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Economic and Monetary Affairs

Employment and Social Affairs

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Employment Conditions in the International Road Haulage Sector

Study for the EMPL Committee

DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

Employment Conditions in the International Road Haulage Sector

STUDY

Abstract

The market integration and internationalisation of the road transport sector has implications for the social protection of its workers. This Policy Department A study aims to provide the EMPL Committee with information about trends in the employment conditions of drivers in this sector. In particular, it aims to review whether the current regulatory framework is achieving the desired balance between market integration and social protection of workers, and what steps can be taken to ensure this balance in the future.

This document was requested by the European Parliament's Committee on Employment and Social Affairs.

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LIST OF ABBREVIATIONS

AGRI	Agriculture and Rural Development Committee
ALDE	Group of the Alliance of Liberals and Democrats for Europe
BAS	Brake-assist systems
CAP	Common Agricultural Policy
CFP	Common Fisheries Policy
CMO	Common market organisation
CoJ	Court of Justice
CoR	Committee of the Regions
CULT	Culture and Education Committee
ECOSOC	Economic and Social Committee
ECTS	European Credit Transfer System
EPP-ED	Group of the European People's Party and European Democrats
ETF	European Transport Workers' Federation
FAO	Food and Agriculture Organisation of the United Nations
FPS	Frontal protection systems
GDP	Gross Domestic Product
GM	Genetically-modified
Greens/EFA	Greens/European Free Alliance
GUE/NGL	Confederal Group of the European United Left - Nordic Green Left
IFI	International Fund for Ireland
IND/DEM	Independence/Democracy Group
IRU	International Road Transport Union
UETR	European Road Haulers Association

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EXECUTIVE SUMMARY

Market integration of the sector and its impact on employment conditions

The road haulage sector has undergone a **significant structural change** over the past ten years, due to market integration and the increased competition that this has occasioned. The share of international transport operations increased from 30 % of all road freight transport activities in 2004 to 33 % in 2012. In particular Cabotage has grown by 50 %, though its market share is still low accounting for 5 % in the same year.

A specific feature is an East-West divide: five of the top ten Member States in terms of international flows, are from the EU-12 (Bulgaria, Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovenia and Slovakia) and half of all cabotage operations are performed by operators from the EU-12, up from a third in 2010. Furthermore, **the number of those employed in the sector overall grew significantly in most EU-13 countries** (EU-12 plus Croatia) in the last 10 years but decreased in most of the other EU Member States.

Similar to the employment pattern of the sector as a whole, the professional group of heavy truck and lorry drivers is almost exclusively male and dominated by workers aged 35-64. **Permanent and full-time contracts are the most common form of contracting.** However, subcontracting is also a prominent and augmenting feature of the sector, often involving **complex subcontracting chains across borders** to benefit from hiring on the basis of lower wage levels. This has been linked to a proliferation of employment practices that undermine the working conditions of drivers, notably **false or bogus self-employment and the employment of non-resident drivers via so-called letterbox companies.**

There are indications of convergence of labour costs, but considerable divergences remain. Labour costs have fallen most in Greece, Portugal and Cyprus since 2008, and have risen most in Bulgaria and Romania (albeit from a very low base). The divergence in reported wages in part reflects different methods of remuneration: **variable elements appear to be a key component of total remuneration**, particularly in the case of EU-12 nationals. There is evidence that earning is growing in relation to the company size, with the only exception of earnings in companies up to 10 employees which are often higher.

Long driving times and insufficient rest, time spent away from appropriate facilities, and high strain coupled with low autonomy are seen as the most problematic employment issues for drivers contributing to health and safety hazards. This is exacerbated by the **increasing internationalisation of the sector**, which results in longer missions and longer periods away from home. There is evidence that the **employment conditions of EU-12 drivers are worse than those of EU-15 drivers** in terms of pay, social protection, working time and rest breaks.

According to **experts and stakeholders, in particular trade unions**, there has been a negative impact of market integration on employment conditions. There are indications that unconventional employment practices, such as **outflagging, the creation of letterbox companies and bogus self-employment** have increased over the past decade. In this way, the road haulage sector appears to have become a **laboratory for innovative employment practices** bearing the risk of **social dumping.**

European legislation governing the sector

There is a comprehensive body of European legislation that governs the sector, aiming to provide for **market integration** (access for operators and free movement) and **protection of employees** (for example, regulation of working time and rest periods). This is

principally the **Posting of Workers Directive**, Regulations on **access to the profession of road haulage operator** and **access to the international road haulage market**, the Directive **limiting working time** in road transport, the Directive on **social legislation** relating to road transport activities and the Regulation on **harmonisation of certain social legislation** relating to road transport.

However, there are **doubts as to whether this legislation is adequately protecting the employment conditions of drivers** who work in an increasingly integrated, internationalised and competitive sector.

Although current legislation is deemed to be adequate in general, there are issues around **weak application and enforcement** in Member States which may be partly due to a **lack of clarity or loopholes** in existing legislation. Specifically, there are **differences in interpretation** of EU legislation, definitions and categorisation of infringements, levels of fines and sanctions, and discrepancies in control mechanisms and enforcement practices. In order to close any loopholes and clarify issues and concepts defined in European legislation, **a review of existing legislation** may be of use. In addition, intensified **coordination** could help to improve the situation, including **more guidance from the EU** in the form of explanatory information, tools, financial help and exchange of good practice.

A number of **areas of legislation have been identified that could usefully be reviewed** based upon a review of analyses by the European Parliament, the European Commission, the High Level Group on the Development of the EU Road Haulage Market and other research:

- the application of the Posting of Workers Directive (96/71/EC) to international drivers, due to the **complex contractual relationships** in the sector;
- enforcement of Regulation (EC) No 1071/2009 on access to the profession, which may help to **combat the phenomenon of letterbox companies**;
- enforcement of Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market with a view to cabotage;
- guidance on **frequency and minimum number of checks** necessary to ensure compliance with rules governing cabotage, (Regulations (EC) No 1071/2009 and (EC) No 1072/2009);
- guidance on the **level of sanctions and fines and the categorisation of infringements of social legislation** (Directive 2009/5/EC amending annex III of Regulation (EC) No 561/2006 regarding driving times, rest times and the digital tachograph);
- guidance on the **frequency and detection rates of roadside checks**, in order to help Member States to comply with the provisions contained in Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport, and Directive 2002/15/EC on limitations on working time in road transport.

There is a **high degree of consensus among the social partners** – employer and worker representatives - about how to improve the situation. They agree that there should be **clarification on the application of the Posting of Workers Directive to international drivers** and that other loopholes should be closed, such as regulation of the use of the tachograph, in order to ensure that drivers have adequate rest. The social partners also agree on **the need for legislative action** to enhance enforcement of EU legislation, for **better sharing of information and data, and an enhanced social**

dialogue. Combating social dumping through joint liability in sub-contracting chains and further action against letterbox companies is another key area of consensus.

The **main areas of divergence between the social partners** include how to sanction companies in breach of social legislation, the creation of an EU-wide corps of inspectors for roadside checks and how to limit the length of subcontracting chains.

Policy recommendations

- **Infringements and penalties:** Developing a common classification of infringements in order to standardise practice in all Member States; examining whether indicative values can be assigned to sanctions in relation to minor, serious and very serious infringements in all areas of employment conditions.
- **Enforcement:** Encouraging Member States to adequately staff labour inspection and to fund the training of enforcement officers; promoting cooperation between different national authorities.
- **Subcontracting and letterbox companies:** Enhancing formal, written contracts to form the core of employment relationships in the sector, thus formalising supply chains; tightening conditions for access to the road haulage market.

Future areas for research

- **Improving the evidence base** on: the share of international transport and related staff in the overall road haulage sector; employment and working conditions for drivers in the international road haulage sector with a view to the impact of market integration; the practice of outflagging, whereby fleets are registered in Member States with lower operating costs.
- **Exploration** of the interaction between the Posting of Workers Directive and other measures governing the international road haulage sector.
- **Comparison** of interpretation, enforcement and practices in EU Member States; of strategies and practices to increase the attractiveness of the sector for new entrants.

Please find more detailed information in the summary boxes presenting key findings for each section

1. INTRODUCTION

This study aims to analyse the situation relating to **employment conditions for drivers in the international road haulage sector**. This is an important topic of debate in the context of the overall debate on European integration and the growth of the internal market in the EU, and the implications of this for social rights and employment conditions. This note aims to build on recent European Commission work¹ in this area.

The international road haulage sector comprises drivers who engage in transits across national borders in the EU and those who engage in cabotage, which is the national carriage of goods for hire or reward carried out by non-resident hauliers in a host Member State. This note focuses on these drivers in the context of **increasing integration of services** in the EU and the **increasing number of drivers who work across borders**. It contains information on employment conditions in the road haulage sector in general, and specific information on the employment conditions of drivers involved in international road haulage and the effects of increasing integration on employment conditions for these drivers. This includes the impact on driving times, rest breaks and health and safety considerations, and new forms of employment and contracting.

This is an important sector for Europe's economy. There is legislation at European level, covering issues such as working time and rest breaks. The main relevant legislation is:

- **Directive 2002/15/EC**, which introduces the concept of **limitations on working time in road transport**, and requires Member States to adopt measures to limit the maximum weekly working time of persons performing mobile road transport activities.
- **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** and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, which provides a common set of EU rules for maximum daily and fortnightly driving times, as well as daily and weekly minimum rest periods for all drivers of road haulage and passenger transport vehicles, subject to specified exceptions and national derogations.
- **Directive 2006/22/EC** of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 **concerning social legislation relating to road transport activities**.
- **Regulation (EC) No 1071/2009** of the European Parliament and the Council **establishing common rules concerning the conditions to be complied with to pursue the occupation of the road transport operator** and repealing Council Directive 96/26/EC, which regulates admission to the occupation of road haulage operator and road passenger transport operator in the European Union.
- **Regulation (EC) No 1072/2009** of the European Parliament and of the Council **on common rules for access** to the international road haulage market, which regulates market access for cabotage.

For more details, see section three of this report.

¹ Notably: European Commission (2014) *Report from the Commission to the European Parliament and the Council on the State of the Union Road Transport Market*. COM (2014) 222. European Commission; and Bayliss, B.T. (2012) *Report of the High Level Group on the Development of the EU Road Haulage Market*.

This paper aims to answer the following questions:

- **What is the current position with regard to employment conditions in the international road haulage sector?**
- **What are the main effects of market integration of the sector, particularly on forms and conditions of employment?**
- **What are the key differences in terms of view and interpretations of data?**

This paper looks in detail at the composition of the road transport sector as a whole in order to set out a framework for the specific study of heavy truck and lorry drivers. It examines legislation at EU level and the employment conditions of drivers working internationally. It also attempts to identify the main trends in terms of employment conditions, and focuses specifically on the effects of integration on employment conditions for international drivers.

This paper draws on evidence from the existing literature and interviews with key stakeholders (sectoral social partner representatives and the chair of the Commission's high-level group on road haulage). Interviews were held as follows:

- **Face-to-face interview with Jan Nemec, IRU, on 9 February 2015.**
- **Telephone interview with Brian Bayliss, independent expert and chair of the Commission's high-level group on road haulage, on 11 February 2015.**
- **Face-to-face interview with Cristina Tilling, ETF, on 17 February 2015.**

2. OVERVIEW OF THE SECTOR

KEY FINDINGS

There are a number of **opposing trends** in employment within the EU creating a divide between the EU-15 Member States and the EU-13 countries (i.e. the EU-12 plus Croatia). Employment in the road haulage sector has grown significantly in most EU-13 countries since 2003, whereas it has decreased in most EU-15 Member States, with the exception of Germany and Sweden and to a lesser extent France. The number of heavy lorry and truck drivers shrank by 3.2 % between 2012 and 2013, although this disguises the fact that some countries have seen a strong expansion (e.g. Ireland and Belgium).

Heavy truck and lorry drivers are **almost exclusively men**. Only in Sweden and France are more than 3.5 % of drivers women. The age profile of heavy truck and lorry drivers is dominated by workers aged between 35 and 54.

Drivers are mostly employed on **permanent contracts** (89.9 %), although there are significant differences between Member States (for example, in Poland, 27.1 % of drivers work on a temporary basis). The vast majority of truck and lorry drivers are employed **full-time** (on average 95.7 %).

Subcontracting is a prominent feature of the labour market in road haulage, often involving **complex subcontracting chains** across borders. This has been linked to a proliferation of practices that impinge on the working conditions of drivers, notably false or bogus self-employment and the employment of non-resident drivers via so-called “letterbox” companies.

Long working hours are a major issue for the sector. Although EU legislation governs working time, there are issues around its enforcement. Weekend working is a common feature for the sector, in particular on Saturdays.

Drivers working in the international road haulage sector face a number of **health and safety hazards** associated with driving long distances and spending time away from home. These include risks relating to posture, musculo-skeletal problems and a range of factors that can increase stress.

The road haulage sector is becoming **increasingly international**, both in terms of the nature of traffic flows and the role played by non-resident hauliers. The new Member States, in particular Poland, account for a disproportionately large share of growth in international transport, due largely to labour cost advantages. Among the **top ten Member States in terms of international flows** carried, **five were from the EU-12 in 2013**. Half of all **cabotage operations** are performed by operators from the EU-12, up from a third in 2010.

The following section gives an overview of the sector as a whole before elaborating in more detail on the employment conditions of drivers.

Box 1: Structure and characteristics of the road freight transport sector

Road freight transport accounts for 72 % of inland transport activity and this has remained stable over the past decade. National haulage operations carried out by domestically registered vehicles account for around two-thirds of total haulage operations, whereas **international haulage transport** (including cross-trade and cabotage) **accounts for around a third. Cabotage grew by 20 % in 2013 alone**, but overall still only accounts for a small share of total freight activities in the EU-28 and is concentrated in a few countries West European countries, such as Germany, France, Italy, the United Kingdom, Belgium and Sweden.

National haulage operations decreased by 9.1 % between 2005 and 2012, whereas international road haulage transport operations increased to a less extent by 0.4 % in the same period. **Cross-trade** appears to be the **most fast-growing segment** of road haulage market (+80 % between 2004 and 2012), as it benefits from the liberalisation of international transport activities within the EU.

There are, however, significant differences between Member States. In some **East European countries international haulage operations accounted for more than 70 %** (and up to about 90 %) of the total haulage in 2012 (namely Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Luxembourg, Slovenia, and Slovakia) whereas in some West European Member States such as France, Italy, Sweden or the UK, national haulage operations accounted for more than 90 % of total haulage.

The sector comprised 562 113 companies in the EU-28 Member States in 2012. This figure had decreased by 2 % compared to 2011. Such companies were **predominantly micro and small companies**. At EU-28 level, more than 90 % of enterprises had less than nine employees. In particular, 54.6 % had up to one employee.

The most recent data from Eurostat Structural Business Statistics (2012) indicate that companies in the road freight transport employed in total 2 393 995 workers across 23 EU Member States. In 2004 there were 2 614 789 individuals employed in 26 Member States. Over that decade, **employment trends show again an East-West divide**: Employment in the sector has grown significantly in most EU-13 countries, whereas it **decreased in most EU-15 Member States**, with the exception of Germany and Sweden and to a lesser extent of France.

Labour Force Survey data indicate that 2 328 414 individuals were employed in the sector in 2013. This figure is different from employment figures illustrated above, as data source and data collection methodologies are different. **Drivers** working in the road freight transport sector account for a **high proportion of the total employed** in the sector, ranging from a minimum of almost half of the employed in the sector in the Netherlands and Lithuania, to 77.2 % in Finland and 79.4 % in Greece. In the average of the 19 countries for which data are available, drivers in the road haulage sector account for 1 543 691 individuals.

The sector is **highly male-dominated**. Only one employed individual out of ten is a woman.

The vast majority of workers in the sector (82 %) are **employees**.

Looking at **heavy truck and lorry drivers**, the size of the **workforce shrank by 3.2 %** between 2012 and 2013. However, this disguises the fact that some countries have seen a substantial contraction of the number of truck and lorry drivers, while others have seen a strong expansion. Among the 20 countries for which data are available at this level of disaggregation, by far the biggest **expansion of the labour force of heavy truck and lorry drivers from 2012 to 2013 has been in Ireland**, which recorded an increase of 17.9 % (some 3 000 workers) followed by **Belgium** with a 10.5 % increase (some 6 000 workers) and the **UK** with 8 % more truck and lorry drivers (roughly 21 000 workers). This is however, offset by a severe contraction amongst Dutch truck and lorry drivers, where in 2013 26.8 % fewer workers were in this occupation compared to 2012, which equates to around 33 000 people. Luxembourg (15.8 %), Lithuania (14.9 %) and Slovakia (14.1 %) recorded the next biggest reductions. These reductions have to be seen in relation to the total size of the labour force though, where in Luxembourg 15.8 % represent about 400 workers, whereas 14.9 % in Lithuania equates to about 5 000 workers. Nevertheless, these reductions in the size of the local labour force of truck and lorry drivers across all sectors of the economy is significant and requires further exploration into the reasons why. Mundutey (2014) highlights that with **increasing market pressures and increased monitoring of drivers to maintain just-in-time delivery demands**, driver autonomy has been substantially reduced which in turn has increased work pressures, stress levels and other associated psychosocial risks, which may explain some of the contraction of the driver work force.

2.1. Gender and age

Heavy truck and lorry drivers are almost exclusively men. In the average of 20 countries for which data are available **98.4 % of truck and lorry drivers are men**, but in some countries all truck and lorry drivers are men. Only in Sweden and France are a share of more than 3.5 % of drivers women.

The age profile of heavy truck and lorry drivers in these 20 EU Member States is dominated by workers aged between 35 and 54. Roughly 59 % of drivers fell into this age bracket. The younger age group (18-34) represented 21.5 % of drivers, whereas the older age group (55-64) constituted 17.8 %. Those older than 65 represent a very small proportion of total workers employed as heavy truck and lorry drivers (1.6 %). Germany, Estonia, Ireland, the Netherlands, Sweden and the UK had substantially larger representation of the older age groups (55 to 65+) with more than 20 % of workers falling into this age group. Sweden had the highest proportion of 65+ drivers (5.7 %).

When comparing the age of those individuals working as heavy truck and lorry drivers with their representation in the general economy it becomes apparent that on average across the 20 EU countries, the younger age group (18-34) is underrepresented as is the oldest age group (65+). In contrast, the **age group from 35 to 64 is overrepresented in comparison to the general economy**. There are some interesting exceptions though. Malta is the only country where the 18-34 age group is overrepresented in comparison to the wider economy, and surprisingly the 45-54 age group is underrepresented. The biggest gap in representation of the younger age group is prevalent in the UK, where the general economy has 20 % more working young people than are working as heavy truck and lorry drivers. The middle age group (45-54) is generally overrepresented among those who are truck and lorry drivers (with the exception of Malta) and is highest in Luxembourg (13.4 %) and Estonia (13.2 %). These differences may potentially be due to the high cost and extensive training required for becoming a heavy truck or lorry driver, which may put the profession out of reach of young people. There is also the potential influence of insurance cost with those under 25 being charged a premium.

2.2. Employment conditions

Box 2: Background: Employment conditions in the road freight transport sector

Contracts: Employees in the sector work mostly on permanent contracts (86.4 %). Full-time work appears to be predominant in the sector (92.3 % of workers).

In terms of **pay**, there are **significant differences across Europe**, with marked imbalances between salaries and wages paid in EU-15 countries and those paid in EU-13 countries.

Shift working is not very prevalent across the overall sector - on average affecting 11.5 % of the sector's workforce. However, evening and night work is very prevalent in the sector. On average, nearly 50 % of workers work usually or at least sometimes in the evening and a third usually or at least sometimes work nights.

Weekend work is common on Saturdays, less frequent on Sundays. On average, around 46 % of workers either habitually or sometimes work on Saturdays and around 21 % of road freight employees work on Sundays. However, the differences amongst member countries are vast, ranging from around 50 % in Lithuania to almost no-one in France, Italy and Austria.

Satisfaction: The proportion of those looking for another job varies greatly, from 0.9 % in Austria to more than 7 % of workers in Spain, Finland, Sweden and the UK. Poor working conditions is usually cited as the main reason.

