DEVELOPMENT AND IMPLEMENTATION OF EU ROAD CABOTAGE

STUDY

2013
DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES
TRANSPORT AND TOURISM

DEVELOPMENT AND IMPLEMENTATION OF EU ROAD CABOTAGE

STUDY
Abstract
The study provides an analysis of the European freight cabotage transport services in the EU and discusses the main changes that have occurred in the regulation of this market in recent years. The entry into force of Regulation (EC) No 1072/2009, and the gradual opening of the market to the Member States, have been the two major drivers of change in the past ten years. The study analyses the amendments that have been made to the Regulation and looks at enforcement provisions within Member States. The study provides updated statistical data on cabotage, where available. It also provides an assessment of socio-economic effects within Member States during the application of the current and previous Regulation commenting on the extent to which these changes were due to Regulation (EC) No 1072/2009 or to other factors.
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LIST OF ABBREVIATIONS

AuslBG Ausländerbeschäftigungsgesetz (Austrian Foreign Labour Act)

AVRAG Arbeitsvertragsrechts-Anpassungsgesetz (Austrian Labour Contract Law)

BAG Bundesamt für Güterverkehr (German Federal Office of Goods Transport)

CETM Confederación Española de Transporte de Mercancías (Spanish Confederation of Goods Transport)

EC European Community

EEA European Economic Area

EEC European Economic Community

EFTA European Free Trade Agreement

EP European Parliament

ERRU European Registers of Road Transport Undertakings

EU European Union

EU12 The Member States which joined the EU in 2004 and in 2007

EU15 EU Member States before the 2004 enlargement

EU27 The current Member States

GITD Główny Inspektorat Transportu Drogowego (Polish Inspectorate of Road Transport)

GüKG Güterkraftverkehrsgesetz (German Road Haulage Act)

GUS Główny Urząd Statystyczny (Central Statistical Office of Poland)

HLG High Level Group

ILT Inspectie Leefomgeving en Transport (Dutch Inspectorate for Human Environment and Transport)

KiM Kennisinstituut voor Mobiliteitsbeleid (The Netherlands Institute for Transport Policy Analysis)

Km Kilometre
**LOTT**  Ley de Ordenación de los Transportes Terrestres (Spanish Land Transport Management Act)

**MS**  Member State

**NTA**  Hungarian National Transport Authority (Nemzeti Közlekedési Hatóság, NKH)

**OCRS**  Operator Compliance Risk Score

**PWD**  Posting of Workers Directive

**TNL**  Transport and Logistics in the Netherlands (Dutch Association of Transport and Logistic)

**VOSA**  Vehicle & Operator Services Agency
### COUNTRY ABBREVIATIONS

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SI  Slovenia
SK  Slovakia
UK  United Kingdom
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EXECUTIVE SUMMARY

This research study is intended to inform the parliamentary debate on further liberalisation of the road haulage sector looking at the manner in which cabotage has grown in Europe in recent years, understanding how much of the changes have been due to the entry into force of Regulation (EC) No 1072/2009 or other causes and discussing the socio-economic impacts following these changes. A description of cabotage and its functioning is included in Chapter 1.

The study is composed of a number of sections as set out in Chapter 1 and is supported by evidence that has been gathered through a number of case studies that are annexed to this study. The analysis is supported, where possible by quantitative information although we have seen that the amount of quantitative information that has been gathered by Member States is often limited and is usually different between Member States.

THE REGULATION

Regulation (EC) No 1072/2009, adopted to harmonise cabotage rules across the EU, was passed when the EU international road freight market was undergoing numerous changes, mostly driven by the 2004 enlargement which opened the door to hauliers from new MS although with some restrictions. These restrictions were removed in 2009 (and in 2012 for Romania and Bulgaria). EU legislation prior to this Regulation (in the form of Regulation EEC No 3118/93) already contained cabotage provisions although some areas were not defined in sufficient detail (for example: what was meant by cabotage needing to be temporary) leading to different interpretations at a national level creating barriers to entry for foreign cabotage operators.

Regulation (EC) No 1072/2009 sought to address these concerns through a number of provisions, the two main ones being: the introduction of the rule whereby no more than 3 cabotage operations can be undertaken within a 7 day period following an international consignment; and the harmonisation of the documents that need to be carried on a cabotage journey to confirm the legitimacy of the cabotage operation.

