persons employed per company size in selected countries, 2014



Source: Annual detailed enterprise statistics for services, [sbs_na_1a_se_r2], Freight transport by road and removal services (H494)

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