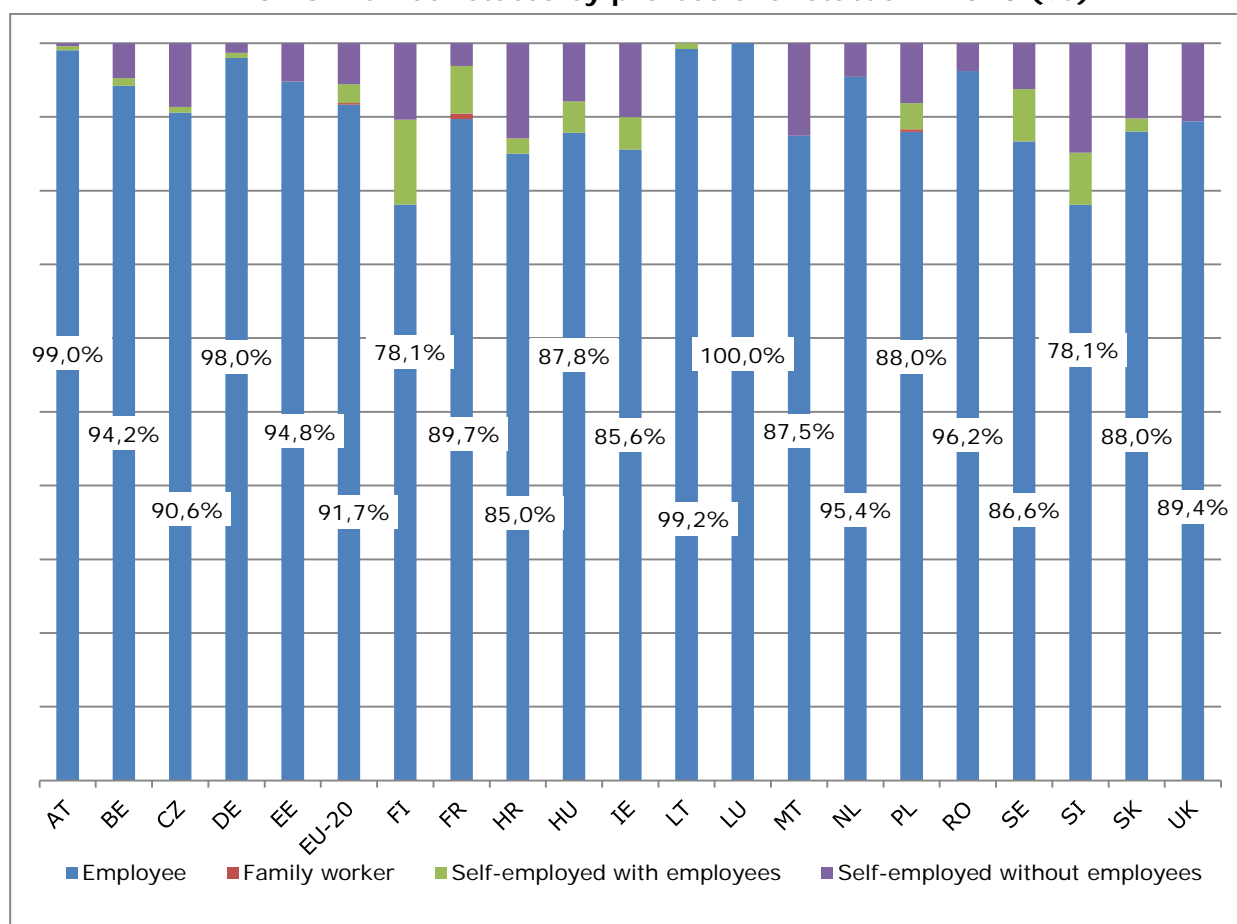
Heavy truck and lorry drivers in the 20 EU member states tend to have predominantly **permanent contracts** (89.9 %). However, there are substantial differences across those 20 member states with drivers in Luxembourg and Malta all having permanent positions, which stands in stark contrast to Poland where 27.1 % of drivers work on a temporary basis, followed at some distance by drivers in the Netherlands (22.2 %) and Sweden (19.8 %).

The vast majority of truck and lorry drivers in the 20 EU member states are employed **full-time** (on average 95.7 %). In Croatia, Luxembourg and Slovakia all drivers report they are employed full-time, while nearly all workers in Romania (99.5 %) and the Czech Republic (99.2 %) are in full-time work. The Netherlands has the highest share of part-time workers (13.1 %) followed by Sweden (10.9 %).

2.2.1. Professional status and subcontracting

The **vast majority of heavy truck and lorry drivers in the 20 member states are employees** (on average 91.7 %), with a substantial group of drivers who are self-employed but have no employees (5.6 %), followed by those who are self-employed and have employees (2.6 %) and a small group who are family workers (0.2 %). Luxembourg (100 %), Lithuania (99.2 %), Austria (99 %) and Germany (98 %) have extremely high populations of employed truck and lorry drivers, whereas Slovenia and Finland have the lowest proportions (both 78.1 %). However, those two countries boast substantial self-employed populations, which in the case of Slovenia is due to its position as a transition country and the preference of operators to subcontract to self-employed individuals due to their perceived higher productivity (CNR, 2014b). Finland had 11.5 % self-employed drivers with employees and 10.4 % self-employed without employees, while Slovenia had 14.9 % self-employed drivers without employees and 7.1 % with employees. Croatia (15 %), Sweden (13 %) and Malta (12.5 %) also had substantial self-employed truck and lorry driver populations.

Figure 1: People employed as a 'heavy truck and lorry driver' (ISCO-08 833.2) in 20 EU member states by professional status in 2013 (%)



Source: Elaboration on Eurostat Labour Force Survey data

From the literature review (Sitran and Pastori, 2013; Thornquist, 2013; AECOM, 2014), **contractual and employment relationships are a central area of concern for the sector**, which is relatively sparsely covered by existing regulatory activity. The complex system of subcontracting arrangements within and across Member States and operators in the sector has been linked to a proliferation of employment practices that impinge on the working conditions of drivers, notably false or bogus self-employment and the employment of non-resident drivers via so-called “letterbox” companies. Bogus self-employment is a form of dependent employment disguised as self-employment, which enables employers to circumvent collective agreements, labour laws, payroll tax and other employer duties and hence can leave drivers open to social dumping and labour abuse. “Letterbox” companies are subsidiaries established in low-cost Member States to take advantage of more favourable taxation, fixed costs, and lower labour costs; drivers employed via such schemes frequently work internationally for wages far below those of their resident peers and under more precarious employment conditions. Both practices have reportedly gained popularity in the period since liberalisation. The complexity of international sub-contracting chains renders it difficult for enforcement authorities to establish drivers’ contractual positions and to enforce the relevant social rules. Moreover, the existing regulatory framework appears to leave gaps in this area.

2.2.2. Salaries and wages

Data from the Structure of Earnings Survey available for 2010 by country and company size, allow for reporting the average gross hourly, monthly and yearly earnings for all heavy truck, bus and tram drivers. Significant differences across Europe, with marked imbalances between earnings reported in EU-15 countries and those reported in EU-13 countries, can be observed (Table 1). Overall, a correlation between company size and level of earnings can be observed, with **earnings growing in relation to the company size, with the only exception being earnings in companies of up to 10 employees, which are often higher** than those reported in companies of 11 to 49 and 50 to 249 employees.

Table 1: Gross monthly and yearly earnings of 'Heavy truck and lorry drivers' (ISCO-08 833) in 2010, by country (euros)

Country	Company size (no of employees)	Gross monthly earnings	Gross yearly earnings	Country	Company size (no of employees)	Gross monthly earnings	Gross yearly earnings	Country	Company size (no of employees)	Gross monthly earnings	Gross yearly earnings
BE	<i>Up to 10</i>	2,487.1	35,765.0	CZ	<i>Up to 10</i>	746.5	9,730.1	EE	<i>Up to 10</i>	699.9	8,681.5
	<i>10 to 49</i>	2,370.3	33,414.1		<i>10 to 49</i>	672.9	9,078.8		<i>10 to 49</i>	599.6	7,378.8
	<i>50 to 249</i>	2,509.1	36,300.9		<i>50 to 249</i>	755.8	9,640.0		<i>50 to 249</i>	743.8	9,191.2
	<i>250 to 499</i>	2,460.8	34,671.0		<i>250 to 499</i>	705.5	9,350.0		<i>250 to 499</i>	798.3	10,313.9
	<i>500 to 999</i>	2,686.7	38,966.9		<i>500 to 999</i>	811.2	10,166.3		<i>500 to 999</i>	:	:
	<i>1,000 and more</i>	2,587.5	38,031.4		<i>1,000 and more</i>	916.4	11,484.7		<i>1,000 and more</i>	:	:
BG	<i>Up to 10</i>	293.1	3,950.0	DE	<i>Up to 10</i>	2,242.6	28,510.5	FI	<i>Up to 10</i>	2,783.5	36,428.2
	<i>10 to 49</i>	212.3	2,688.0		<i>10 to 49</i>	2,060.0	25,532.0		<i>10 to 49</i>	2,753.6	36,817.2
	<i>50 to 249</i>	265.3	3,278.6		<i>50 to 249</i>	2,206.2	27,928.6		<i>50 to 249</i>	2,826.1	36,734.3
	<i>250 to 499</i>	395.0	5,033.3		<i>250 to 499</i>	2,340.5	30,048.1		<i>250 to 499</i>	2,778.1	35,287.8
	<i>500 to 999</i>	313.4	4,332.5		<i>500 to 999</i>	2,540.3	33,070.3		<i>500 to 999</i>	3,057.9	36,932.4
	<i>1,000 and more</i>	600.9	8,635.8		<i>1,000 and more</i>	2,814.4	37,311.2		<i>1,000 and more</i>	2,672.9	35,548.4
CY	<i>Up to 10</i>	1,836.8	24,297.6	DK	<i>Up to 10</i>	3,651.6	44,698.8	FR	<i>Up to 10</i>	2,098.8	27,007.7
	<i>10 to 49</i>	1,734.5	23,625.5		<i>10 to 49</i>	3,411.7	41,601.9		<i>10 to 49</i>	2,048.9	25,394.3
	<i>50 to 249</i>	1,994.0	25,455.0		<i>50 to 249</i>	3,803.3	45,586.8		<i>50 to 249</i>	2,063.2	26,179.6
	<i>250 to 499</i>	:	:		<i>250 to 499</i>	4,104.3	52,511.0		<i>250 to 499</i>	2,093.0	27,193.3
	<i>500 to 999</i>	:	:		<i>500 to 999</i>	3,256.5	40,395.5		<i>500 to 999</i>	2,068.5	27,722.1
	<i>1,000 and more</i>	:	:		<i>1,000 and more</i>	3,725.1	46,161.4		<i>1,000 and more</i>	2,287.5	31,338.9

Country	Company size (no of employees)	Gross monthly earnings	Gross yearly earnings	Country	Company size (no of employees)	Gross monthly earnings	Gross yearly earnings	Country	Company size (no of employees)	Gross monthly earnings	Gross yearly earnings
LT	<i>Up to 10</i>	449.9	5,361.4	MT	<i>Up to 10</i>	1,245.4	15,745.4	SK	<i>Up to 10</i>	610.4	7,800.5
	<i>10 to 49</i>	338.3	4,009.3		<i>10 to 49</i>	1,235.8	15,468.4		<i>10 to 49</i>	560.1	6,864.8
	<i>50 to 249</i>	402.4	4,860.1		<i>50 to 249</i>	1,320.9	16,965.4		<i>50 to 249</i>	569.5	7,289.8
	<i>250 to 499</i>	610.3	6,923.0		<i>250 to 499</i>	:	:		<i>250 to 499</i>	666.2	8,569.8
	<i>500 to 999</i>	519.8	6,330.0		<i>500 to 999</i>	:	:		<i>500 to 999</i>	602.6	8,055.7
	<i>1,000 and more</i>	890.3	10,334.9		<i>1,000 and more</i>	:	:		<i>1,000 and more</i>	792.6	10,137.3
LU	<i>Up to 10</i>	2,960.4	35,862.8	PL	<i>Up to 10</i>	625.4	7,734.3	UK	<i>Up to 10</i>	2,490.8	28,833.1
	<i>10 to 49</i>	2,771.6	33,636.7		<i>10 to 49</i>	473.3	5,846.5		<i>10 to 49</i>	2,347.8	26,347.7
	<i>50 to 249</i>	2,961.9	35,094.3		<i>50 to 249</i>	601.5	7,503.0		<i>50 to 249</i>	2,435.4	27,945.4
	<i>250 to 499</i>	3,336.6	40,726.7		<i>250 to 499</i>	738.0	9,102.1		<i>250 to 499</i>	2,417.4	28,130.5
	<i>500 to 999</i>	:	:		<i>500 to 999</i>	793.2	9,653.1		<i>500 to 999</i>	2,348.5	27,177.3
	<i>1,000 and more</i>	:	:		<i>1,000 and more</i>	948.2	11,244.3		<i>1,000 and more</i>	2,576.6	30,100.4
LV	<i>Up to 10</i>	574.3	7,542.9	PT	<i>Up to 10</i>	902.9	12,779.8				
	<i>10 to 49</i>	380.1	4,586.2		<i>10 to 49</i>	847.9	11,492.8				
	<i>50 to 249</i>	510.7	6,642.9		<i>50 to 249</i>	915.3	12,908.4				
	<i>250 to 499</i>	725.0	9,508.8		<i>250 to 499</i>	950.3	13,939.6				
	<i>500 to 999</i>	709.4	8,660.3		<i>500 to 999</i>	959.3	14,510.7				
	<i>1,000 and more</i>	854.6	11,151.2		<i>1,000 and more</i>	1,034.8	16,347.3				

Source: elaboration on Eurostat Structure of Earnings Survey

2.2.3. Shift work, evening and night work

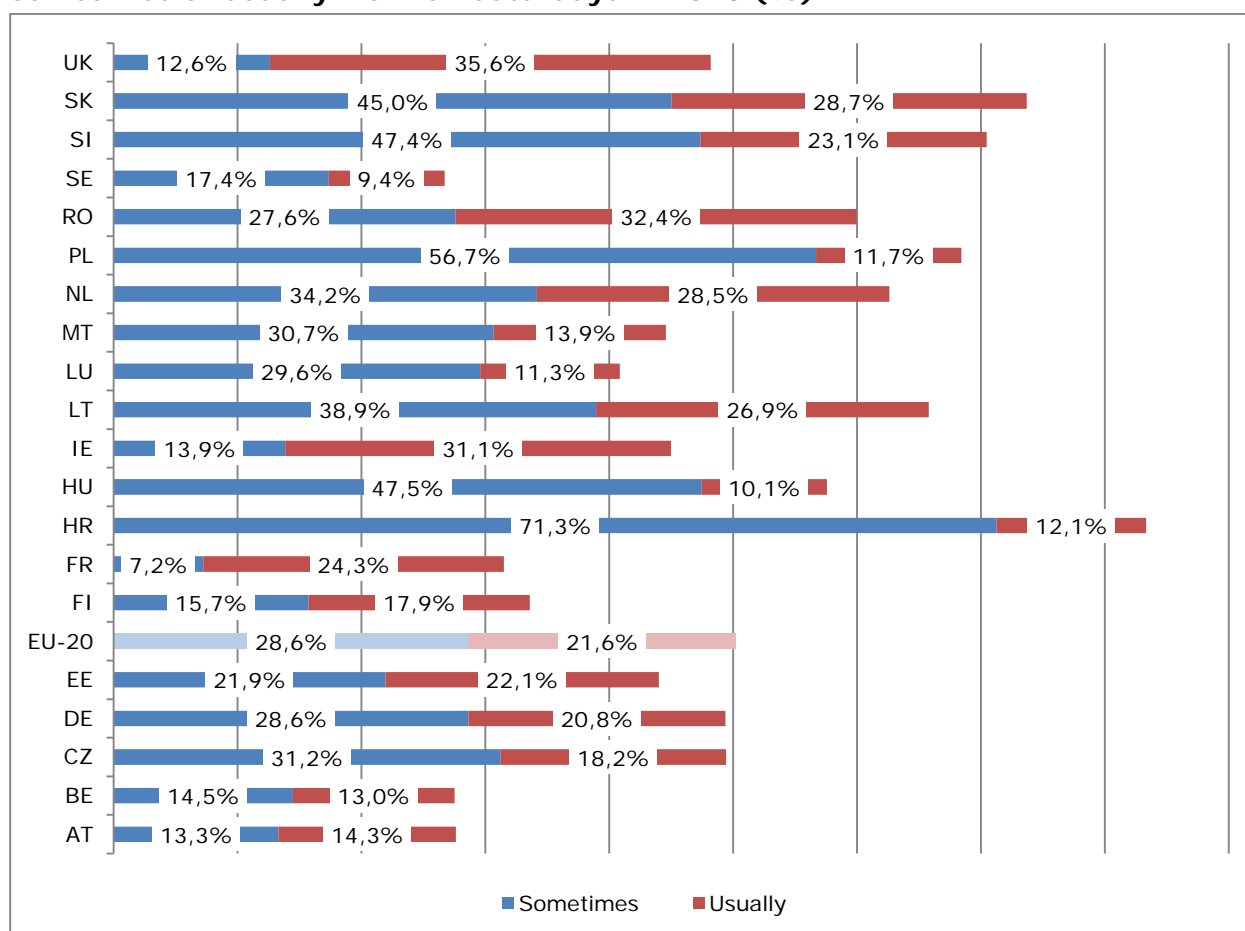
Among heavy truck and lorry drivers, **shift work across the 20 member states is not very common**. Only 13.6 % of truck and lorry drivers state that they work shift patterns. However, there is large disparity across the member states regarding this issue in Sweden (28.9 %), Finland (25.2 %) and Slovenia (25.1 %) where more than a quarter of all drivers work on a shift pattern, contrasted by only 2.9 % in Belgium and 2.5 % in France.

Night working has some prevalence across the 20 member states, with **about one third (37.1 %) of heavy truck and lorry drivers** stating they at least sometimes worked nights. The differences between whether this constitutes an occasional or a general working pattern across the member states were substantial. In the Netherlands more than half (56.5 %) of drivers are at least sometimes working night shifts and of those 40 % report this as their usual work pattern. This is contrasted by Poland, where 48.7 % of drivers sometimes work nights, but of those 40.9 % report this as an occasional occurrence. Other countries where more drivers work nights on a general basis included Slovakia (29 %), Romania (13.3 %), Finland (25 %), Germany (21.7 %) and Austria (13.2 %). Croatia again is an exception with no drivers reporting they habitually work nights, but a comparatively high share 42.3 % who report they are occasionally required to work nights.

2.2.4. Saturday and Sunday work

Weekend work is a common feature of heavy truck and lorry drivers. Roughly 50 % of drivers report they at least sometimes work on Saturdays across the 20 EU countries. Of those on average 28.6 % indicate this happens sometimes and 21.6 % report it is their usual working pattern. In Croatia, more than 83 % of drivers report they work Saturdays, but only 12.1 % of those say this was a general occurrence. Poland and Hungary show similar patterns, where of more than 68 % of drivers who work on Saturdays only 11.7 % do so on a usual basis, and in Hungary of 57.6 % of Saturday workers only 10 % do so habitually. The **highest incidence** of Saturday working as a general working pattern occurs in the **UK (35.6 %), Romania (32.4 %) and Ireland (31.1 %)**. See figure 2 on the next page.