Following the entry into force of the Regulation in May 2010 the Commission published a number of clarifications to facilitate the interpretation of the Regulation. Some concerns still remain in relation to, for example, multidrops and sanctions. These issues are discussed in more detail in Chapter 2.

ENFORCEMENT

This research study has looked in detail at monitoring and enforcement of cabotage provisions within a number of Member States and has found that there are a number of factors that have a direct impact on the manner in which cabotage operations are monitored and enforced. Firstly, in a number of Member States there are multiple bodies tasked with monitoring infringements in road transport legislation (including cabotage), this fragmentation has led to difficulties in coordination and has made it difficult to monitor cabotage operations effectively. Secondly, and related to the first point, there is little coordination across national borders making enforcement of operations in the “home” market even more difficult. Thirdly, a number of enforcement bodies do not have sufficient resources to monitor cabotage operations effectively. Finally, sanctions for cabotage
infringements vary greatly across the EU creating different incentives in different Member States (as shown in the figure below).

Sanctions applicable to cabotage in selected Member States (€)

*additionally in France hauliers can be sentenced for up to 1 year of imprisonment (limited to hauliers from countries that are not allowed to undertake cabotage operations in France);

Source: SDG case studies, national laws and interviews with Ministry of Transport in selected MSs.

Although data on infringements is difficult to come by, we have seen that in those case studies countries where detailed information is available (Germany and the United Kingdom) infringements were between 0.2% and 0.45% of total inspections.

Through the analysis set out in Chapter 3 we have also been able to identify a number of good practices in enforcement, these include the coordination efforts relating to enforcement pursued in Italy and the OCRS developed in the United Kingdom. These should be studied in more detailed and applied in other Member States where feasible.

MARKET REVIEW

The analysis of market data shows that a key change has occurred in the EU cabotage market with hauliers from EU12 Member States having an increased role in cabotage operations. Overall the proportion of cabotage operations undertaken by vehicles registered in one of the EU12 Member States increased from 12% in 2007 to nearly 40% in 2011. Polish hauliers are among the most active ones: in 2011 they carried out the most cabotage operations in the EU, surpassing the volumes of German and Dutch hauliers. By contrast, the destination countries have remained the same: Germany, France, Italy and the United Kingdom. The figure below shows the change in origin of the main cabotage operators between 2007 and 2011.
**Origin of most active cabotage operators in the EU in 2007 (left) and 2011 (right) (based on data in tonne-km)**

As can be seen from this figure, Poland has taken a leading role in cabotage operations accounting for 18% of all cabotage figures. Chapter 4 of this study sets out the full market review and provides more details on cabotage activities across the EU.

**SOCIO-ECONOMIC IMPACTS OF CABOTAGE**

The evolution of cabotage has had differing social and economic effects on different Member States. One aspect has remained constant for all Member States, the recession that had an impact on all road freight transport as shown in the data provided in Chapter 4. While road freight transport volumes have not yet recovered from the economic crisis that started in 2008, two main trends have been identified. Firstly, companies from EU15 MSs have intensified the practice of flagging-out to exploit the favourable labour cost differences and regain competitiveness. Secondly, companies from EU12 MSs have made greater use of cabotage opportunities offering cheaper alternatives to European consignees looking to reduce their costs.

The increased activity of EU12 hauliers in the recent years can be partially explained by the fact that they can offer lower prices thanks to the lower labour costs in comparison to most EU15 MSs. This cost advantage is attributable to different wage levels (that over the long term should level out), but also to different social protection systems that impose different labour costs on firms from new and old MSs. This is best illustrated in the figure below.
In the long term, increasing salaries in EU12 Member States and stagnant salaries in EU15 Member States could lead to a convergence of labour costs although opinions are divided on this issue as set out in Chapter 5. Although labour costs are also affected by other legislation, in particular social security provisions within Member States that can have a significant impact on costs. Some Member States (Austria and France) have introduced provision to limit unfair competition from different social security provisions.

Some cases of full liberalisation of cabotage already exist within the EU. The Benelux region represents an example of successful market opening in the presence of a harmonised socio-economic environment. National governments have repeatedly prolonged this agreement given its efficiency benefits, which include higher revenues per truck, greater economic integration of national businesses and a reduction in empty runs although set on the backdrop of three countries with a similar level of economic activity. Nevertheless Belgium - along with France, Italy, Austria and Denmark - is reluctant to adopt further liberalisation of cabotage in the EU, at least until "serious market irregularities" leading to social dumping are addressed. The five states expressed their view through a joint statement at the Transport Council, held in Brussels on 11 March.