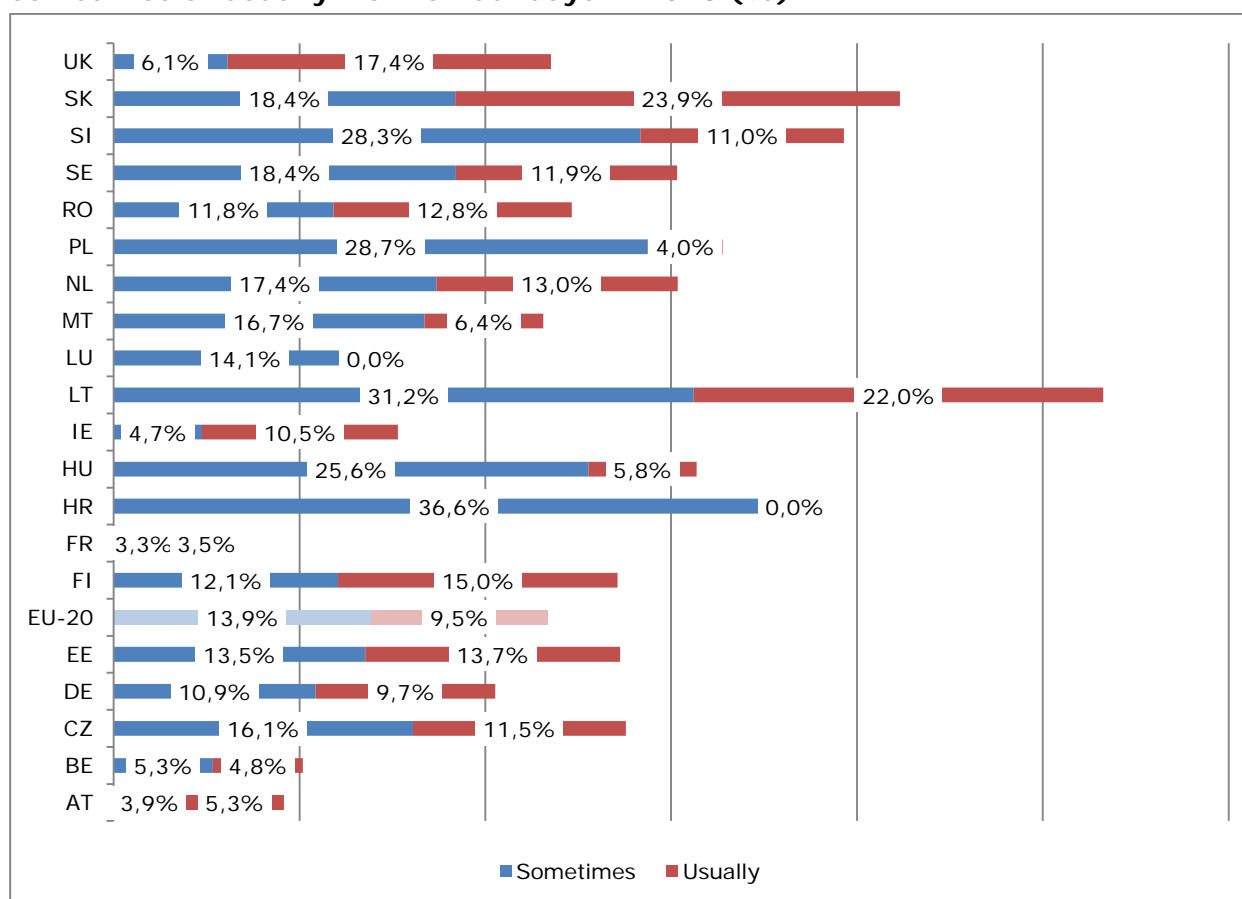
Figure 2: Heavy truck or lorry drivers in 20 EU member states stating that they sometimes or usually work on Saturdays in 2013 (%)



Source: Elaboration on Eurostat Labour Force Survey data. ISCO-08 833.2

Among heavy truck and lorry drivers, **Sunday working is less common**, with on average just under a quarter of them reporting that they worked on Sundays at least sometimes across the 20 EU countries. In contrast to Saturday working, where it could be argued that Saturday is now treated much like a regular weekday, Sunday working is **prevalent in a different set of member states**. In Lithuania, more than 50 % of drivers report they at least sometimes work on Sundays, however, only 22 % of those reported this is their general working pattern. In Slovakia, the incidence of habitual Sunday work is somewhat higher with 23 % saying this is their usual work pattern out of 43.3 % who reported Sunday working. Conversely, all drivers in Croatia who report Sunday working (36.6 %) indicate they are only required to do so occasionally. France, Belgium and Austria have extremely low occurrences of workers who report that they at least sometimes or usually have to work on Sundays with a combined share of 10 % or less (Figure 3).

Figure 3: Heavy truck or lorry drivers in 20 EU member states stating that they sometimes or usually work on Sundays in 2013 (%)



Source: Elaboration on Eurostat Labour Force Survey data. ISCO-08 833.2

2.2.5. Working hours

Long working hours and irregular working patterns are among the most crucial issues affecting workers in the international road haulage sector. Working and driving hours in the road transport profession are regulated by the social legislation in the road transport field, governing driving times, breaks and rest periods. However, significant differences in the enforcement of EU legislation exist between Member States, which implies that drivers from the EU-12 and EU-15 who are active in international traffic are likely to be differently affected by issues of driving and rest times. The existing evidence supports this (Hilal 2008; Eurofound's 5th European Working Conditions Survey (Eurofound, 2014); Tassinari *et al.*, 2014), pointing to poor work-life balance, an above-average level of long, atypical and irregular working hours when compared to other sectors, and endemic working above legal limits in certain areas of the sector. Pressures to reduce costs and keep up with competition arising from liberalisation of the internal market provide a strong incentive for companies to breach social legislation on working time to maintain competitiveness. Long working hours are connected with the incidence of fatigue, which has a demonstrable effect on the health and safety of drivers and other road users. The ETF representative interviewed for this research noted that loading and unloading of vehicles is often not classified as working time in Central and Eastern Europe, which is not legal.

2.3. Health and safety issues: physical, ergonomic and psychosocial risks

Due to the nature of the work they carry out, drivers in road transport are faced with a series of specific occupational health and safety hazards – physical, ergonomic and psychosocial. There are occupational hazards related to the type of material transported (which can result in exposure to specific chemical or biological hazards) as well as to prolonged exposure to diesel, which can increase the risk of respiratory diseases. Physical risks are related to prolonged sitting in a static posture, combined with whole-body vibration, whilst loading and unloading activities are associated with specific ergonomic risks (such as musculo-skeletal symptoms associated with performing physically demanding loading and unloading tasks).

However, the sector, both nationally and internationally, also struggles with the popular perception that it is more dangerous than it actually is:

“In terms of health and safety, the perception is that it's a dangerous profession, but the statistics don't bear this out. In terms of the number of deaths, the figures for this sector are lower than the average of other sectors.”

Brian Bayliss, chair of the high-level group on road haulage (interviewed on 11.02.2015)

Drivers' fatigue is found to be associated with various adverse health effects such as cardiovascular disease, retirement on grounds of disability, subjective fatigue and chronic sleeping problems. There have also been reports of drivers engaging in substance abuse to help them stay awake and maintain work schedules, which illustrate the connexion between this area of drivers' health and safety and the dominant forms of work organisation present in the sector.

However, it is the area of psychosocial risks which presents some of the most severe and often unrecognised issues in the area of working conditions. In particular, the diffusion of just-in-time delivery methods in the sector has led to an intensification of job demands and driving schedules that can be unrealistic, which leads to significant increases in work intensity for drivers. Drivers have also reportedly experienced a loss of autonomy, which, coupled with intensified work demands, poses the risk of unhealthy stress levels and consequently exposes workers to a range of stress-related illnesses such as cardiovascular disease and mental health problems (Eurofound, 2014).

These health and safety factors are also very relevant for drivers working in the international road transport sector and in most cases are exacerbated by the long distances involved. This applies particularly to factors such as fatigue, prolonged sitting in one posture, work intensification and stress. There are also issues related to the availability and quality of rest facilities for drivers crossing borders (EU-OSHA, 2011).

2.4. Job satisfaction - intention to change jobs

Substantial minorities of drivers are looking to change jobs. The data for drivers is similar to that for the sector as a whole, with similar wide variations between Member States. The desire to leave their job among drivers is particularly high in the UK (8.3 %), Sweden (7.2 %) and Finland (6.8 %). The majority of truck and lorry drivers who are looking for a new job were looking to improve their working conditions. In Austria, Belgium, the Czech Republic, Estonia, Croatia, Slovenia and Slovakia all of those looking for a new job said it was **due to working conditions**. In Poland 84.4 % still report this as their main reason for changing jobs. In some countries (Finland and Sweden), the improvement of working conditions is combined with a fear of losing their current job or being laid off (Eurostat Labour Force Survey). These two issues highlight that workers see their jobs as precarious and want to substantially improve the quality and security of their employment. Interestingly, in the Netherlands the vast majority of workers (71.1 %) report that they

view their driving job as a transitional stage which fills a gap before moving on to something else. This is an indication that workers are sometimes willing to engage in more insecure and stressful work for a certain amount of time as a means to earn a wage, but this may not ultimately be their first choice of profession.

Evidence from Germany outlined that work stress and poor working conditions derived from time pressures, long driving hours, unsocial working times (i.e. weekends and nights) and waiting times (ZF, 2012).

2.5. Internationalisation of the sector

The European road haulage sector has become more international both in terms of the nature of flows² and the role played by non-resident hauliers. According to the European Commission, **the share of international transport operations increased from 30 % of all road freight transport activities in 2004 to 33 % in 2012** (COM (2014) 222). The Commission interprets this as a sign of the increasing integration of the single market. Notably, cross-trade, i.e. the carriage of goods between two countries by a vehicle registered in neither of the two, has increased rapidly, growing by 80 % between 2004 and 2012 (COM (2014) 222), with further growth by 15 % reported in 2013 (CNR, 2014a). It now accounts for a fifth of international haulage (COM (2014) 222).

Hauliers established in the new Member States account for a disproportionately large share of the relatively moderate growth in European haulage activities in recent years. According to some sources, Poland is projected to displace Germany as the biggest carrier in international road haulage in Europe in 2017 (CNR, 2014a). **The new Member States also account for a disproportionately large share of the growth in international transport.** International road haulage in Europe (measured in tonne.kms) grew by 6.1 % between 2012 and 2013; the international activities of EU-15 hauliers increased by 2.2 % over this period, while those of hauliers from the new Member States (excluding Malta) grew by 9.7 % (CNR, 2014a). Poland is the leader in international haulage activities in Europe, with Polish hauliers carrying 24 % of total flows. Among the top ten Member States in terms of international flows carried, five were from the EU-12 in 2013 (Poland, the Czech Republic, Hungary, Slovakia, Lithuania, and Romania) (CNR, 2014a).

Flows between EU-12 Member States are almost exclusively carried by hauliers registered in the EU-12; they also carry more than 90 % of flows between the EU-12 and EU-15 (AECOM, 2014). Moreover, they dominate cross-trade; in 2013, EU-12 vehicles were responsible for more than three quarters of tonne.kms in this sector of international haulage (CNR, 2014a). The Member States conducting the highest amount of cross-trade in 2013 were Poland, Lithuania, Slovakia, Hungary, and the Czech Republic (CNR, 2014a), with Poland, the market leader, alone responsible for 26.7 % of flows. Finally, half of all cabotage in 2013 was carried out by operators from the EU-12 (CNR, 2014a), up from a third in 2010 (Bayliss, 2012). As of 2013, **27 % of all cabotage in the EU was reportedly performed by Polish undertakings alone**, which have displaced Germany, the Netherlands, and Luxembourg as the dominant actors in the cabotage market (CNR, 2014a). This is reportedly due to labour cost advantages of 50-60 % relative to German, French and Italian undertakings and the country's proximity to large markets such as Germany (Sitran and Pastori, 2013).³ Observers agree that the relative strength of hauliers

² Flows are measured in tonne.kms. Aggregating tonne.kms aggregates very heterogeneous units, which must be taken into account in interpreting such numbers (Bayliss, 2012).

³ However, according to the High Level Group, outflagging may play a central role in this distribution, with cabotage activities being concentrated in France and Germany, which are known to have large numbers of large companies that outflag vehicles to EU-12 counties (Bayliss, 2012).

registered in the EU-12 in international haulage is due to the favourable cost differentials enjoyed by EU-12 hauliers (Sitran and Pastori, 2013; AECOM, 2014; van Elburg *et al.*, 2007).

Vehicles registered in the EU-15, however, still account for over four-fifths of the total tonne.kms generated by movements between EU-15 Member States (Bayliss, 2012). EU-15 hauliers appear to have increasingly focused on domestic activities: while close to 80 % of the transport activities of EU-15 hauliers are domestic, this is true of only 34 % of haulage flows carried by hauliers operating from the EU-12⁴ (COM (2014) 222). Overall, two thirds of flows across the EU-28 remain national traffic carried by domestic operators (Bayliss, 2012).

The increasing internationalisation of the sector has significant implications for the employment conditions of drivers, who regularly cross national borders in their work. We explore this in the next section.

⁴ It should be noted that the data identifying the carriers responsible for international flows is based on the country where vehicles are registered (Bayliss, 2012). Given the complexities of subcontracting relationships and practices like outflagging, these need not correspond to the country of stable establishment and registration of haulage companies or drivers involved (cf. section 4.2.2).

3. IMPACT OF MARKET INTEGRATION ON MARKET STRUCTURE AND EMPLOYMENT CONDITIONS

KEY FINDINGS

There has been a **significant structural change** in the sector over the past two decades due to market integration and internationalisation. This has led to increased competition. In particular, cabotage grew by 50 % between 2004 and 2012. There are **complexities in the movement of labour costs**. The European Commission argues that wages, absolute labour costs and labour standards are converging between the EU-12 and EU-15. However, other sources and stakeholders, such as the trade union, the European Transport Workers' Federation (ETF), claim that persistent divergences remain. Labour costs have fallen most in Greece, Portugal and Cyprus since 2008, and have risen most in Bulgaria and Romania (albeit from a very low base).

Overall, it is difficult to form a view on the precise movement of wages for drivers. The divergence in reported wages in part reflects different methods of remuneration: **variable elements appear to be a key component of total remuneration**, particularly in the EU-12 Member States and for EU-12 nationals operating in and from EU-15 countries.

There are indications that **employment conditions have deteriorated**, particularly in the areas of income, working hours, working environment and the accessibility and security of parking areas. However, **robust evidence is limited**.

Complex subcontracting chains, stretching across countries, have emerged as a result of increased competition and internationalisation. Subcontracting allows larger companies to extend their reach, respond flexibly to fluctuating demand, and reduce costs by passing on less profitable work to smaller operators. It is also a way in which employers can **take advantage of lower wages** in other countries as a means of reducing labour costs and increasing competitiveness. There are no precise figures, but this practice is thought to be extensive. Practices such as **outflagging, the creation of letterbox companies and bogus self-employment** have **increased** over the past decade, according to a range of reports. In this way, the road haulage sector has become something of a **laboratory for innovative employment practices**. However, many of these practices could be defined as **forms of social dumping** as they take advantage of uneven labour and wage costs across different parts of the EU and in some cases seek to circumvent social legislation.

The **increased distances travelled by drivers working internationally** have raised the number of nights spent on the road, and the likelihood of working off-schedule hours and night shifts. Long hours, insufficient rest, time spent away from appropriate facilities, and high strain coupled with low autonomy can **affect the health and safety of drivers working internationally**.

There is a view that market integration in the road haulage sector has resulted in negative pressure on employment conditions, particularly in the areas of **working hours and rest periods, pay and wages, forms of contract, and health and safety at work** (such as exposure to physical and psychosocial risks). A 2013 report for the European Parliament (Sitran and Pastori, 2013) states that:

“The process of liberalisation of the sector has not ... been accompanied by a parallel process of social harmonisation in the employment and working conditions; on the contrary, these are experiencing a general and sharp downward trend for both resident and non-resident professional drivers”.

Sitran and Pastori’s study asked 24 drivers what they felt had deteriorated most in the past five years: 28 % cited income levels; 23 % cited working hours; 21 % cited working environment; 18 % cited accessibility and security of parking areas; 10 % cited skilled work; and 5 % each cited job demands or other factors.

It should be noted, however, that this review **found relatively little robust evidence on developments in employment conditions**, particularly at the level of individual Member States. Existing evidence tends to be from small-scale surveys and anecdotal reports from stakeholders, and is hard to verify and often politicised. Moreover, there is a high degree of **disagreement in the literature regarding the causal relationships** between and relative weight of liberalisation, EU enlargement, the economic downturn and changes in the organisation of haulage activities in accounting for the development of employment conditions in the sector.

Changes in the road freight sector since 2002 have to be understood in the context of the various EU enlargement processes (2004, 2007, 2013), which gave hauliers access to the European road haulage market.⁵

Regulatory change at the European level during this period has been marked, on the one hand, by attempts to harmonise the regulatory framework governing employment conditions in the international haulage sector⁶, and on the other, by an attempted simplification of rules governing market access. Relevant Directives and Regulations include:

- **Directive 2002/15/EC** introduces the concept of **limitations on working time in road transport** and requires Member States to adopt measures to limit the maximum weekly working time of persons performing mobile road transport activities.
- **Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport** and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, which provides a common set of EU rules for maximum daily and fortnightly driving times, as well as daily and weekly minimum rest periods for all drivers of road haulage and passenger transport vehicles, subject to specified exceptions and national derogations. The aim of this Regulation is to avoid the

⁵ Prior to accession, international haulage was restricted by means of quota systems governed through bilateral agreements (van Elburg *et al.*, 2007). Transition agreements reciprocally restricted access to domestic markets between old and new Member states after accession for an initial period of two/three years, which could be extended by a further two years. As a result, the Member States that joined in 2004 obtained full market access to most EU-15 Member States’ national markets in 2009, and Bulgaria and Rumania obtained full access in 2012.

⁶ Note that the European Commission has stressed that the standardisation of cost structures, and by implication wage levels, is “neither an objective of EU policies nor a competency of the EU” (COM (2014) 222).

distortion of competition, improve road safety and ensure drivers' good working conditions within the European Union.

- **Directive 2006/22/EC** of the European Parliament and of the Council of 15 March 2006 **on minimum conditions for the implementation** of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/ECC.
- **Regulation (EC) No 1071/2009** of the European Parliament and the Council establishing common rules concerning the conditions to be complied with to pursue the **occupation of the road transport operator** and repealing Council Directive 96/26/EC, which regulates admission to the occupation of road haulage operator and road passenger transport operator in the European Union. According to this Regulation, operators must fulfil **four criteria** to access the profession: they must have an **effective and stable establishment in a EU Member State**; they must be of **good repute**; they must be of **good financial standing**, and they must have **professional competence**...
- **Regulation (EC) No 1072/2009** of the European Parliament and of the Council **on common rules for access to the international road haulage market**, which regulates **market access for cabotage**. It was intended to modernise, simplify and streamline rules in the road haulage transport sector in order to harmonise rules on cabotage and minimise the administrative burden to the industry.

3.1. Internationalisation and competitive labour costs

Observers agree that over the past two decades, the European haulage market has undergone structural changes and intensified competition (Sitran and Pastori, 2013; AECOM, 2014; ETF, 2009c) alongside an increasing internationalisation (Sitran and Pastori, 2013; Bayliss, 2012; COM (2014) 222).

3.1.1. The role of cabotage

Cabotage, the national carriage of goods for hire or reward carried out by non-resident hauliers in a host Member State, **grew by 50 % between 2004 and 2012**, and by a further 20 % in 2013 alone (CNR, 2014a). According to the European Commission, this rise is largely due to the lifting of restrictions on the market access of EU-12 drivers (COM (2014) 222). Despite this growth, cabotage **still only accounts for a mere 1 % of total freight activities in the EU-28**, or 2 % of national road haulage activities for hire or reward; its share of the market is 5 % (Bayliss, 2012). However, there have been suggestions that Eurostat statistics on cabotage operations fail to reflect the real extent of the practice in Europe. Sternberg *et al.* (2014) present evidence from data collected through an app which truck drivers can use to report their location and observations of vehicles from other Member States, which suggests that Eurostat data underestimate the actual magnitude of cabotage in Denmark. While Eurostat data indicates that the share of cabotage in the Danish transport market is 2.7 %, data from the study suggest it accounts for at least 4.6 % of the total domestic market, and could be as high as 8.5 % of the feasible cabotage market.⁷ The practice is concentrated in the EU-15, with 86 % of total cabotage taking place in Germany, France, Italy, the United Kingdom, Belgium and Sweden (AECOM, 2014).

⁷ It should be noted that this data is subject to a lot of potential errors in calculation, and that volunteer observers have incentives for over-reporting the presence of foreign vehicles.

Interviewed for this research, Brian Bayliss, chair of the high-level group on road haulage, noted that the present system of cabotage is not working well at all, as there is **no way of controlling the number of days of cabotage**. He emphasised that it is very difficult to control, including via the Posting of Workers Directive, due to the fact that there are so many intermediary bodies involved, meaning that contractual issues are difficult.

Other interviewees for this research agree that cabotage is a major issue for the sector. The IRU representative (employer side) noted, however, that there are few cabotage infractions and that this issue is often confused with posting problems. Nevertheless, there are some areas where cabotage is more problematic: for example in Scandinavia there are circular movements with cabotage activities; and port areas and combined transport (ship-road) give rise to the greatest number of cabotage issues.

Box 3: Access to the international road haulage market

Regulation (EC) No 1072/2009, which regulates market access for cabotage, was intended to modernise, simplify and streamline rules in the road haulage transport sector in order to harmonise rules on cabotage and minimise the administrative burden to the industry. The Regulation states that any haulier may perform up to three cabotage operations within a seven-day period starting the day after the unloading of the international transport. A haulier may carry out one, two or all three cabotage operations in different Member States and not necessarily the Member State in which the international transport was delivered. In this case only one cabotage operation is allowed in a given Member State to be carried out within three days of entering that Member State without cargo.⁸ This is presented as a “transitional cabotage regime” that is to remain in operation while the “harmonisation of the road haulage market has not yet been completed”.⁹ Bulgarian and Romanian hauliers were not allowed to perform cabotage in most countries until 1 January 2012.

Representatives of haulage workers in the EU-15 have singled out the new rules governing cabotage, and the lifting of the five-year restrictions on cabotage operations by hauliers from the new Member States (2009, 2012) as a strong factor in increasing competitive pressure in domestic markets (ETF, 2011; Frisoni *et al.*, 2013). The ETF argues that in permitting three cabotage operations within the seven-day period after an international carriage, the European Commission has effectively liberalised cabotage, allowing it to become “a regular and permanent activity” of operators, contrary to Regulation (EC) 1072/2009, Recital 15. According to a report compiled for the European Parliament, EU-12 companies have increasingly used cabotage to benefit from their competitive advantage in relation to resident drivers in EU-15 markets (Frisoni *et al.*, 2013).

The **impact of cabotage on national haulage markets is contested**. Caboteurs are reportedly **“able to offer lower rates than domestic hauliers** since they are either improving their margin on an already profitable international journey or taking advantage of a lower cost base through lower fuel costs or taxes in their ‘home’ state” (AECOM, 2014). McKinnon (2007) has argued that despite its low market share, the presence of caboteurs

⁸ In a Common Position issued in January 2009, the Commission adapted some of the European Parliament’s proposals for cabotage regulation and rejected others. Amongst others, it rejected the proposal to liberalise cabotage completely from 2014, opting instead to incorporate a clause requiring the Commission to produce a report outlining “whether the progress in the harmonisation of certain rules (for instance, enforcement and road user charges) allows further opening of the domestic transport markets, including cabotage” by the end of 2013. It also included provisions allowing Member States to restrict cabotage in case of major disruptions to domestic markets.

⁹ Regulation (EC) No 1072/2009 of the European Parliament and of the Council on common rules for access to the international road haulage market, Recital 5.

can have a disproportionate effect on haulage rates. In a UK survey (FTA, 2005), nearly 50 % of companies reported losing business to foreign operators; 23 % of respondents cited foreign competition as a key reason behind the 49 % fall in operators' profit margins recorded between 2000 and 2005 (FTA, 2005). France in particular is identified in the literature as having experienced an erosion of the international market share of resident hauliers, as well as pressure on its domestic market arising from cabotage, as it is subject to competition both from Germany, the Netherlands, and Spain and from the new Member States (Guihery, 2008). In Italy, there are reports from local stakeholders of cabotage having a particularly strong regional impact on local enterprises in the border region since Slovenia obtained access to the European market (Sitran and Pastori, 2013).

German evidence (BAG, 2010, 2012) from expert interviews and market analyses in the aftermath of lifting of cabotage restrictions on the new Member States, by contrast, found **no notable negative effects or added competitive pressure** on the domestic market. The German Federal Office for Freight Transport argues that the (expected) rise in cabotage using vehicles registered in the new Member States is in all likelihood a reflection of outflagging activities by large international or Western European undertakings, which establish branches in the EU-12 (BAG, 2012). Excessive competition from EU-12 hauliers is reportedly prevented by a number of barriers to entry into German markets, including a lack of sufficient liability insurance, low punctuality and reliability, language barrier, and the competitive pressure between EU-12 undertakings (BAG, 2012). German operators are reportedly able to justify higher prices due to perceived quality and reliability (Sitran and Pastori, 2013). Other observers point to efficiency gains in German companies, which have reportedly reduced price differentials resulting from other Member States' lower labour costs (Sitran and Pastori, 2013; Guihery, 2008).

3.1.2. The role of wages

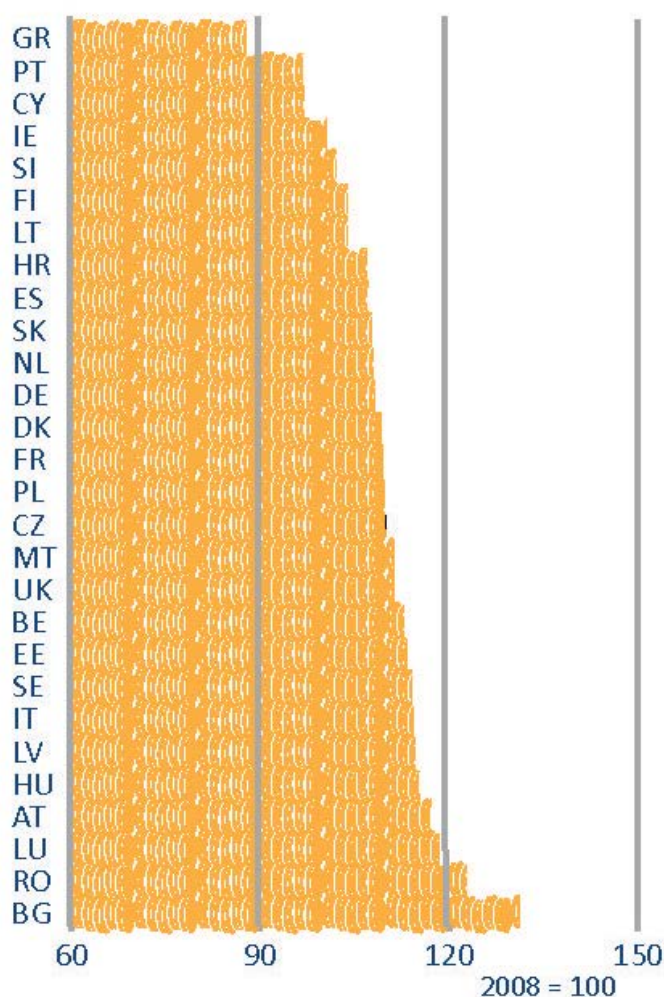
There is agreement in the literature that the European road haulage market is characterised by heightened competitive pressure and low operating margins, and that the ability of undertakings to compete in this market depends on their ability to minimise operating costs (Sitran and Pastori, 2013; AECOM, 2014)¹⁰. However, observers disagree both about the magnitude of differences in operating costs between Member States in the period after liberalisation, and about the impact of differences on markets and employment conditions (compare e.g. COM (2014) 222 to Sitran and Pastori, 2013).

The European Commission report on the state of the Union road transport sector argues that overall, **wages, absolute labour costs, and labour standards** as well as many elements of non-labour costs and the overall cost structure (relative contribution to total costs of driver and fuel costs) **are converging between the EU-12 and EU-15** (COM (2014) 222; cf. also van Elburg *et al.*, 2007). **Other sources**, by contrast, **indicate persistent differences in operating costs between Eastern and Western European Member States**: stakeholder consultations (AECOM, 2014) suggest that hauliers in the EU-15 incur operating costs of at least €74 per hour, while hauliers based in EU-12 Member States incur average hourly costs of €52. According to evidence presented by Sternberg *et al.* (2014), the difference in prices between hauliers from the EU-15 and EU-12 Member States is on average between 20 % and 40 %. The Burns Inquiry (FTA, 2005) similarly found that vehicles operating out of the EU-12 Member States enjoy a cost advantage of up to 40 % relative to UK-based operators.

¹⁰ Operating costs in the road haulage sector encompass the costs of fuel, driver wages and training, taxation, and other costs like maintenance and financing (AECOM, 2014).

The complexities of labour cost movements are illustrated in Figure 4 below, which shows movements in labour costs in the transport sector in EU Member States between 2008 and 2013. We can see that labour costs have fallen most in Greece, Portugal and Cyprus, and have risen most in Bulgaria and Romania (albeit from a very low base), but also in Luxembourg and Austria.

Figure 4: Transport labour costs -change in wages and salaries, (index)



Source: The cost of non-Europe in transport. European Parliamentary Research Service Briefing, January 2015.

Driver wage costs appear to be the most significant source of disparities in competitive conditions between Member States (Bayliss, 2012; Van Elburg *et al.*, 2007). However, there is disagreement in the literature regarding both the absolute wage levels in Member States and the degree of convergence between EU-12 and EU-15 (Frisoni *et al.*, 2013). Consistent data on wage levels across the EU-28 is difficult to obtain (AECOM, 2014). This is in part due to the variable elements of remuneration in the sector, which besides wages may include overtime, bonuses (e.g. for timely deliveries or distance driven), daily allowances, as well as social security benefits. The European Transport Federation cites European Parliament figures (2009) suggesting that in 2006, average driver pay ranged from €29 000 in Belgium to €1 800 in Bulgaria (ETF, 2013a). European Commission data indicate that before 2004, wages in the EU-15 were five times those of the accession countries. Between 2004 and 2008, wage levels in the EU-12 increased relative to those in the EU-15 (Van Elburg *et al.*, 2007). Currently, however, wage levels are reported to be growing at similar rates in the EU-12 and EU-15 (COM (2014) 222). According to the Commission report on the state of the Union road transport sector, wage

differences between Member States in the sector are now comparable to those throughout the economy (COM (2014) 222). It therefore claims that “risks related to social security competition are limited, due to a levelling of productivity-adjusted labour costs and the harmonisation of a number of labour standards” (ibid.). However, the same Commission report (COM (2014) 222) concedes that the effects of even reduced differences may be larger in road haulage, as the mobile nature of the work allows for services to easily be provided by individuals that operate under the wage conditions of other Member States.

The sometimes extreme divergence in reported wages in part reflects **different methods of remuneration: Variable elements appear to be a key component** of total remuneration **particularly in the EU-12 Member States** (AECOM, 2014; CNR, 2013a) and for EU-12 nationals operating in and from EU-15 countries (Sitran and Pastori, 2013). Interviews conducted with drivers from the EU-12 by the French Comité National Routier (CNR, 2013a) indicate that variable elements of remuneration, which are generally not subject to income tax or social contributions, account for more than half of drivers’ net monthly incomes. Besides a basic salary that is often close to the national minimum wage, drivers receive daily allowances or other, often performance-related payments, which are often unrelated to their actual driving activities¹¹ (CNR, 2013a). This reportedly allows employers to minimise social insurance contributions (Sitran and Pastori, 2012; CNR, 2013a).

Stakeholders frequently report that such differences give operators established in low-cost Member States a competitive advantage in the liberalised road haulage market.

3.1.3. The role of subcontracting

According to stakeholder reports, increased competitive pressure in the international haulage market, as a result of liberalisation, is giving rise to new business models (Sitran and Pastori, 2013), centred on subcontracting. Subcontracting allows larger companies to extend their reach, respond flexibly to fluctuating demand, and reduce costs by passing on less profitable work to smaller operators (AECOM, 2014). There is agreement among observers that **extensive subcontracting in a fragmented market further increases competitive pressures** and negatively affects the market position of smaller operators (Sitran and Pastori, 2013; AECOM, 2014; COM (2014) 222). Small hauliers are effectively price takers (AECOM, 2014). Stakeholders report that in long subcontracting chains, where a cut of profits is taken by each intermediary, the hauliers who actually carry out the transport receive a reduced share of the price of an initial contract of carriage (Sitran and Pastori, 2013) and operate with very low margins. Small hauliers therefore reportedly display poor economic performance and stability (COM (2014) 222; AECOM, 2014; Sitran and Pastori, 2013). For example, according to Eurofound, transport workers in micro-workplaces were the most affected by recent salary reductions in the sector (Tassinari *et al.*, 2014). Further, a third of French companies are reported to be financially vulnerable (Banque de France, 2012)¹².

According to stakeholders, notably worker-side organisations, this situation has produced a “climate of harsh and often uncontrolled competition that relies more on continuously

¹¹ Drivers reported regularly submitting a signed, empty assignment sheet at the beginning of the month, which is then filled in by their employers to ensure that recorded travel allowances amount to the overall salary negotiated orally between drivers and employers (CNR, 2013a).

¹² Sternberg *et al.* (2014) argue that the evidence, supported by parallels with the North American trucking deregulation of the 1980s, suggests that shippers are the main beneficiaries and drivers “the big losers” from deregulation. However, once evidence of the competitive pressures on small operators low down the supply chain is taken into account, it appears that deregulation may in fact mainly benefit large operators and freight forwarders and put pressure on smaller operators, self-employer owner-drivers, and employed drivers.

decreasing prices instead of a greater degree of organisational efficiency and quality of the services offered" (Sitran and Pastori, 2013). Stakeholders present this market situation as a central factor driving declining working conditions and unfair competitive practices, particularly as small operators are less subject to enforcement checks and controls (ETF, 2009b; Sitran and Pastori, 2013; Hilal, 2008).

3.2. Abuse of internationalisation: social dumping

There are strong suggestions in the literature that the added competitive pressure within the international road haulage market, combined with the differentials in labour costs and employment conditions between EU-15 and EU-12, is creating **incentives for actors in the sector to engage in unfair competitive practices and social dumping** (Sitran and Pastori, 2013; AECOM, 2014; ETF, 2013a; Hilal, 2008; Thornquist, 2013).

Evidence on unfair competitive practices such as illegal competition and illegitimate employment schemes is by its nature difficult to obtain. Reports tend to rely on local case studies or anecdotal evidence from hauliers and industry organisations, which are difficult to verify. However, the international nature and complex contractual relationships underlying cabotage operations and subcontracting render it difficult for local enforcement authorities to determine the status of drivers and to ensure the application of the relevant Regulations, social and labour legislation. Notably, it appears to be difficult to determine a carrier's country of establishment and driver's main country of operation, and therefore to determine which rules are applicable in complex cases (cf. van Hoek and Houwerzijl, 2011).

3.2.1. Flagging out and "letterbox" companies

Multiple sources document a rise in the practice of EU-15 companies registering their vehicle fleets in Member States with lower operating costs – a practice known as "outflagging" – or establishing so-called "letterbox companies", subsidiaries where no administrative functions or commercial activities take place. The absence of harmonisation in tax levels and related duties makes this practice highly attractive for EU-15 companies. By **registering their vehicle fleets in low-cost countries**, companies can save on vehicle excise duty, corporation and dividend taxes, insurance and maintenance, as well as licencing costs (AECOM, 2014; Dieplinger *et al.*, 2010). Companies can also take advantage of differences in labour costs, welfare and tax law regulations in recruiting professional drivers on much lower pay and less advantageous conditions (ETF, 2012b; Hermann, 2003; Hilal, 2008), in order to then post them to EU-15 Member States (Sitran and Pastori, 2013).

According to Dieplinger *et al.* (2010), the **practice of flagging out vehicles** is not novel; however, it appears to have **increased considerably after the accessions of 2004** onwards (ibid; ETF 2013a). In a letter-writing campaign in October 2013, transport unions across the EU complained about an increase in companies "employing and 'trafficking' professional truck drivers through systems such as letterbox companies". A series of surveys of Austrian haulage companies suggested that in 2011, more than half of the vehicles operated by commercial Austrian hauliers with fleets larger than 20 vehicles were registered abroad. Companies reported that the practice of flagging out was essential for economic survival in long distance transport. Differences in labour costs were the most important driver of flagging out, closely followed by differences in vehicle tax (Dieplinger *et al.*, 2010; cf. also Kummer *et al.*, 2014). According to the European Transport Federation, "letterbox companies" can save 90-95 % on wages and more on social contributions (ETF, 2013a).

There have been reports that in the EU-15 Member States characterised by the most intense competition both domestically and with EU-12 operators – notably the Netherlands

and Germany –, the sector has come to resemble an **'insider-outsider model'**: with a **small number of large 'insider' operators employing unionised workers on regular employment contracts**; and a **large number of smaller - often-subcontracted - 'outsiders' required to offer high levels of flexibility/reactivity** in order to survive, and therefore unable to provide job security to workers (Guihery, 2008). In the German market, an **East/West divide**, reflected amongst other things in wage levels, has reportedly resulted in highly profitable West German operators outsourcing haulage operations to East German or East European subsidiaries with poorer employment protections (Guihery, 2008). Dutch union representatives describe companies as using **“creative constructions” to prevent their international drivers from being covered by Dutch social legislation** (van Hoek and Houwerzijl, 2011). Union representatives interviewed for a report submitted to the European Parliament (Sitran and Pastori, 2012) indicated that Dutch companies increasingly recruit Polish or Hungarian drivers via their foreign subsidiaries to transport dangerous goods. These companies reportedly do not fulfil the condition of being real and stable establishments under EU legislation, but are fictitious companies. Similarly, in Italy there have been reports of the logistics headquarters of international companies exclusively employing Eastern European drivers “under ‘letter-box company’ schemes” (Sitran and Pastori, 2013: 50). Such drivers operate vehicles registered in Poland or Bulgaria and conduct haulage activities in Italy (amounting to illegal cabotage) or throughout the EU-15, without ever entering the countries in which they are formally employed. According to trade union representatives, this results in unfair competition for companies that adhere to social rules. Some Italian companies furthermore reportedly employ drivers from the EU-12 without using foreign subsidiaries of their own as intermediaries, relying instead on temporary employment via work agencies. Italian unions have reported that some companies dismiss Romanian drivers formerly directly employed in Italy, and hence subject to Italian social rules, and reemploy them via Romanian agencies under contracts subject to Romanian law and standards (Sitran and Pastori, 2012).

As the Commission report on the state of the market argues, such reports are by their very nature difficult to verify and translate into accurate estimates of the extent of the practice (COM (2014) 222). However, **flagging out and employment schemes involving “letterbox” companies do appear to be a significant feature** of the European road haulage market. Such schemes often violate both Regulation (EC) 1071/2009, which requires that haulage undertakings have a “stable and effective establishment” in the Member State they claim to operate out of, and rules governing access to domestic haulage markets (Regulation (EC) 1072/2009). Moreover, there are uncertainties regarding the application of the Posting of Workers Directive (Directive 96/71/EC) to drivers operating under such schemes.

From the stakeholder interviews, the IRU representative stressed that both bogus-self-employment and the setting up of letter-box companies are strongly condemned by the IRU and that these practices are relatively rare and should not be seen as representative. The ETF representative noted that cooperation between Member States is the key to eliminating letterbox companies. For example, Denmark cooperates with Romania and Estonia in this regard.

3.2.2. Bogus self-employment

Although this practice represents a **relatively small number of drivers**, as most are employed on permanent contracts, **the proportion of drivers involved in dependent contracting and bogus self-employment is growing** in some countries in particular, largely in response to the competitive pressures of market integration. The label describes nominally self-employed drivers who, though not contractually bound to an employer,

nonetheless work regular hours for the same shipper over prolonged periods of time, and are hence financially dependent on that shipper (2008/TREN/065). This practice enables employers to circumvent collective agreements and labour laws (Thornquist, 2013). Purportedly self-employed drivers will cost the company no taxes, social contributions, or paid leave, as labour and social obligations are transferred from the company to the self-employed worker (Sitran and Pastori, 2013). Moreover, the relationship between a self-employed worker and a client is not protected by labour law in the same way as a regular employment relationship and is thus highly precarious. In international road haulage, self-employed workers are furthermore often not covered by collective agreements, as well as being exempt from certain aspects of social legislation (Sitran and Pastori, 2013). While falsely self-employed workers legally fall under the provisions of the Road Transport Working Time Directive (2002/15/EC), this has proved very difficult to enforce (2008/TREN/065). They are often exposed to potentially disadvantageous and dangerous working conditions in terms of prolonged working time, low pay and widespread employment insecurity. **Shifting drivers from employment to (bogus) self-employment therefore allows employers to gain a competitive advantage by reducing labour costs and increasing flexibility.**

Given its unclear legal status, this practice can be prone to high risk of social dumping and labour abuse. Drivers involved in this practice may in the long term suffer from reduced income security, employment benefits and social security. A 2008 impact assessment on the Working Time Directive suggests that 11 % of drivers in the European Union may be “false” self-employed drivers (2008/TREN/065, in AECOM, 2014). According to stakeholders consulted during a study commissioned by the European Parliament (Sitran and Pastori, 2013), EU-15 drivers have been **pressured to agree to bogus or dependent self-employment in order to retain their work** in recent years, as a result of the increased competitive pressure on their employers. According to the European Transport Federation, information provided by affiliated trade unions and company work councils indicates that many large companies within the EU-15 converted workers’ contracts to “false self-employment” between 2006 and 2012 (ETF, 2010).