Economic efficiency is in turn linked to environmental efficiency. Reducing empty running (which across the EU is equivalent to about 22% of all vehicle-km) would have a knock on effect on CO₂ emissions. National governments need to be sure however that any increase in economic activity and cabotage operations does not have downward impact on road safety which is an area of concern that has been put forward by a number of stakeholders during this study.

From the analysis undertaken it seems that the need for further market opening is driven by: the need to reduce empty runs and the overarching goal of creating a European Single Transport Area where road hauliers from different MSs are free to get access to the transport profession in different countries as well as to undertake transport operations across the EU. Any review of existing cabotage rules would benefit from the introduction of a distinction between the two goals mentioned above. This would help to identify the amendments that should be made to current legislative provisions.
CONCLUSIONS AND RECOMMENDATIONS

The study shows that between the two main drivers for liberalisation - i.e. amendment of existing rules to increase clarity and EU enlargement - the latter has been the one that has lead to more changes in the structure of the cabotage market.

The study indicates areas where the framework conditions for cabotage operations vary across MSs, thus challenging the smooth functioning of this market. For example, the extent to which clients of road haulage operations are co-responsible for potential infringements by cabotage operators or the insurance requirements imposed on vehicles circulating on the national networks. Both of these areas are interpreted differently in different MSs and a harmonisation of these issues would benefit the market as a whole.

The presence of such heterogeneous conditions across the EU has had different socio-economic effects in different countries. The analysis in this study shows that, overall, cabotage has put downward pressure on transport costs in several EU15 MSs and has created new business opportunities for EU12 hauliers. This has however been counterbalanced by the reduced profitability of EU15 operators, safety concerns and the potential of driver shortages going forward. All these factors are likely to amplify in the short term with further market opening unless the liberalisation is carried out in a gradual manner and it is accompanied by stronger enforcement regimes at a national level.

In light of future liberalisation of the sector it would be useful to clarify the goals behind market opening of the road haulage market. As mentioned above, the study indicates two main factors driving the debate on further liberalisation: the need to reduce empty running and the creation of a European Single Transport Area. It is the view of the authors of this Report that these two factors need to be addressed separately to ensure that the overall goal of increasing the efficiency of the road transport market is achieved. The proposal put forward by the HLG that distinguishes between linked and non linked cabotage operations goes in this direction.

To ensure efficiency and reduce empty running a different approach to the “3 in 7” rule could be considered through the removal of the maximum number of cabotage operations (3) allowed in 7 days and/or a revision of the provision that requires the full unloading of international carriage before a cabotage operation.

At the same time enforcement could be facilitated by linking cabotage to border crossing rather than unloading as well as introducing other complementary provisions such as those set out in Chapter 6 of the study. In particular, greater cooperation and exchange of information between national and international bodies could improve enforcement.

As for the goal of achieving a fully integrated European Transport Area, a detailed Impact Assessment of the socio-economic effects of different options should be carried out. This is necessary because of the great imbalances that still exist between different framework conditions (in particular labour aspects) in different MSs. In addition to the enforcement aspects, a decision needs to be taken on further harmonisation of cabotage labour laws and on co-responsibility of clients before full opening of the market is implemented.
1. **INTRODUCTION**

1.1. **Preface**

This study looks at the manner in which cabotage has grown in Europe in recent years focusing on the impact over the last 10 years and understanding how much of the changes have been due to the entry into force of Regulation (EC) No 1072/2009.

The analysis included within this study is based exclusively around the cabotage provisions in the above mentioned Regulation and not any related provisions. As a result, the study only briefly touches on other important issues within the road haulage market, such as social and working conditions of road transport hauliers.

The study has been informed by a number of previous studies, desktop analysis and discussions with stakeholders and provides a review of current developments in a subset of Member States based on case studies. Case studies were selected according to a number of criteria: the role of each MS in the EU cabotage market, the existence of good practices in the implementation and enforcement of the Regulation and the need to ensure a balance between EU15 and EU12 Member States.