Dependent subcontracting also appears to play a role in the increasingly complex and international subcontracting chains in the sector. Evidence from Sweden (Thornquist, 2013) shows a rise in bogus self-employment involving foreign drivers: Swedish forwarding agencies, which control the vast majority of contracts and engagements between customers and hauliers, are increasingly **subcontracting domestic transport activities to self-employed foreign drivers**, especially from Eastern European Member States, who are reported to receive wages that are less than 50 % of those of Swedish drivers (Thornquist, 2013). Social partner estimates suggest that as of 2012, there were around 1 000 bogus self-employed drivers formally engaged as subcontractors in Sweden, predominantly from Eastern European Member States (ibid.). Self-employed foreign drivers reportedly often stay only for short periods of time (six months or less), so that they can avoid having to pay tax and social security contributions in Sweden. Thornquist (2013) links this to a **rise in illegal cabotage traffic** since the early 2000s. According to Thornquist, this has resulted in downward pressure on prices and wages in the Swedish domestic market (ibid.). In 2015, at request of the Employment and Social Affairs Committee, two further studies will look at the issues of subcontracting as a practice to circumvent the labour and social rights of employees, and precarious employment contracts.

Box 4: Laboratory for innovative employment practices?

Given the highly competitive nature of the international road haulage sector and the effect that this can have on employment conditions, it could be argued that the sector is something of a laboratory for the emergence of innovative employment practices. The increasingly international nature of the sector, combined with cost competition, is leading some employers to cut wage costs by using cross-border subcontracted labour in order to benefit from wage differentials, as in other sectors where wages form a significant proportion of costs, such as construction or meat processing. In road haulage, this has led to the creation of highly complex subcontracting chains, alongside other practices that can circumvent social protection legislation, such as flagging out of vehicles and the creation of letterbox companies, alongside bogus self-employment. These types of practices all contribute to the creation of a sector that is highly fluid and in which workers are often subject to unstable, precarious and disadvantageous employment conditions.

Further research is necessary to detect the magnitude and causes of this phenomenon in transport and in other sectors, such as construction. Upon request by the Employment and Social Affairs Committee, the Parliament's Policy Department will provide two comprehensive studies in 2015, one on development of precarious employment and a second on sub-contracting. Both will gather evidence and analyse the situation against the background of existing European legislation.

3.3. The effect on employment conditions**3.3.1. Working hours, rest and driving times**

The increased distances travelled by drivers due to the internationalisation and liberalisation of the sector have raised the number of nights they spend on the road, and the likelihood of working off-schedule hours and night shifts. Recent research evidence from Eurofound's 5th European Working Conditions Survey (Eurofound, 2014; Tassinari *et al.*, 2014) shows that workers in the transport and storage sector as a whole – especially men, who make up 78 % of the sector's workforce - report an **above average level of long, atypical and irregular working hours** when compared to the EU-28 as a whole. Male workers also report poor work-life balance in greater proportions than the EU-28 average (35 % compared to 20 %).

Competitive pressure provides a strong incentive for companies to breach social legislation on working time and driving and rest periods to maintain competitiveness (AECOM, 2014; Munduteguy, 2014). This is confirmed by an online survey of 200 professional drivers conducted by the German trade union *verd.i* in 2001, which found that out of the 27 % of respondents who reported only "sometimes" respecting driving times legislation, close to half (47 %) reported driving under time pressure, with 38 % experiencing difficulties in reaching appropriate parking spaces within the stated time limits. Stakeholder consultations in the Baltic States also identify oversupply and cost pressures as a factor driving practices that impinge on drivers' safety (Alvarez-Tikkakoski *et al.*, 2012). Driving and resting hours were identified as being particularly problematic by stakeholders in Estonia, Latvia, Lithuania and Poland (*ibid.*). As outlined above, falsely self-employed drivers are especially likely to be in breach of working time legislation. There is also evidence to suggest that drivers from the EU-12 who are active internationally are particularly vulnerable to pressures to extend their driving and working times.

3.3.2. Health and safety issues – physical, ergonomic and psychosocial risks

Long hours, insufficient rest, time spent away from appropriate facilities, and high strain coupled with low autonomy give rise to a number of issues affecting the health and safety of workers in the international road haulage sector.

Occupational hazards relate to type of material transported (which can result in exposure to specific chemical or biological hazards) as well as to prolonged exposure to diesel, which can increase the risk of respiratory diseases. Physical risks are further related to prolonged sitting in a static posture combined with whole-body vibration, whilst loading and unloading activities are associated with specific ergonomic risks (such as musculo-skeletal symptoms associated with performing physically demanding loading and unloading tasks). Professional drivers are disproportionately likely to suffer from a number of potential health risks, mainly associated with cardiovascular, cervical, dorsal and spinal pathologies that can be linked back to these working conditions (OSHA, 2011).

Long working hours, inadequate rest facilities, and prolonged periods spent away from home are connected with the incidence of **workplace fatigue**, which has a demonstrable effect on the health and wellbeing of drivers and other road users. Fatigue-related incidents appear heavily linked to night working, the length of one's working day, and the working of irregular hours. In some studies, over 50 % of long-haul drivers have reported falling asleep at the wheel.¹³ In a survey of drivers, 46 % of respondents reported that fatigue was a "substantial" or "major" problem for them. Drivers linked this to "too much non driving work" (31 %), "heavy traffic conditions" (25 %), "long driving hours" (19 %), "irregular or inadequate rest or sleep" and "poor or irregular diet or eating" (13 % each) (Sitran and Pastori, 2013). **Among non-resident drivers interviewed by the European Transport Federation, the proportion who identify fatigue as a major problem is as high as 80 %** (ETF, 2013a). This has clear implications for road safety: fatigue among truck drivers is identified as the main cause of 6 % of road accidents – 37 % of which are fatal; and estimated to be a contributing factor in 30 % to 40 % of all heavy truck accidents (European Commission, 2011), with the potential social costs estimated close to EUR 2 8 billion. US studies also suggest that between 30 % and 50 % of US road accidents are fatigue-related, while the less-comprehensive European literature suggests that 20 % of commercial transport accidents are related to fatigue (OSHA, 2011).

These factors do not only pose a risk in relation to road-related fatalities and accidents, but also for drivers' own health. Indeed, drivers' fatigue is found to be associated with various adverse health effects such as cardiovascular disease, retirement on grounds of disability, subjective fatigue and chronic sleeping problems. Munduteguy (2014) quotes a research study according to which 15 % of truck drivers reported suffering from obstructive sleep apnoea. Drivers' fatigue is also associated with the use of substances (i.e. amphetamine) to help them stay awake and maintain work schedules. Munduteguy (2014) found this practice to be more likely for drivers on payment-by-results or contingency-payment basis, thus showing the connexion between this area of drivers' health and safety and the dominant forms of work organisation present in the sector.

However, it is the area of **psychosocial risks** which presents some of the most severe and often unrecognised issues in the area of working conditions. In particular, the diffusion of just-in-time delivery methods in the sector has led to an intensification of job demands and a problem of unrealistic driving schedules, which leads to significant increases in work intensity for drivers. Drivers have also reportedly experienced a loss of autonomy and

¹³ European Transport Safety Council (2001), *The Role of Driver Fatigue in Commercial Road Transport Crashes*, Brussels: ETSC.

intensified work demands. The resulting prolonged job strain poses the risk of unhealthy stress levels and consequently exposes workers to a range of stress-related illnesses such as cardiovascular disease and mental health problems (Eurofound, 2014).

Long periods away from home and the lack of sufficient parking spaces with access to good quality services (food, sanitation facilities, laundry, etc.) also have a detrimental impact on **drivers' social lives** (OSHA, 2011; ETF, 2013a). According to Eurofound (Tassinari *et al.*, 2014), workers in the European transport sector report a worse social environment, as regards the existence of social support and abuse at work, compared to EU-28 workers as a whole. National legislation limiting HGV driving on specific days, such as Sundays in Germany, can also have a detrimental effect on drivers:

"You get a situation in Germany where 1 000s of vehicles are holed up with no facilities, due to the driving ban on Sundays. Drivers aren't able to get food and there are no washing facilities, toilets etc."

Brian Bayliss, chair of the high-level group on road haulage

The IRU is aware of many of these health issues and is, for example, currently working with the EC on the nutritional health of drivers.

Drivers' stress can also be exacerbated by **time pressures arising from the rise of 'just-in-time delivery' practices**, which demand that drivers arrive at their destinations within narrow time windows, and the broader reorganisation of the logistics sector (Hilal, 2008). Tight delivery schedules and the increasing proportion of drivers' working time taken up by non-driving activities lead to higher levels of drive-related stress and fatigue (ETF, undated; Sitran and Pastori, 2013). It is reportedly difficult for drivers to reconcile the pressures and unpredictability of just-in-time delivery practices with the need to reach their destination within the legal driving time limits (AECOM, 2014). A German survey of 450 professional drivers (ZF, 2012) confirmed that stress mainly derived from the permanent time pressure to which drivers are exposed, the long hours spent driving, unsocial working times, and the time spent waiting for their vehicles to be loaded or unloaded.

Further, Munduteguy (2014) notes how before liberalisation of the sector, drivers would usually be allocated the same tractor and enjoy high levels of job autonomy (in compensation for high levels of flexibility demanded by the job). Competitive market pressures following liberalisation have instead led to a 'rationalisation' of activities, with drivers becoming **increasingly disconnected from tractors and subject to an increase of 'monitoring' practices** on part of their employers or freight forwarders (for example through the use of GPS systems) which allow companies to keep very close track of drivers' movements and schedules. This implies a **reduction of autonomy** for drivers – an aspect of the job which, in the past, was often identified as one of the most attractive features of the profession – and in increased work pressures which in turn exacerbate stress levels and psychosocial risks.

Increases in competition within the sector have also led to a **diversification of job demands**, with drivers being increasingly required to **carry out tasks other than driving** (such as loading, unloading, dealing with clients and deliveries) which increase their level of task flexibility and reportedly heighten the perceived stress of work activity. In surveys conducted for a report submitted to the European Parliament (Sitran and Pastori, 2013), stakeholders report a change in job demands since liberalisation in 2009, with drivers being expected to engage in an increasing amount of non-driving activities (e.g. loading and unloading or waiting for goods).

Finally, it is reported that **parking areas can be unsafe** (OSHA, 2011): according to the International Transport Federation, 35 % drivers report that attacks in parking areas have affected their working life (ITF, 2007). Interviewers from the French Comité National Routier who conducted interviews with Polish drivers at a major Spanish service station report that none of the drivers approached were willing to leave their vehicle to be interviewed in the restaurant, for fear of thefts (CNR, 2012). This is also an issue that will hamper efforts to include more female drivers in international road haulage.

3.3.3. Employment conditions of EU-12 drivers

EU-12 hauliers are **more likely to be heavily involved in international transport activities**. The negative aspects of international driving activities (see also section 2.3 on health and safety), particularly those concerning access to high-quality rest stops and opportunities to return home, therefore affect drivers from the EU-12 more strongly, particularly those operating as non-resident drivers in the EU-15 over longer periods of time. Further, there is strong evidence that drivers from the EU-12 who are operating in and from EU-15 countries experience **significantly worse working conditions** than resident EU-15 drivers, as regards pay, social security and benefits, rest, and health and safety.

a. Pay

Instances of **extremely low pay for drivers from EU-12 countries** are well-documented, and disparities in the levels of pay and remuneration between EU-15 and EU-12 drivers have also led to downward pressures on remuneration levels in old Member States, which have intensified since 2009. Levels of pay and associated benefits (holidays, health and safety) are central to cost competition between haulage undertakings in the EU, and hence appear to be under pressure, particularly in the EU-15. The sector also appears to have been more severely hit by decreases in salary since the onset of the crisis in 2008, in comparison to the EU-28 as a whole (cf. Eurofound, 2014).

The ETF conducted a **survey** that looked at 1 000 drivers from the EU-12 employed through schemes that required them to work in the EU-15. These drivers worked for 3-12 weeks in host Member States before spending 1-3 weeks on rest in their home Member State. A total of 95 % reported that they were not paid during these periods, and 25 % reported they received no paid annual leave (ETF 2013a)¹⁴. According to the ETF, companies reporting that they operated out of the EU-12 Member States paid drivers **fixed sums and 'bonus' payments** based on distance driven or on-time delivery (ibid.). Sixty % of interviewed drivers reported receiving part of their pay based on distance driven (ibid.).¹⁵ Final salary under such schemes rarely exceeded EUR 1 000 a month. A European Parliament report (Sitran and Pastori, 2013) presented similar findings, confirmed by unions and drivers, showing that **EU-12 drivers' salaries were seven to eight times lower than Western European drivers' salaries**. In a survey of 24 EU-12 and EU-15 drivers in Italy (Sitran and Pastori, 2013), EU-15 drivers reported average net salaries (including daily subsistence allowances) of between EUR 2 200 and EUR 2 500, while EU-12 drivers received between EUR 1 200 and EUR 1 500. This is in line with the wage levels identified by internationally active drivers interviewed by the French Comité National

¹⁴ Most of the drivers were interviewed in improvised parking areas where migrant drivers congregate to spend their weekends. Therefore, the sample cannot be viewed as entirely representative of drivers across the whole sector.

¹⁵ Performance-based remuneration models may incentivise drivers to work longer hours, which increases safety risks; under such conditions, they are illegal (Article 10(1) of Regulation (EC) 561/2006) (Sitran and Pastori, 2013).

Routier based in Poland, Slovakia, the Czech Republic, and Hungary (CNR, 2012a, 2012b, 2013b; Vanel and Salini, 2010).

However, the IRU representative interviewed for this research noted that although pay in the sector is not high, drivers do benefit from a number of **non-wage benefits and additional allowances**. He felt that when these benefits are taken into account, pay in the road haulage sector is similar to that in other service-intensive sectors with the same type of skills requirements.

b. Social protection

There are also significant differences in the degree of **social protection** enjoyed by resident and non-resident drivers due to the nature of remuneration schemes under which they are employed. **Social security contributions and entitlements are generally calculated based on drivers' fixed base salary**, not including performance bonuses and the daily subsistence allowance paid on driving days (Sitran and Pastori, 2013; CNR, 2012a, 2012b). Sitran and Pastori (2013) suggest that employers may introduce variable elements of remuneration, such as performance bonuses, explicitly to lower basic salaries and hence obtain a lower baseline for the calculation of social contributions. This reduces drivers' entitlements in the long run. Moreover, the large share of variable elements of remuneration increases employers' flexibility by allowing them to reduce bonuses when business is bad and thereby share risks with their employees (CNR, 2012b).

More immediately, while working in host countries under complicated employment schemes, drivers often lack **access to prompt and adequate healthcare** – potentially placing operators in breach of the legally binding charter of the fundamental rights of the European Union Act 35 – with 40 % of interviewed drivers reporting that they covered more than 75 % of their own healthcare costs (ETF, 2013a).

c. Working time and rest breaks

The 2013 ETF survey found evidence of endemic **working above legal limits** among non-resident drivers. The evidence suggested that companies often engage in **illegal practices to monitor drivers' working times and encourage breaches of legislation covering working hours and driving times**. Some of these practices include: using tachographs and digital equipment to monitor professional drivers' activities by the minute – potentially breaching individual privacy rights; requiring drivers to account for all time spent outside their lorry; and instructing drivers to register loading and unloading time as 'rest' or 'break' time rather than 'other work'. Eighty % of interviewed drivers reported not being paid for loading and unloading time that they themselves have supervisory responsibility for. Similarly, over 60 % of interviewees stated that they were unable to take the 45-minute break required after 4.5 hours of driving. This was largely attributed to a lack of parking facilities and/or oversights in transport operator's route planning. Due to these issues, the average working day of participants in the ETF survey reported above was 11.5 hours, with their average working week 57.5 hours.

This is confirmed by a number of surveys. A roadside survey among 1,800 drivers in Germany suggests that **EU-12 drivers spend more of their rest periods in their vehicle or away from home**. While 72 % of all drivers interviewed spend their mandated daily rest periods in/by their vehicle, 43 % of EU-12 compared with 11 % of EU-15 drivers also spend their weekly rest period in/by their vehicle (BAG, 2014). A quarter of EU-12 drivers questioned spend less than one weekend per month at home (ibid.). An ETF survey on non-resident drivers found that 95 % of non-resident drivers spend their rest time on board their vehicles (ETF, 2013a).

The ETF survey also found that 80 % of non-resident drivers cook and eat their own food on board their lorries on a daily basis; approximately 25 % have access to hot food only two-three times per week, and 10 % of never eat hot food (ETF, 2013a). **Poor access to sanitary bathroom and washing facilities** were also reported. As non-resident drivers in particular are rarely reimbursed for their expenses, they are moreover reluctant to use facilities and services where they exist.

4. THE ROLE OF EUROPEAN LEGISLATION

KEY FINDINGS

European legislation currently in place is **largely comprehensive**. It aims to **provide for both market integration** (access for operators and free movement) **and protection of employees** (for example, legislation governing working time and rest periods). However, there are **doubts as to whether it is adequately protecting the employment conditions of drivers** who work in an increasingly internationalised and competitive sector. Ideally, legislation should be able to adequately **mitigate the most detrimental effects** of increased competitiveness, in order to balance the integration of European markets and the provision of decent work for those employed in the transport sector, including a guarantee of their social and labour rights.

The main problems with legislation are seen to be linked to **weak application** in Member States and **weak enforcement** on the ground. Differences in Member States' application, transposition and enforcement of legislation include interpretation of legislation, definitions and categorisation of infringements, levels of fines and sanctions, and discrepancies in control mechanisms and enforcement practices.

Although a number of enforcement standardisation activities have already been enacted within the EU, there is social partner consensus that this needs to be improved. The trade union view, from the European Transport Workers' Federation, is that **Member States need more support** to do this, and should be penalised more strongly if they fail. Other recommended actions to improve enforcement include better sharing of information, and enhanced social dialogue. **Standardised training of enforcement officers** is seen as particularly important.

Various sources indicate a number of areas of legislation that could usefully be reviewed. These include: the application of the Posting of Workers Directive to international drivers; enforcement of Regulation 1071/2009 on access to the profession; frequency and minimum number of checks necessary to ensure compliance with the rules set out in the two Regulations governing cabotage; the level of sanctions and fines and the categorisation of infringements of social legislation; and the frequency and detection rates of roadside checks.

There is **social partner consensus on the need for legislative action** to enhance enforcement of EU law, comprising amendments to existing legislation and a review of operational Directives and Regulations. Overall, the social partners are in agreement on many of the key approaches to improving enforcement.

Combating social dumping is a key area of focus and one on which the social partners largely agree. For example, they advocate action ensuring that **supply-chain operators** should be held jointly responsible for social protection infringements and further **action against letterbox companies**. There is also social partner consensus on the need for **an EU-led development of a network of parking spaces and safe and secure facilities for drivers**. Working time and the use of the tachograph is also an issue, with the social partners recommending that **loopholes in its use be closed** in order to ensure that drivers obtain proper rest.

The **main areas of divergence between the social partners** include how to limit the length of subcontracting chains, how to sanction companies that breach social legislation and whether or not there should be EU inspectors for roadside checks.

The internationalisation of the road haulage sector has increased competition within the sector. The EU has put in place a body of legislation designed to protect workers from the potential harmful effects of this increased competition, particularly in areas such as driving times, the organisation of working time and rest breaks. As is clear from previous sections, however, there are continuing problems and trends that exert a downward pressure on working conditions for drivers. It would appear that the legislation in place is largely comprehensive and that the main issues area linked to **differences in transposition** in Member States and **weak delivery and enforcement** on the ground. It is difficult to avoid some of the issues arising in the context of international competition. However, the main issue is whether existing legislation is protecting workers to a sufficient extent, in a context of increasing competition; and whether this legislation is able to adequately **mitigate the most detrimental effects** of this in order to **balance the integration of European markets and the provision of decent work** for those employed in the transport sector, including a guarantee of their social and labour rights.

Below, we review available literature to uncover the relevant factors in terms of the application of European Regulations and Directives currently in force. We focus primarily on **content, transposition and enforcement** of legislation. According to the existing evidence, differences in the implementation of legislation relate to three main aspects: the way in which EU Directives are **transposed and interpreted** in national legislation, **which legislation to apply**, and the way these are **enforced** on the ground by Member States.

4.1. Interpretation and transposition

Access to the profession of road haulage transport operator has been governed since December 2011 by Regulation (EC) No 1071/2009, which repealed Council Directive 96/26/EC. Directive 96/26/EC introduced three criteria for establishment as a road haulage operator: a requirement of good repute; a requirement of professional competence; and a requirement of good financial standing for the undertaking as a whole. However, evidence from research commissioned by the European Commission in 2005 (cf. NEA/TIS, 2005) suggests that the Directive was **not transposed consistently** across Member States and also that there were issues around its enforcement on the ground. The Commission took stock of disparities in implementation of the Regulations and sought to address this issue in its Regulation (EC) No 1071/2009, which clarified some minimum conditions to meet the three qualitative criteria above and added a further requirement for admission to the occupation of road transport operator – for undertakings to be independently operated and effectively and stably established in a Member State. This requirement was aimed at

combating the phenomenon of ‘letter-box’ companies. However, reports for the European Parliament in 2012 and 2013 emphasised differences and disparities which still existed in the criteria adopted by Member States to determine the conditions which must be set to satisfy the ‘Good Repute’ criterion, although minimum standards are now more clearly spelled out in the Regulation, as well as what is considered an ‘effective and stable establishment’ in a Member State.

There are also differences across Member States in the interpretation and transposition of rules governing **cabotage**. EU legislation seeks to better clarify the temporary nature of cabotage operations (three transport operations, within seven days of an international transport operation). However, the 2014 Commission report (COM (2014) 222) notes how differences persist in the interpretation and implementation of certain provisions – especially in the definition of the nature and scope of temporary transport operations in national legislation.

Observers interested in the road haulage sector have identified a number of recent regulatory actions that are forecast to positively affect working conditions in the sector. For instance, Thornquist (2013) identifies the adoption, in 2009, of a **‘positive’ definition of false self-employment**¹⁶ as a development which could allow workers and their representatives to better challenge employers who control workers on self-employed contracts, to reduce labour and social-insurance costs. However, with many of the vulnerable workers operating in the sector being migrant workers – often disconnected from nationally-bounded trade unions and their support mechanisms – most agree that there is a need for further clarifications of, and adjustments and additions to, the current Regulations and Directives governing the sector.

4.2. Application of legislation: the Posting of Workers Directive

One question at the heart of this is whether the Posting of Workers Directive (Directive 96/71/EC) should apply to drivers working internationally in the sector. The debate on governance of the sector focuses not only on application and enforcement, but also on which legislation to apply. The Directive is of particular relevance in case of cabotage. The following boxes give an overview of main provisions of the Posting of Workers Directive and provision on cabotage of the Regulation on rules for access to the international road haulage market.

¹⁶ The 2002 Directive on Road Transport Time (2002/15/EC) defined self-employed drivers – then exempt from the Directive on Road Transport Time and various other social protections – as *“anyone whose main occupation is to transport passengers or goods for hire (...), who is entitled to work for himself and who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, who is free to organise the relevant working activities, whose income depends directly on the profits made and who has the freedom to (...) have commercial relations with several customers”*. Accordingly, false self-employment could only be defined negatively – with false-employment being performed by individuals whose employment status did not meet the above criteria. Looking to address the resultant ambiguity, the EC instead proposed a positive definition of false self-employment: defining it as *“any person who is not tied to an employer by an employment contract or any other type of working hierarchical relationship, but i. Who does not have the freedom to organise the relevant working activities; ii. Whose income does not depend directly on the profits made; iii. Who does not have the freedom, individually or through cooperation between self-employed drivers, to have relations with several customers.”* (Thornquist, 2013).

Box 5: Main aspects of the Posting of Workers Directive (Directive 96/71/EC)

The Posting of Workers Directive establishes a core of terms and conditions for employment in order to ensure the minimum protection of workers who are posted from one EU Member State to another, within the framework of the transnational provision of services in the following cases:

1. posting under a contract concluded between the undertaking making the posting and the party for whom the services are intended;
2. posting to an establishment or an undertaking owned by the group;
3. posting by a temporary employment undertaking to a user undertaking operating in a Member State other than that of the undertaking making the posting.

In all of these cases, there must be an employment relationship between the undertaking making the posting and the posted worker during the period of posting.

The Directive covers the following areas of protection:

- maximum work periods and minimum rest periods;
- minimum paid annual holidays;
- minimum rates of pay, including overtime rates, although excluding supplementary occupational retirement pension schemes;
- conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- health, safety and hygiene at work;
- protective measures regarding the terms and conditions of employment of pregnant women or recent mothers, children and young people;
- equality of treatment between men and women and other provisions on non-discrimination.

These rules must be laid down by Member States either in law and/or by collective agreements. To ensure effectiveness, the Directive provides for cooperation on information between the Member States. Liaison offices are designated to monitor the terms and conditions of employment and to serve as correspondents and contact points for authorities in other Member States, for undertakings posting workers and for the posted workers themselves.

Box 6: Cabotage: main points of the Regulation on common rules for access to the international road haulage market (Regulation 1072/2009)

Regulation (EC) No 1072/2009 defines cabotage as the national carriage of goods for hire or reward carried out by non-resident hauliers on a temporary basis in a host Member State. The aim of the Regulation is to improve the efficiency of road freight transport by reducing empty trips after the unloading of international transport operations. It provides that:

Every haulier is entitled to perform up to three cabotage operations within a seven day period starting the day after the unloading of the international transport.

A haulier may decide to carry out one, two or all three cabotage operations in different Member States and not necessarily the Member State in which the international transport was delivered. In this case only one cabotage operation is allowed in a given Member State to be carried out within three days of entering that Member State without cargo.

In a position paper prepared during the debate on the Regulation on common rules for access (EC) 1072/2009, the **employer organisation** IRU has expressed concerns about applying the **Posting of Workers Directive** to **cabotage operations** at all, on grounds that it considers them to be '**economically non-significant activities**' as defined by article 3.5 of the Directive.

In contrast, **trade unions** consider that the Regulation leaves some loopholes. Recently, a collection of Belgian trade unions have argued that **further regulative activities** are needed in order to affect private international law decisions **regarding which Member State's national legislation is applicable when a worker carries out work in a country external to their own undertaking** (Maes, 2014). The Belgian unions argue that Article 8 of Rome I (Regulation EC 593/2008, which sets out which law should be used to interpret contracts agreed by parties in different countries) should be amended in line with the principles of the 2011 *Koelzsch* case: a test case of the Court of Justice (CoJ) that ruled that the laws of the Member State where the worker conducts the 'major part' of their role – such as the loading/unloading of goods, or the receiving of instructions – are those that apply to workers in practice¹⁷. However, the subsequent *Schekler* judgement¹⁸ stated that "even where an employee carries out the work in performance of the contract habitually, for a lengthy period and without interruption in the same country, the national court may, under the concluding part of that provision, disregard the law of the country where the work is habitually carried out, if it appears from the circumstances as a whole that the contract is more closely connected with another country". The unions believe that this ruling undermines *Koelzsch* and want clarification inserted into legislation, as this could, in their opinion, result in workers being covered by the legislation of Member States with poorer social protections. In order to negate the risk of further private law ambiguities, the Belgian unions recommend that Rome I be further amended to stipulate that when judicial interpretations are needed, the national laws of the Member State with the strongest social protections for workers should be favoured (Maes, 2014).

¹⁷ Case 29/10, *Heiko Koelzsch v Luxembourg* [2011].

¹⁸ Case 64/12, *Anton Schekler v Melitta Josefa Boedeker* [2013].

Not all observers are in agreement about the utility of such an action: A guide for national control authorities produced as part of the TRANSPO Project (TRANSPO, 2012)¹⁹ argues that such a measure **would not safeguard against social dumping**, as the law would still be open to manipulation. Some national experts consulted as part of the project therefore argue that the Posting of Workers **Directive** (Directive 96/71/EC) **should apply to any contract of transnational transport** for the part of the journey that takes place in a Member State other than that of establishment. However, as with all regulatory actions, this would pose practical difficulties with regard to contractual conditions and enforcement (TRANSPO, 2012).

Box 7: Implementation of cabotage rules and the Posting of Workers Directive

There are also **differences in how Member States apply the Posting of Workers Directive** (Directive 96/71/EC) **to drivers performing cabotage** (Frisoni et al., 2013). Regulation (EC) 1072/2009, regulating cabotage operations, explicitly states that the Posted Workers Directive applies to transport undertakings performing a cabotage operation. However, the **cabotage presents a number of different scenarios**. For example, there is a difference between simple cabotage and situations where there is sub-contracting and then cabotage in the sub-contracting country, which is not reflected in the Posting of Workers Directive. Accordingly, some studies state that the Directive is ill fitted to deal with workers who do not work in a specific country but rather from a specific country (van Hoek and Houwerzijl, 2011: 16). Further, the complex contractual relationships in the sector often make it difficult to apply the Directive, which requires a contract of service between the employer and a recipient of the service in the host state. For instance, where a company in the EU-15 contracts with an EU-12 company, which may be established in the EU-12 for this purpose, to provide workers or transport services, EU-12 workers may work predominantly from the EU-15 state. Their labour contracts in such cases have a close link with the national EU-15 labour market, and they would on some accounts merit protection according to local standards (van Hoek and Houwerzijl, 2011). However, the **Posting of Workers Directive** does not provide the basis for such a claim in cases where the transport service is performed largely outside the country; it **assumes that posted workers are active in, not from, another country** (van Hoek and Houwerzijl, 2011). The **gap in current legislation** is even more apparent with regard to cross-trade, which involves workers serving on routes that do not touch on their employer's country of establishment at all.

Van Hoek and Houwerzijl (2011) likewise argue that even a harmonisation of statute law with the *Koelzsch* case would still leave **gaps in the coverage of the Posting of Workers Directive**. *Koelzsch* concerned the case of a worker being posted to another country to work, and therefore cross-trade operations – which would see workers posted to work from another country during cross border operations – would not be covered. They therefore argue that a **significant number of transport-specific legislative adjustments** – “formulated in cooperation with the relevant stakeholders and experts in the field of transport regulation” – should be considered (ibid.).

¹⁹ The TRANSPO Project (Road Transport Sector and Posting of Workers) was co-funded by the European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities.

4.3. Enforcement

Other issues persist concerning enforcement of Regulation 1071/2009 on access to the profession. A Commission report (COM (2014) 222) noted that there are **persistent differences in resources and priority levels given to enforcement of the compulsory checks on establishments** to verify their compliance with the Regulations. The establishment of a European Register of Road Transport Undertakings (ERRU), set up by EC Regulation, should help with the cross-country monitoring and reporting of infringements.

Overall, various reports suggest that unsatisfactory enforcement derives crucially from an **absence of binding provisions on the frequency and minimum number of checks** necessary to ensure compliance with the rules set out in the two Regulations governing cabotage (in terms of the shares of checked locations, share of checked working days, etc.). Indeed, there is no specific Directive on enforcement mechanisms for Regulations 1071/2009 and 1072/2009. On the basis of this, Member States apply them with varying degrees of strictness and dedicate varying levels of resources to ensuring compliance. It could be speculated that countries in the EU-15 with a greater interest in ensuring protection of their domestic markets and stronger social partner organisations apply the rules more strictly than some of their counterparts.

Another major area of discrepancy in the enforcement of legislation regards the **level of sanctions and fines** and the **categorisation of infringements of social legislation** in road transport, as well as in the other areas of EU Regulations applying to the road haulage sector. In 2009, a European Commission study found that national systems of penalties for infringements of Regulations in the road haulage sector differed significantly between Member States (COM/2009/225). The same finding is reiterated in numerous reports (Pastori *et al.*, 2012; Sitran and Pastori, 2013; Sciaudone and Frisani, 2013), which find a continued lack of a system-wide, standardised approach towards the categorisation of infringements in Member States and between the levels of fines imposed. This is identified as a “major cause of legal uncertainty and a potential source of unfair competition within the internal market” (Pastori *et al.*, 2012).

The penalties applicable in the case of infringement of legislation vary with regard to the level of fines imposed, the categorisation of infringements and the type of penalties. For example, the **levels of fines imposed for infringements of road haulage Regulations can vary between Member States up to a ratio of 1:10** (cf. Sciaudone and Frisani, 2013). Socio-economic differences in income levels between different Member States have often been invoked in the past to explain the differences in the levels of fines and sanctions imposed. However, given the current state of affairs and the progressive convergence in income levels between the EU-15 and the EU-12, a 2009 report by the Commission (COM/2009/225) argued that “differences in sanctions can only be partly explained by socio-economic differences that make the same fine proportionate and dissuasive in one country but not necessarily in the other” (COM/2009/225).

Further, national systems of penalties differ widely in terms of the **categorisation of infringements and the typology of penalties** they impose. These can vary between financial penalties, immobilisation of the vehicle, immobilisation of the driver and withdrawal, suspension and restriction of either the undertaking’s licence or the driver’s licence.

To improve the situation with respect to differing national interpretations of the driver time Regulations, the Commission adopted Directive 2009/5/EC55 amending annex III of Regulation (EC) No 561/2006 regarding driving times, rest times and the digital tachograph. The new annex proposes that infringements be classified into three categories according to their degree of seriousness, namely minor, serious and very serious

infringements, and specifies reference thresholds for infringements relating to quantitative variables. The Directive made it mandatory for Member States to issue a classification of minor, serious and very serious infringements by the end of 2009 (AECOM, 2014, p. 27). However, **no value or indicative value in terms of sanctions to be imposed has been assigned to each of these categories, thus continuing pre-existing discrepancies.**

Disparities in sanctions and penalties applied by Member States are considered as a source of potential legal problems, as they can lead to discrimination between transport operators of different nationalities. In many cases, operators breach driving time regulations when following instructions of their employer or of the freight forwarders. However, in those cases where legislation does not provide for the criminal liability of companies in general but only of drivers, this can expose drivers to a situation of great legal vulnerability. In this regard, the report noted that if opportunities for fraud relating to the 'Tachograph Regulation' and the Road Transport Working Time Directive 2002/15/EC were reduced, this would improve working conditions for drivers, as employers would not be able to exert pressure on drivers to circumvent social legislation, ensuring that drivers could fully enjoy their rights (European Commission, 2011).

4.3.1. Frequency and detection rates of roadside checks

Under EU law²⁰, Member States are responsible for ensuring that a coherent national enforcement strategy is applied in their territory. Data from the European Commission report on implementation of social legislation in the road transport sector from the reporting period 2009/2010 (European Commission, 2012) show that over time, **enforcement in Member States appears to be improving** (especially in reaching thresholds for number of controls set in legislation, in data collection methods and reporting disciplines) and that improvements in the application of rules by professional drivers and companies were noticeable.

Usually Member States exceeded the 3 % threshold for minimum number of working days checked, with the exception of Greece, Portugal, Slovenia, Denmark and the Netherlands, which failed to meet the threshold. However, disparities were reported between Member States in the detection rate of offences (with Ireland, Slovakia, Poland and Germany reporting a significantly higher offence rate than, for example, Luxembourg, Bulgaria, Latvia and Romania). Higher detection rates were reported for checks carried out at companies' premises rather than in roadside checks.

The high detection rate in some Member States can be linked to the relatively larger number of infringements and the higher effectiveness of checks. A decrease in detection rates over time for the same Member States in comparison with previous reporting periods could instead be motivated by better compliance with provisions of the legislation. However, the Commission report on implementation of Regulation (EC) No 561/2006 and of Directive 2002/15/EC (European Commission, 2012) also suggests that **Member States with low detection rates may have an inefficient system of carrying out checks at premises, and should thus rectify their control procedures**. The lack of effectiveness in controls and enforcement measures can be traced back to a variety of factors, such as lack of dedicated resources, insufficient numbers of enforcement officers, insufficient training of enforcement officers and lack of cooperation between different authorities.

The 2011 Commission impact assessment on changes to the tachograph Regulation (European Commission, 2011) identifies the non-standardised training of enforcement officers across Member States responsible for monitoring social legislation at roadside

²⁰ Directive 2006/22/EC⁵⁴, (as amended by Directive 2009/4/EC and Directive 2009/5/EC).

checks as a particularly problematic area, as the standards and thoroughness of training differ widely between Member States. **Standardised training of enforcement officers** is particularly important, given the highly technical nature of road transport Regulations.

One of the main challenges lies in the **collection and comparison of evidence from different sets of working time records** (such as analogue and digital tachograph records, manual records and other supporting documents). Checks on drivers working for multiple employers can also be particularly challenging, given the lack of consistency between different employers' systems for the recording of working time (European Commission, 2012).

In this sense, availability of adequate training and equipment is crucial to ensure effectiveness of controls. The 2011 Commission impact assessment on changes to the tachograph Regulation (European Commission, 2011) noted that **fewer officers with more effective training and equipment** (such as in the case of the UK) can be more effective in enforcing the Regulations than a greater number of officers with less effective preparation. However, differences in the quality and effectiveness of training appears in some cases to be the result of a conscious policy of Member States, which in some cases do not have fixed budgets for training officers.

Fragmentation at the national level in the structure and organisation of national authorities responsible for monitoring and carrying out controls is also a potential explanation for the differing levels of effectiveness of enforcement mechanisms. Responsibilities for monitoring the Regulations applying to the sector are in some cases split between transport authorities and labour inspectorates. **Cooperation between labour inspectorates and transport inspectors** is emphasised in the 2012 Commission report on implementation of Regulation (EC) No 561/2006 and Directive 2002/15/EC as key to successful checks, as transport inspectors have the technical knowledge and appropriate equipment to read tachographs which labour inspectors may lack. However, this type of cooperation and coordination is not necessarily applied consistently between Member States.

The ETF believes that the **prescription of specific targets (in addition to minimum standards) and financial incentives to Member States could help: enforce the various social protections that govern the profession of professional driving; enhance the training of enforcement officers; and improve the inter-body coordination between enforcement bodies** (ETF, 2009b). The ETF believes that such enforcement Directives, and further prescriptive measures, such as new mandatory reporting mechanisms, could be inserted into Rome I, Regulation (EC) No 1072/2009, Directive 96/71/EC, and Directive 2002/15/EC (ETF, 2012b). It should be noted that by incentivising enforcement activity, these prescriptions go further than some control measures already in place, such as that within Directive 2006/22/EC which sets common rules on roadside- and in-undertaking cabotage controls (Bayliss, 2012).

Worker-side organisations also suggest that the **clarification of Regulation (EC) No 561/2006** – which looked to harmonise certain social legislation relating to road transport – could allow for a greater standardisation of enforcement agencies' activities. The ETF suggests, for example, a strictly defined clarification of when performance pay – namely, pay per KM or tonne – is permitted. This could negate the potential negative effects of such forms of pay on work intensity (ETF, 2012b). It would require a rewriting of the current Regulation which has been described as ambiguous in its current form²¹ (Sitran & Pastori, 2013). The ETF also believes that the removal of certain exemptions – such as 'combined

²¹ At the moment Article 10 prohibits pay per KM/transported ton "if that payment is of such a kind as to endanger road safety and/or encourages infringement of this Regulation".

transport', e.g. those road haulage operations which contain an intermediary voyage on a second form of transport (such as a ferry) during which no loading/unloading occurs – from laws governing cabotage could eliminate ambiguous situations which allow for divergent national approaches to the application of legislation (ETF, 2012b; Maes, 2014).