1.2. **Study Requirements**

The objective of this research study is to provide the TRAN Committee with an update on the workings of road cabotage across Europe. In particular the terms of reference for the study required the following activities to be completed:

- An overview of the legislative background with a focus on the new rules that came into force with Regulation (EC) No 1072/2009 and their aim of removing the uncertainties that had developed as a result of different national interpretation of the previous cabotage rules as set out in Regulation (EEC) No 3118/93. The degree of enforcement of the old and new rules in the Member States and their real impact on the road haulage market. The need of a review of the applicable rules in order to overcome the persistent problems of unfair competition within the internal market and/or the use of other instruments stemming the social dumping.
- Updated statistical data for EU27 Member States relating to road haulage and more specifically cabotage information where available in relation to number of operators, origin of operators and volumes covering, where possible, a diverse mix of Member States.
- An assessment of the economic and social impact of full liberalisation of road cabotage beyond the transitional steps created by the current rules looking at the different domestic policy responses to move towards a more integrated market for cabotage. This assessment is to be facilitated through the preparation of at least 10 case studies which are to be developed in association with discussions with stakeholders at a national level as well as through discussions with the European Commission.
- An overview of the different national controlling/enforcement procedures regarding cabotage with particular emphasis on whether the controls are effective, if they can be improved, and if the courts system can be an effective way of substituting national controls. In addition to a review of the effectiveness of the introduction of a registration requirement at national level proving linked cabotage.
Finally, this study provides conclusions on the development of cabotage across Europe, looks at the possible impacts of the current EU rules and approaches concerning cabotage on the domestic road transport policies and formulates recommendations, in view of the future debate in the TRAN Committee on the review of the internal market in the road freight transport.

1.3. Why cabotage?

In order to increase the efficiency of the economy, in many cases, the European Institutions have sought to liberalise numerous sectors of the economy. Liberalisation has also been pursued in the transport sector with the various modes following different timescales. In the road haulage sector this was first in relation to purely international haulage and now seeking to address liberalisation on a national level.

Road haulage accounts for the vast majority of freight movements across Member States (MSs) with the exception of Latvia and Estonia where rail is the dominating mode in freight transport. Road haulage activity is either national domestic (when hauliers of one country transport goods within their country’s borders) or international transport. The latter is often related to trade activities between Member States which can be further classified into: bilateral international transport (where either loading or unloading activities take place in the country where the vehicle is registered), cross-trade (where loading and unloading take place in two different countries, none of which is the country where the vehicle is registered) and international cabotage activities (where loading and unloading take place in the same country which is not the country where the vehicle is registered, henceforth referred to as “cabotage”).

Liberalisation in the road haulage sector is currently focusing on ensuring that current and future cabotage provisions work effectively. Cabotage is seen as an important, transitory step in increasing the efficiency of the market as it is seen as a way of reducing empty running after an international journey. For example, an operator carrying goods from country A to country B would probably run empty when returning to country A. If however, on the return journey to country A can make additional stops within country B where further loading and unloading occurs, the share of the total journey that is undertaken with an empty vehicle is reduced, thus increasing the efficiency of the journey and also reducing CO₂ emissions.

The current cabotage provisions as set out in Regulation (EC) No 1072/2009 were created primarily to decrease uncertainty resulting from the previous Regulation where national interpretation of the requirements resulted in an inhomogeneous approach to application of the requirements. (The detailed provisions of the Regulation are discussed in Chapter 2). Fundamentally however, as mentioned above, the provisions of the Regulation were established as transitory provisions. This emerges clearly in the preamble of the Regulation, which states that “the establishment of a common transport policy implies the removal of all restrictions against the person providing transport services” on the grounds of nationality or country of establishment, but to provide a system where “(..) smoothly and flexibly, [a] provision should be made for a transitional cabotage regime as long as harmonisation of the road haulage market has not yet been completed”. To ensure that the Regulation remains transitory, the Commission is required to review the market by the end of 2013 in order to assess whether the system has: “.progressed to such an extent that the further opening of domestic road transport markets, including cabotage, could be envisaged”.”
In parallel to the assessment study required by Regulation (EC) No 1072/2009, the Commission is also working on a legislative proposal amending existing rules on cabotage. As announced by the Commission on a number of occasions, the proposal may be presented along with an impact assessment study. However, at the Transport Council on 11 March 2013, the Visegrád Group (Czech Republic, Hungary, Poland and Slovakia) explicitly asked the Commission not to publish the report on the road transport situation simultaneously with the proposed legislation. They argue that more time is required to allow for a comprehensive debate in MSs. At the Transport Council, a total of nine MSs raised concerns with respect to a further liberalisation of cabotage in the EU, while some other countries, stated that they would agree with a move to further liberalisation in this field, in line with the goal of a single transport market. The Commission assured all MSs that it would thoroughly assess the situation before presenting any proposal.