Alternatives to prescriptive instructions to Member States involve the dissemination of **good practice guidance** to national enforcement agencies. The employer-side IRU and UETR both praise, in principle, the 2010-2012 Transport Regulators Align Control Enforcement (TRACE) Project. The Member State control agencies that participated in this scheme developed six guidance notes, which looked to affect the approach that national enforcement agencies took when applying the social protections on driving time (Regulation (EC) No 561/2006). Again in principle, both organisations would like to see this TRACE manual become the 'go to' good practice guide for the enforcement of working time legislation. This project is mirrored in the recommendations made by the European Parliament in 2013, which suggested that the competencies of the intra-Community liaison body set up under Directive 2006/22/EC be enhanced, and that cooperation between enforcement agencies should be encouraged in the areas of best practice and training (Sitran and Pastori, 2013). However, both employer-side organisations are wary of the fact that the guidance notes of the TRACE 'shelf project' have no legal status, with no requirement that they be followed in practice (IRU/UETR, 2011). Here, **employer-side bodies are clear that a legislative approach to the standardisation of enforcement is needed**. The promotion of similar, but legally-codified, projects focused on other social protections pertinent to the sector could standardise approaches.

In addition to issuing directions to Member States regarding the scope, frequency and severity of inspection/sanction activities, there is a frequently voiced argument that **European-level institutions should more strongly penalise Member States that are in breach of their obligations**. For instance: while certain social protections have inbuilt obligations for Member States to withdraw non-compliant undertakings' licences, as is the case with letterbox companies according to Regulation (EC) No 1071/2009, there are often no mechanisms in place to penalise States that do not comply with their obligations (Maes, 2014). An introduction of such mechanisms across the raft of social protections pertinent to the road haulage sector could secure a harmony in the *de facto* minimum accepted standards of enforcement agencies.

Another area that could be affected by European activity concerns the division of Member State responsibilities between two or more Ministries – such as business, transport, and taxation departments. An EC-funded project looking at access to the market recommended that Member States should be encouraged to develop **unified legal frameworks** 'owned' wholly by a single ministry (NEA/TIS, 2005). This could avoid situations where there are overlaps and gaps in national oversights and controls.

A further area that could indirectly enhance the standardisation of enforcement is that of data and data collection. Interested parties have suggested that **better sharing of information** could help avoid a 'race to the bottom' in terms of Member State enforcement and sanctioning (NEA/TIS, 2005). Worker-side (cf. Maes, 2014) and employer-side (cf. UETR, 2011) organisations have suggested the creation of 'black lists' of poor performers. These demands have been partially met²², through the establishment of the **European Register for Road Transport Undertakings** (ERRU) in 2013, which links up national electronic databases of road transport undertakings.

²² The establishment of national registers and their interconnection were required under the legislation about access to the profession (Regulation (EC) No. 1071/2009).

Further, the ETF would like to see CHASE or similar schemes – those which collect data on road traffic incidents – include data on occupational health and safety factors and drivers' contractual conditions in injury and accident reports (ETF, 2009b). This could allow enforcement authorities to develop risk-based approaches to inspections.

Employer-side organisations also urge Member States to **invest more in enforcement controls** – pointing out that as professional drivers are obliged to complete EU-level training,²³ then Member States should also be required to invest more in enforcement training. An academic (Hilal, 2008), and a number of Belgian trade unions (Maes, 2014) argue for the appointment of an **EU-wide corps of inspectors** charged with conducting roadside checks. However, the employer-side IRU argues that the prerogative to enforce social protections should remain with national enforcement bodies (IRU, February 2009), due to their specialist local knowledge of national legislation.

Finally, the promotion of **enhanced social dialogue in** the sector has been identified, as part of the EU2020 strategy, as a further activity that could improve job quality and working conditions among professional drivers (COM (2011) 144). An example of the utility of social dialogue can be found in the public/private Online Complaints Desk initiative, operated between the employer-side IRU and the Euro Control Route group of public-sector transport inspection authorities. The Complaints Desk collects self-submitted reports from drivers and companies affected by what they perceive as poor enforcement/sanctioning activities, with the intent that this could be used to identify areas where there is a particularly noticeable lack of consistency between national approaches.²⁴

4.3.2. Working time

The social partners both advocate **closing certain loopholes within EU legislation concerning tachographs**. The UETR argues that the requirement that only some vehicle types use tachographs produces unfair competition between vehicle types, and that some vehicles that are currently exempt from using tachographs under working time legislation – such as agricultural vehicles that are presumed, in current legislation, not to reach speeds of 40km/h but reportedly travel up to 60km/h – should be fitted with recording instruments in order to monitor drivers' working time (UETR, undated). The IRU representative interviewed for this research noted that the Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 will come into force in the medium term with the implementation of the new tachograph and that this is welcomed by the IRU. However, he stressed that there are some issues remaining. For example, the tachograph with the necessary functionalities is still in development, making employers unsure of future costs. Another point of attention is data ownership: which data will be registered and who will be owner of the data. The use of tachograph data by authorities is welcomed as it leads to targeted checks instead of general enforcement sweeps, which are less effective but more costly to bona fide employers.

Worker-side organisations similarly argue that vehicles with a combined weight (truck and trailer) of less than 3.5 tonnes should be included within all tachograph legislation (Maes, 2014).

²³ With 35 hours every 5 years mandated by the EC.

²⁴ Cf. http://www.iru.org/en_media_press_pr?code=1109&lang=en

The ETF has identified further areas where tachograph legislation could improve working conditions in the sector:

- **integrating the latest generation of digital tachographs with sensors which automatically record loading and unloading periods;**
- **introducing an obligation for tachographs to record the start and end location of all operations;**
- **all companies found to be in breach of social protections should be required to retrofit their entire fleet with the latest generation of tachographs.**

The use of the tachograph is bound up with a number of competing objectives. It aims to protect the working conditions of drivers by recording working time and breaks. However, there are issues connected with the privacy and monitoring of drivers. This is especially the case in supply chains, where drivers may not be the employees of the original operating company. It should be noted, therefore, that **tachographs are not seen as an automatic protector of working conditions** by worker-side organisations. The ETF argues that the introduction of legislation protecting privacy rights for professional drivers should be considered. This would mean that supply chain operators would be prevented from monitoring drivers' behaviour on a real time basis through tachograph or other digital recorder outputs, potentially producing an intensification of work (ibid.).

An area for further legislative activity that has been discussed by **worker-side organisations** regards further changes to cabotage controls.²⁵ The ETF has argued that Regulation (EC) No 1072/2009 on cabotage could be improved by **clarifying the wording of the Regulation, moving away from the interpretation currently favoured by the EC that allows three cabotage operations** after each international carriage of goods, to one that stipulates that three cabotage operations are only allowed in the seven day period following the completion of a full international operation: the ETF believes that this would help eliminate an identified practice where undertakings organise repetitive cycles of cabotage by performing 'empty runs' across borders (ETF, 2012b)²⁶.

4.4. Balancing market integration and social protection

The European Commission and the high-level group in the road transport sector have both made recommendations on future change in the sector in order to achieve this goal of balancing integration and workers' rights. The Commission focuses on revising existing legislation in order to clarify it, removing restrictions on cabotage and better enforcement of social provisions, particularly those relating to driving time and rest periods. The high-level group also focuses on enforcement of legislation and promotion of a common understanding and implementation of rules across Member States, in order to protect the social conditions of drivers.

²⁵ In principle, the UETR believe that cabotage should be further liberalised, but caveat this by arguing that a greater standardisation of Member State controls, inspections, and sanctions needs to be achieved first – see below.

²⁶ The ETF further believe that the introduction of a requirement for vehicles to return to their country of registration following the seven-day cabotage period allowed in Regulation 1072/2009 would further combat the issue of empty runs (ETF, 2012b).

Box 8: European Commission recommendations for change

The European Commission's 2014 report on the state of the Union road transport market contains a number of suggestions on how to move forward in the road transport sector, as follows:

- A further **reform to clarify the provisions on access to the EU road haulage market** should be considered. This would bring clarity to the legal provisions that Member States and the industry understand and apply differently. Clearer rules would provide the basis for an enhanced culture of compliance and limit the possibilities for fraud. The planned revision of Regulations (EC) No 1071/2009 and (EC) No 1072/2009 under the REFIT exercise will mark a first step in this direction.
- A gradual **review of certain archaic restrictions that still exist to market access** would appear appropriate.
- **Gradually removing restrictions to the operation of cabotage** could contribute to reducing the administrative burden that the current complex unclear rules create. In addition, this would allow a more efficient matching of transport offer and demand. Relaxing the restrictions on cabotage could contribute to a more economical and resource-efficient road transport sector, as this could lead to a reduction in empty runs, and would play a part in increasing the sector's economic and fuel efficiency.
- Providing the industry with a **highly trained and available workforce** would also help in responding to the impending driver shortage.
- In addition, work should **continue to improve the enforcement of the EU social provisions in road transport**, including those relating to driving time and rest periods. The Commission notes that it is making continued efforts to improve enforcement, including the elaboration of guidance and clarification notes for Member States and stakeholders.
- The Commission's report concludes that in order to ensure that the economic and social dimensions of the sector go hand in hand, it will be necessary to **design measures aiming at restoring the attractiveness of the profession and improving the working environment of drivers**. This includes measures on enforcement, control and mitigation of fiscal and social fraud, as well as improved training levels and skills.

Box 9: High-level group recommendations for change

The high-level group's 2012 report on the development of the EU road haulage market made a number of recommendations on enforcement. These include:

- Enforcement practices have been a long-standing area of concern in this sector, with Member States adopting different enforcement practices. The high-level group therefore recommends that the **Commission continue to promote a uniform interpretation of rules in relation to the most serious infringements and sanctions**, in order to break down differential practices, which are frequently perceived as discriminatory. It also recommends that the Commission extend its target of achieving common definitions of infringements and penalties in the areas of working and driving time to other areas of legislation.
- That control measures to address the risk of non-compliance of any particular operator in the area of driving and working times should also be extended to other areas of legislation.
- That **mutual co-operation be extended** to remove concerns of operators with respect to discrimination.
- That a **distinction be made between linked** (i.e. linked to international movements) **and non-linked cabotage**. Further, that operators should share information when they operate in international or cabotage markets.
- That **development of joint liability regimes** involving shippers and freight forwarders would encourage compliance throughout the logistics chain. The co-responsibility of transport undertakings and drivers for infringements of driving time legislation are an example of how joint liability can work in practice.
- There is a lack of innovation and good practice in the sector. There should therefore be **targeted EU financial support for innovation in the sector**. This could be done within the framework of the Regulation on guidelines for the trans-European transport network (COM(2011) 650 final).

Box 10: Applying the minimum wage to international drivers in Germany

The case of Germany highlights the **difficulties in applying national employment legislation** to drivers based in another country but operating on German soil, illustrating the conflict between freedom of movement and social standards. The question of whether national rules apply to workers in transit is under discussion but has not yet been resolved.

The recent introduction of the minimum wage in Germany, on 1 January 2015, offers an interesting case study of the complexities of the legal framework and practices in this area (Eurofound, 2015). Germany initially sought **to apply the minimum wage to any worker engaged in work within Germany**, including international haulage workers engaged in cabotage and in transport operations to and from Germany, as well as workers in transit. Companies established outside Germany are required to record the start, duration and end of journeys and the hours worked by their employees on German territory. They must pre-notify the German customs authorities of planned operations and confirm that their employees are paid according to German legislation for the part of their journey that takes place in German territory. The new rules apply to over 411 journeys per annum (Aischmann, 2015). Germany is thus going further than other Member States, which have generally restricted attempts to apply national social legislation to non-resident drivers to those drivers who are engaged in cabotage (van Hoek and Houwerzijl, 2011). However, employers and governments from neighbouring Member States contest whether this is in keeping with European law, notably whether the Posting of Workers Directive is applicable to transit, and whether the regulatory burden imposed on foreign undertakings is too high (IRU, 2015). Following complaints from the Polish and Hungarian governments, the European Commission initiated an EU pilot on 21 January 2015 to investigate whether the German practice is in conformity with EU law. The German government has now announced a **moratorium on the enforcement** of the minimum wage legislation **with regard to foreign drivers in transit**; it will **continue to be enforced in application to cabotage** and journeys involving loading/unloading in Germany (BMAS, 2015). Polish unions (El-Sharif, 2015) and the ETF continue to support the enforcement of the minimum wage with regard to transit, describing it as a necessary response to the “critical social and labour situation” in the sector due to the lack of European regulation and enforcement (ETF, 2015).

4.5. Social dumping

On the issue of social dumping there is a relative degree of **social consensus** in many areas, with European-level employer- and worker-side organisations in agreement over the need for future EU actions. For instance, both the employer-side UETR and the worker-side ETF want recognition that road haulage operations are, in practice, co-managed by a variety of **supply-chain operators** enshrined in all relevant EU law. Both bodies recommend that supply-chain operators should be held **jointly responsible** for social protection infringements.

A second area where a degree of consensus between the social partners exists regards the need for **further action against letterbox companies**, used to align workers' pay and protections with the minimum requirements of the Member States with the most lax social protections. The UETR therefore wants Member States' enforcement agencies to be required to perform more checks in order to identify letterbox companies (UETR, 2014). The ETF similarly believe there should be an amendment to Regulation (EC) No 1071/2009, so as to require Member States to carry out checks on road haulage undertakings every

two years, instead of every five as currently required. This is in line with the observations of the Commission report on the state of the Union road transport sector, which described the once every five year requirement of the Regulation as 'weak'. The ETF argues that additional amendments to Regulation (EC) No 1071/2009 – such as the introduction of requirements for all road haulage undertakings to provide parking spaces for all their registered vehicles, and for companies' transport managers to have responsibility for a maximum of one undertaking, instead of the four currently allowed – could further limit the proliferation of letterbox companies (ETF, 2012b).

Another area of social consensus concerns the need for various **further limitations to companies' access to the road haulage market. To limit the length of sub-contracting chains** the UETR would like to see the introduction of a Regulation providing that only companies which wholly own 60 % of the vehicles they use are allowed to operate as transport contractors (Digioia, March 2009). The ETF divergently argues that companies in breach of social legislation should be removed from the +3.5 tonne road haulage market, by amending Regulation 1071/2009 so that it explicitly stipulates that non-compliance with EC Directive 2002/15 on the organisation of work and the Rome I Regulation should be among the 'serious infringements' that lead to the 'loss of good repute and immediate withdrawal of authorisation to perform road transport activity' (ETF, 2012b). The ETF further believes that the implementation of a coordinated quota system for operating licences should be introduced, to limit non-EU operators' access to the market so as to prevent further social dumping (ibid.).

Employer-side organisations have recommended further legislative actions that could improve working conditions in the sector, albeit in an indirect manner. The UETR suggests that a **European observatory** be set up to monitor the true cost of road transport operations so that all operators are able to make informed pricing decisions. The UETR likewise asks that a 'competitive clause' be introduced into contractual legislation, in order to allow undertakings to make automatic changes to their transportation charges according to changes in highly-variable fuel costs. Similarly, the UETR asks that the European Parliament introduce a legislative requirement for all users of road haulage operators to pay for their commissioned services within 30 days of an operation. This would reportedly reduce the impact of the wide scale issue of late payments, which again put pressure on wages and other (semi-) controllable costs, such as social security contributions (del Boca, 2009).

The social partners have also advised that **more research is needed in the sector**. The ETF, and employer associations such as the Nordic Logistics Association and the French employers' association have previously demanded that the EC activate a safeguard procedure contained within Article 10 of Regulation (EC) No 1072/2009, so as to conduct an impact assessment of Member States' cabotage enforcements on businesses and workers (ETF, September 2012). The ETF also argues that the sector is overdue for a research project looking at the prevalence, causes and impacts of work-related fatigue (ETF, 2012b). This is in line with recommendations made to the European Parliament in 2013, which suggested that **mandatory enforcement impact assessments** should accompany new legislation introduced to the sector (Sitran and Pastori, 2013).

4.6. Health and safety

A further area of social consensus regards the need for an EU-led development of a **network of parking spaces and safe and secure facilities** for drivers.

An area for further legislative activity that has been discussed by employer-side organisations regards the practical matter of **how fines for infringement should be paid**. The UETR criticises some Member States for only accepting driver fines in cash: the

organisation believes that this forces drivers to carry significant amounts of money on their person, leaving them exposed to crime and psychological damage.

Worker-side organisations also suggested that stipulations should be inserted into the proposed revision of Directive 96/53 – which is mostly focused on improving new vehicles' aerodynamic profiles – **to increase the size of the truck cabins** within which drivers spend the majority of their working and much of their non-working time (ETF, 2013a).

European-level interventions aimed at reducing and negating the effects of work-related fatigue in the sector could also improve employment and working conditions in the sector. Looking in 2005 at international initiatives aiming at reducing fatigue among professional drivers, the International Labour Organisation identified a number of nationally-sponsored projects designed to reduce the effects of work-related fatigue in road haulage, these included: providing information and guidance to drivers about the effects of fatigue; developing a code of practice for fatigue management; and setting up a transitional fatigue management scheme.

Further impact analyses of these programmes could identify programmes of best practice/high impact, which could potentially be used as templates for European-level action.

Box 11: Social partner consensus and divergence on the way forward**Areas of social partner consensus**

- Better Member State enforcement and a standardisation of regulatory practices, sanctions and penalties.
- New or revision of European legislation to improve enforcement, for example in the area of tachographs and also to tighten access to the road haulage market. Better sharing of information, in order to standardise Member State enforcement of legislation.
- Social dialogue as a tool for enhancing cooperation and enforcement.
- Supply-chain operators should be held jointly responsible for social protection infringements.
- Further action against letterbox companies, for example, more frequent checks on companies.
- The need for various further limitations to companies' access to the road haulage market in order to guard against the setting up of letterbox companies and other employment practices that could lead to social dumping.
- Closing loopholes within EU legislation on tachographs in order to ensure wider use of tachographs and therefore ensure that drivers do not work longer hours than they should by law.
- The need for the development of a network of parking spaces and safe and secure facilities for drivers

Areas of divergence between the social partners

- Sub-contracting: On limiting the length of sub-contraction chains, employers support the introduction of a Regulation providing that only companies which wholly own 60 % of the vehicles they use are allowed to operate as transport contractors.
- Sanctioning: The ETF argues that companies in breach of social legislation should be removed from the +3.5 tonne road haulage market, and also supports a coordinated quota system for operating licences.
- EU-wide corps of inspectors charged with conducting roadside checks. Trade unions are generally in favour of this, whereas employers believe that the prerogative to enforce social protections should remain with national enforcement bodies.

5. POLICY RECOMMENDATIONS AND OPEN QUESTIONS FOR FUTURE RESEARCH

From this review, it would seem that the current legislation governing the sector at EU level is adequate on the whole. However:

- **there are issues around enforcement of legislation, specifically concerning the different enforcement practices of Member States;**
- **different enforcement practices are principally: differences in the understanding, interpretation and application of relevant legislation; and a low level of application and standardisation of enforcement practices;**
- **there is also an issue around the application at Member State level of the Posting of Workers Directive 96/71/EC in the case of international drivers.**

Enforcement issues were highlighted in the literature review and in the interviews with stakeholders. However, none of the interviewees recommended introducing further legislation. One suggestion, from the employer side, was that the Parliament could develop a **common classification of infringements**, in order to standardise practice in all Member States. The view from the ETF interviewee was that existing legislation merely needs to be enforced more thoroughly.

Although the EU has started the standardisation of enforcement practices in the areas of working and driving times, these practices still vary between Member States and therefore **a greater standardisation of enforcement practices in working time and driving times would be advisable.**

In terms of differing national interpretations of the driver time Regulations, although there is legislation that obliges Member States to issue a classification of minor, serious and very serious infringements, no value in terms of sanctions to be imposed has been assigned to each of these categories. It may be worthwhile looking at **whether indicative values can be assigned to these categories.**

It would also be advisable to **standardise definitions of infringements of rules and penalties, and the application of rules relating to infringements and sanctions**, in all areas relating to employment conditions in the sector, not just driving time and working time. Specifically, as there is no Directive on enforcement mechanisms for Regulations 1071/2009 and 1072/2009, it may be advisable to **look at how these Regulations could be better enforced by the EU.**

Differences amongst Member States persist regarding the **application of the Posting of Workers Directive to drivers performing cabotage**, due to the complex contractual relationships in the sector. This is, in general, an extremely complex area of legislation, which is further complicated by differences in practice and interpretation of the law in different Member States. This therefore **appears to be a regulatory gap which may merit further investigation** in order to reduce complexity and ensure fairer treatment of workers working across Member States.

As a large number of transport operations are conducted without formal, written contracts, **efforts to formalise supply chains** in the sector could be of value, as current social protections of the EU only apply when contracts are shown to exist. This will be a difficult exercise, as the sector is characterised by complex subcontracting chains stretching across a number of Member States. However, guidance at EU level to Member States on how to formalise these supply chains to a greater extent would be valuable. This would then help to ensure contractual employment rights for drivers.