The detailed rules for cabotage operations set out in Regulation (EC) No 1079/2009 and the manner in which the various Member States have interpreted these provisions are set out in Chapter 2.

**Box 1: Types of road haulage operations**

In order to ease the reading, this box illustrates the different types of road transport. Each movement set out in the figure is explained and defined in the legend underneath. The figure illustrates the four main types of movements: **national carriage by domestic hauliers**, national carriage by foreign hauliers (**cabotage**), **cross-trade** and **bilateral transport**.

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**Legend:**
- **A → B** National road freight transport in France undertaken by French hauliers.
- **A → B** National road freight transport in France undertaken by Italian hauliers (**cabotage**).
- **C → D** Cross trade between Poland and Italy undertaken by an haulier registered in France.
- **D → A** Bilateral transport between Italy and France undertaken by an haulier registered either in France or in Italy.
1.4. **Organisation of the research study**

The remainder of this research study is structured as follows:

- Chapter 2 provides an overview of the current EU and national regulation for road transport cabotage operation;
- Chapter 3 provides an overview of the different national enforcement procedures regarding cabotage;
- Chapter 4 presents updated statistical data concerning the road cabotage market in the EU;
- Chapter 5 outlines the economic and social impact of the full liberalisation of road cabotage; and
- Chapter 6 concludes by outlining key findings and recommendations.
2. REGULATION OF CABOTAGE

2.1. European legislative background

2.1.1 Introduction to road transport legislation

Road freight cabotage was gradually liberalised across the European Union in the years preceding the introduction of Regulation (EC) No 1072/2009. Liberalisation was kick-started by Council Regulation (EEC) No 3118/93, which stated that any non-resident hauliers holding a Community authorisation provided for in Council Regulation (EEC) No 881/92 were entitled to operate, on a temporary basis, national road haulage services in another MS, without having a registered office or other establishment in that MS. The previous system, based on quantitative restrictions (quotas) - which governed cabotage before Regulation (EEC) No 3118/93 - was thus replaced by a more flexible, but not more uniform framework. The exact definition of “temporary” mentioned above was left to MSs to determine, a provision which has caused difficulty and created uncertainty, delaying harmonisation at the EU level.

2.1.2 National cabotage provisions prior to Regulation (EC) No 1072/2009

As for Regulation (EEC) No 3118/93 the opening of the EU road cabotage market occurred in June 1998, the date established in Art. 2 of this Regulation for the full removal of the quota restrictions that used to govern this sector and introduce the new regime that allowed this type of operations on a temporary basis.

The International Transport Forum\(^1\) reports that since 1998 Member States chose to interpret the new rules laid down by Regulation (EEC) No 3118/93 in different ways. Some MSs did not add any specific provisions to clarify “temporary”, others applied additional specifications. For example in 1998, Greece imposed a time limit on cabotage operations, a maximum of two months per year – an interpretation that was subsequently abandoned following pressure from the Commission. In 2002, the regulations in the UK set a limit that required haulier’s vehicle to leave the country at least once per month. In 2004, Italy limited cabotage operations to 15 days a month for a maximum of five consecutive days and required hauliers to carry a book of record sheets for cabotage operations on board. Between 2002 and 2004 France specified strict requirements for the “temporary basis” of cabotage operations by introducing in 2002 a Circular imposing a time limit of one week, then in 2004 a Decree defined cabotage as transport operations “which do not give rise to the presence on the national territory of one and the same vehicle for more than 10 consecutive days, nor more than 15 days in any 60 day period”. Both of these attempts by the French government to provide interpretations of Council Regulation (EEC) No 3118/93 were ruled by the French Council of State as being incompatible with the aims of the Regulation.

Following these national initiatives, and following numerous requests from MSs on how to interpret the requirements of Regulation (EEC) No 3118/93, the Commission in 2005 issued an Interpretative Communication\(^2\) that indicated four criteria for assessing the temporary

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nature of cabotage operations: duration, frequency, periodicity and continuity. These criteria originated from three judgements by the Court of Justice in relation to the temporary nature of services (Gebhard judgment\(^3\) and Schnitzer judgment\(^4\)) and cabotage operations (Andreas Hoves judgment\(^5\)) undertaken in a host MS in the EU.

The Commission Communication did not however solve the interpretation issue: the criteria identified were too vague to provide clarity on the meaning of the “temporary basis”: as shown by Table 1 below, after its publication, there was still room for divergent interpretations of Regulation (EEC) No 3118/93 across EU.