Restrictions on access to the road haulage market may help to stop the spread of letterbox companies. For example, only permitting access to companies that wholly own a specific percentage of the vehicles they use. This would discourage operators from entering the market with the specific intention of setting up a letterbox company.

There is a wide variation between Member States in terms of the effectiveness of controls and enforcement measures. Initiatives to encourage Member States to **dedicate resources** to this, to **provide training of enforcement officers** and **promote cooperation between different authorities at national level** would be useful.

Questions for future research.

- More research into the **interaction between the Posting of Workers Directive and legislation governing the international road haulage sector** would be useful, given the complexity of the contractual arrangements in the sector. This could also be linked to more research in the area of cabotage, bearing in mind the recommendations of the 2012 high-level group, which advocated making the distinction between linked and non-linked cabotage.
- Given the dearth of information from national sources, it would be useful to conduct **European-wide comparative research** on employment and working conditions for drivers in the international road haulage sector, and the **impact of internationalisation** of the sector. Eurofound conducts comparative analytical research into such issues, based on reports from national correspondents. Such a study into employment conditions for drivers in the international road haulage sector would be useful.
- As enforcement of legislation at EU level is a major issue, **targeted research into enforcement and interpretation practices** in EU Member States would be beneficial, in order to provide a firm basis on which to base future standardisation actions.
- It would be useful to organise more research on **mutual cooperation between operators**, so that they can share information in order to standardise practices to a greater extent, as recommended by the high-level group. Likewise, research into **the feasibility of a joint liability scheme** as also recommended by the high-level group, between shippers and freight forwarders, would be useful, as this would work towards eliminating time and schedule pressure, which in turn has a negative impact on working conditions for drivers. This was also identified by the IRU representative as an issue for future action.
- **Increasing the attractiveness of the sector** for new entrants could be a useful topic of cooperation for the sectoral social partners, focusing on issues such as how to minimise time away from home, how to ensure adequate rest facilities, how to ensure better enforcement of driving and rest times across all Member States, and how to increase professionalism and career progress within the sector.
- Practices such as **outflagging** have been identified in the literature and stakeholder interviews as something that has increased over the past decade. However, there is a lack of precise information and it would therefore be beneficial to conduct more research into this area.

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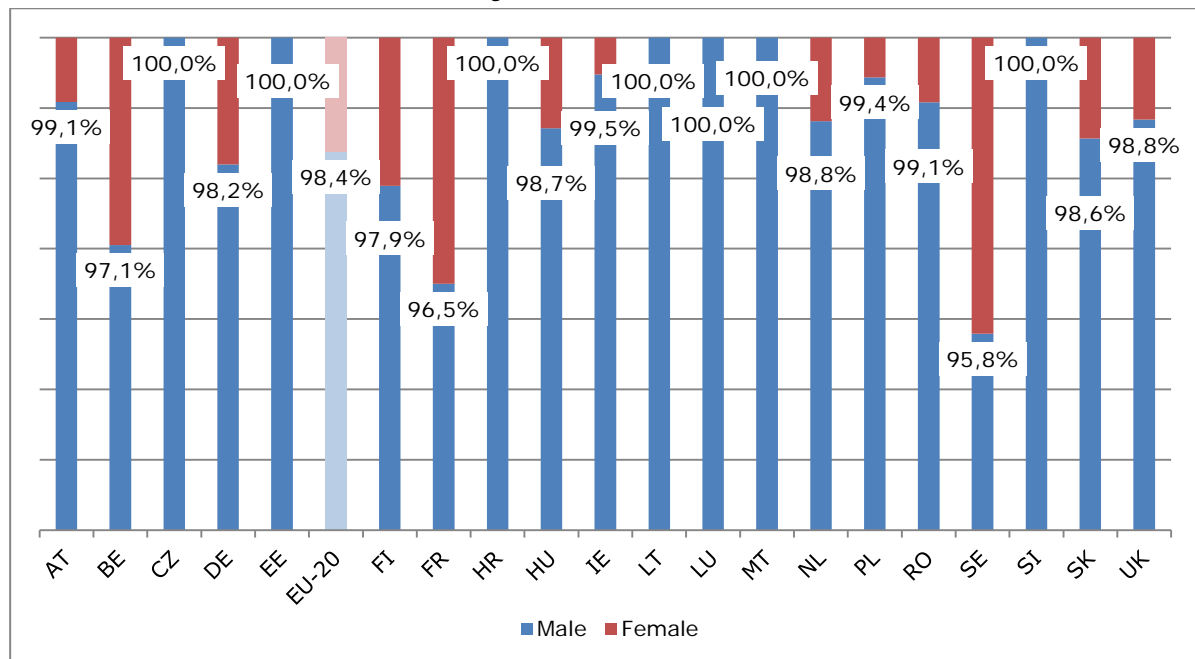
INTERVIEWS

Interviews were carried out as follows:

- Face-to-face interview with Jan Nemec, IRU, on 9 February 2015.
- Telephone interview with Brian Bayliss, independent expert, on 11 February 2015.
- Face-to-face interview with Cristina Tilling, ETF, on 17 February 2015.

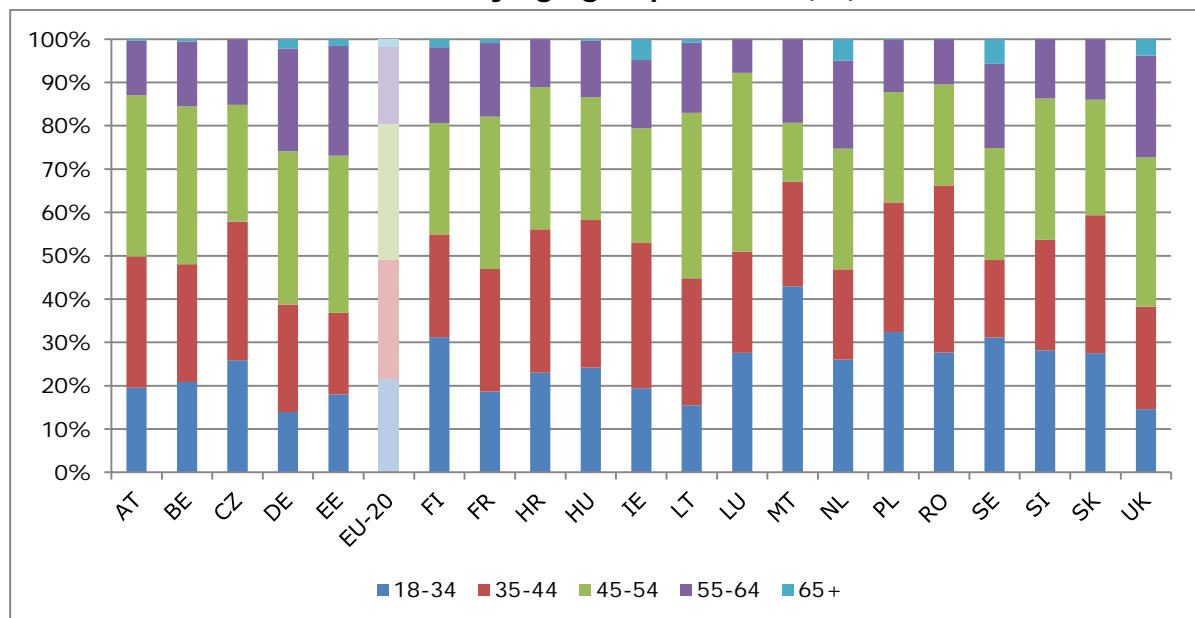
ANNEX: KEY DATA TABLES

Figure 5: People employed as a 'heavy truck and lorry driver' (ISCO-08 833.2) in 20 EU Member States by sex in 2013 (%)



Source: elaboration on Eurostat Labour Force Survey data

Figure 6: People employed as a 'heavy truck and lorry driver' (ISCO-08 833.2) in 20 EU Member States by age group in 2013 (%)



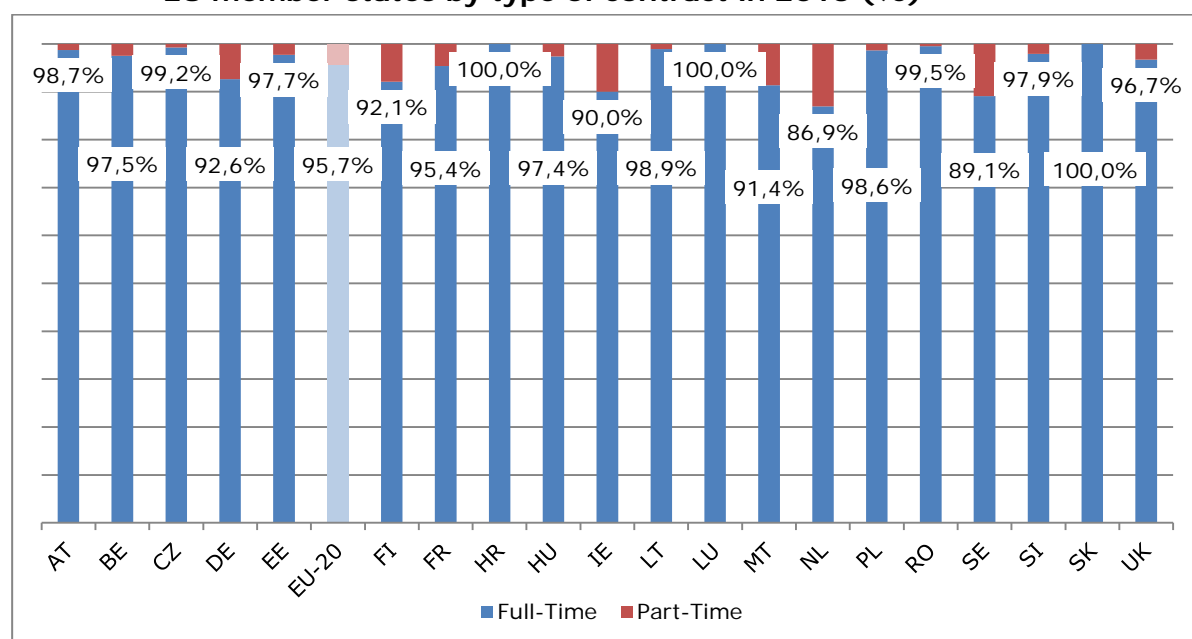
Source: Elaboration on Eurostat Labour Force Survey data

Figure 7: People employed as a 'heavy truck and lorry driver' (ISCO-08 833.2) in 20 EU member states by professional status in 2013 (%)



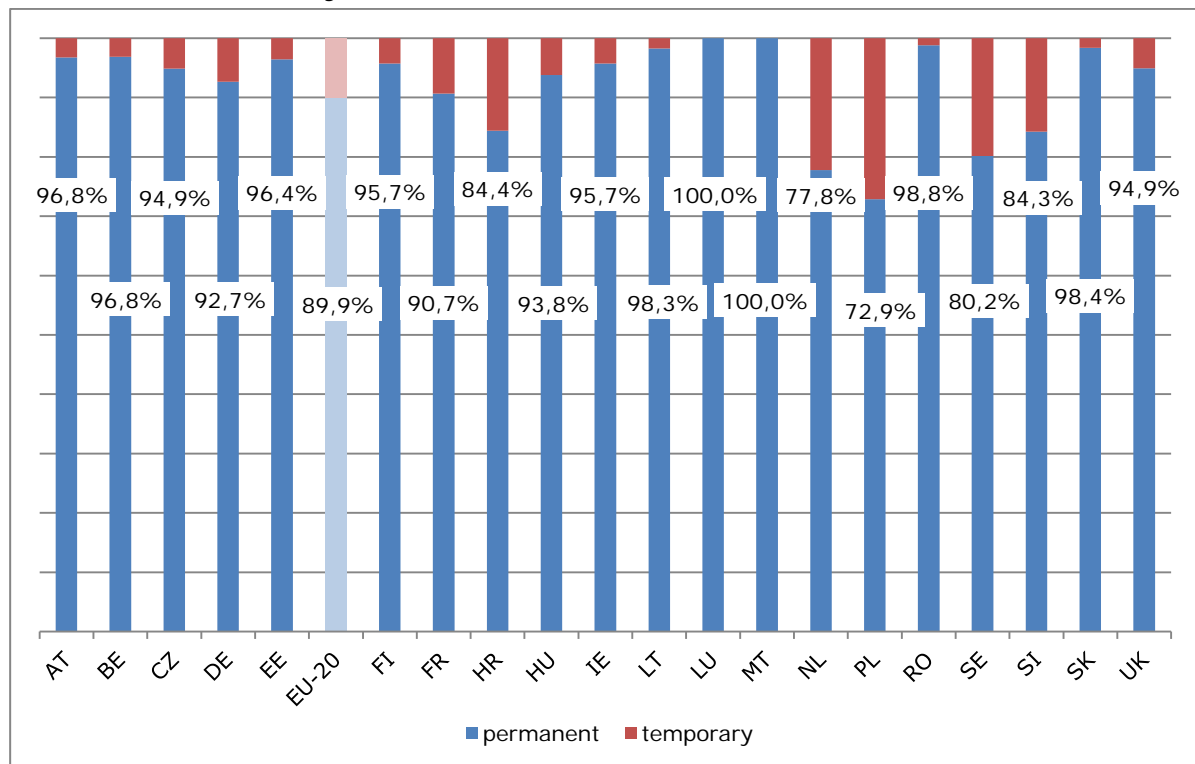
Source: Elaboration on Eurostat Labour Force Survey data

Figure 8: People employed as 'heavy truck and lorry driver' (ISCO-08 833.2) in 20 EU member states by type of contract in 2013 (%)



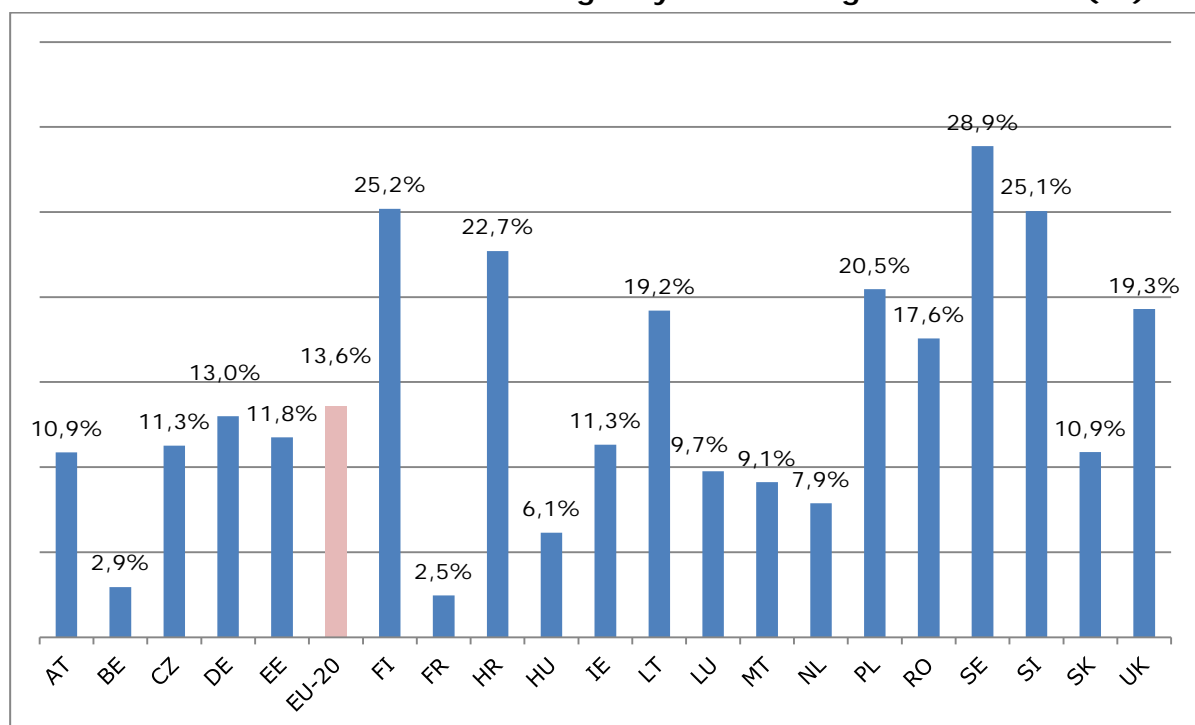
Source: Elaboration on Eurostat Labour Force Survey data

Figure 9: People employed as 'heavy truck and lorry driver' (ISCO-08 833.2) in the EU20 by duration of contract in 2013 (%)



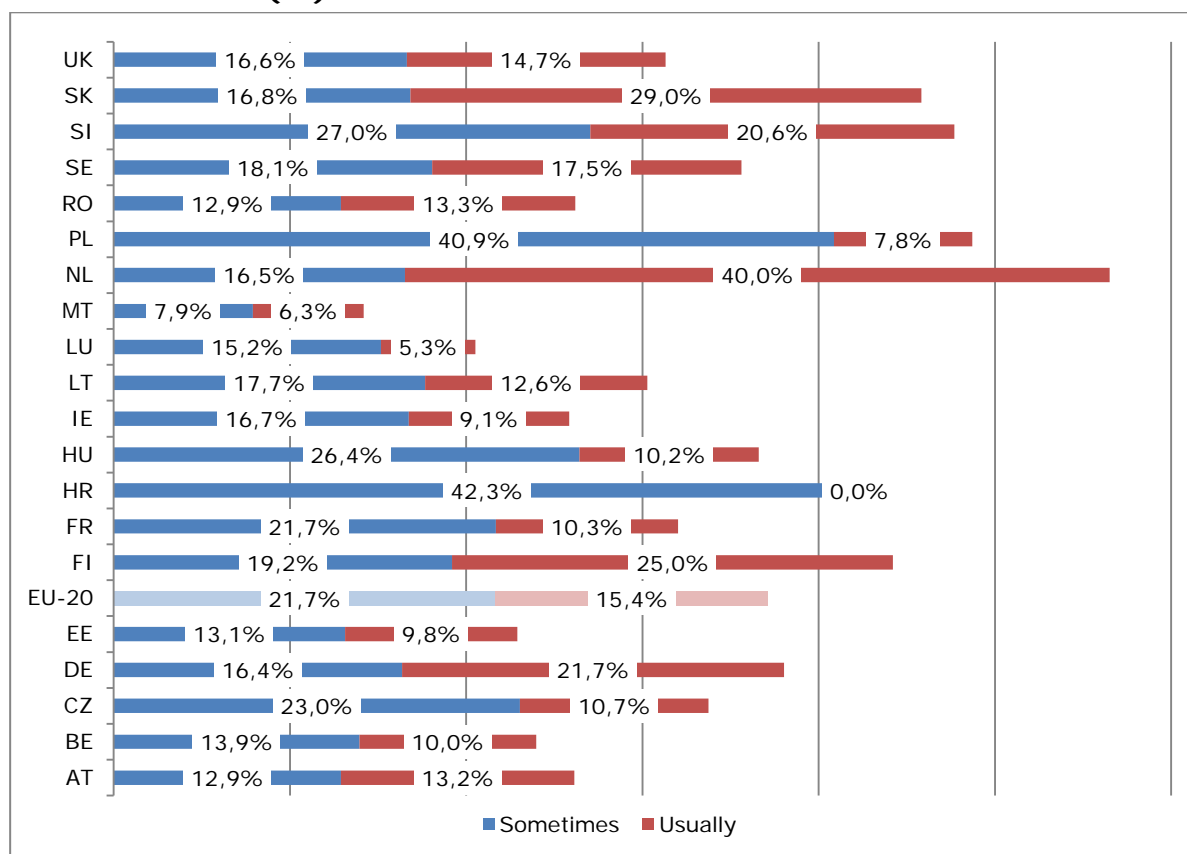
Source: Elaboration on Eurostat Labour Force Survey data

Figure 10: People employed as 'heavy truck or lorry driver' (ISCO code 833.2) in 20 EU member states stating they are working shifts in 2013 (%)



Source: Elaboration on Eurostat Labour Force Survey data

Figure 11: People employed as 'heavy truck or lorry driver' (ISCO-08 833.2) in 20 EU member states stating they sometimes or usually work nights in 2013 (%)



Source: Elaboration on Eurostat Labour Force Survey data

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