**Table 1: Additional measures by Member States defining the temporary character of cabotage as per Council Regulation (EEC) No 3118/93 in force in 2006**

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<th>Additional Measures</th>
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<td>Austria, Germany, Luxembourg, Netherlands, Slovenia, Spain, Sweden</td>
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<td>France</td>
<td>Limits the number of consecutive days (30) and non-consecutive days (45) in any calendar year</td>
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<td>Italy</td>
<td>Limits the number of consecutive days (30) and non-consecutive days (60) in any calendar year and states that cabotage vehicles must leave Italian territory at least once per month</td>
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<tr>
<td>United Kingdom</td>
<td>States that the cabotage vehicles must leave the UK at least once per month. Operations must be ad-hoc, casual, circumstantial and at infrequent intervals</td>
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“To enhance the clarity, readability and enforceability of the existing rules”, in 2007 the Commission presented a proposal to recast some of the existing rules applied to international road haulage, including those regarding cabotage operations\(^6\). The Commission’s proposal was under scrutiny for two years until an agreed text was approved by the European Parliament and the Council in in 2009 (see section 1.1.3 below).

In the two years the new rules were under discussion, some Member States anticipated their application by adopting national rules that interpreted the “temporary basis” of Regulation (EEC) No 3118/93 – still in force – using the criteria that would have been introduced in the new legislative provisions. For example, Spain, Italy and Germany introduced a new cabotage regime in 2008 and 2009 respectively with very similar provisions to those contained in the final text of Regulation (EC) No 1072/2009:

- The Italian Transport Ministry Decree of 3 April 2009 in force between 29 April 2009 and 13 May 2010 established that hauliers authorised to undertake cabotage operation in Italy according to Regulation (EEC) No 3118/93 were allowed to

---


undertake up to 2 cabotage operations within 7 days from the last unloading in Italy following international carriage (rules were less restrictive in previous legislation, as outlined below). It also abolished the special register, “libretto dei resoconti”, where hauliers were asked to track cabotage operations and listed the types of documents to be provided, aligning them to those that would then have been included in forthcoming Regulation (EC) No 1072/2009.

- In 2008 the German government introduced a rule allowing hauliers from other Member States to undertake 3 cabotage operations within 7 days, following the transportation of a cross-border load to Germany which involved the full or partial unloading of the vehicle. This rule came into force on 14 May 2008 and was established by an amendment of Article 17a of the Ordinance on International Road Haulage and Cabotage (GüKGrKabotageV) of 22 December 1998. The same Article further established the documentation necessary for carrying out cabotage in Germany, close to those that would then have been included in Regulation (EC) No 1072/2009.

- In Spain, the Ministerial Order ORDEN FOM/2181/2008 approved in July 2008 - composed of only two articles - laid out the limits for cabotage operations following the “3 in 7” rule and prescribed the documents required for foreign hauliers.

2.1.3 Road cabotage transport – Regulation (EC) No 1072/2009

In October 2009 Regulation (EC) No 1072/2009 was adopted by the European Parliament and the Council with the aim of modernising and simplifying the rules for access to the international road haulage market through a harmonisation of rules relating to cabotage and minimising the administrative burden to the industry.

The Regulation laid down common rules applicable to access contestable markets for cabotage, namely “international carriage of goods by road for hire or reward” within the European Union and clarified the conditions to be fulfilled to undertake international carriage of goods.

In addition, Regulation (EC) No 1072/2009 aimed at bringing together a number of legislative provisions. For example, it incorporated Directive 2006/94/EC which contained separate provisions for the liberalisation of international road transport of mail and for vehicles less than 3.5 tonne of weight. The Regulation also sought to harmonise the requirements for community licences (Article 4) and drivers’ attestations (Article 5) across the EU. The following table highlights the main areas addressed by the Regulation.
### Table 2: Overview of contents of Regulation (EC) No 1072/2009

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Articles</th>
<th>Key provisions</th>
</tr>
</thead>
</table>
| I – General provisions | Scope (Art. 1) | -Applied to **international carriage** of goods for **hire or reward** for journeys within the Community  
-Types of carriage **excluded** by the Regulation (e.g. carriage from EU to Third Countries; mail as universal service; vehicles < 3.5 t; self-carriage; carriage of goods for medical care; etc.) |
| Definitions (Art. 2) | -Vehicle: motor vehicle registered in a MS or a coupled combination of vehicles where the motor vehicle is registered in a MS  
-International carriage: laden journey undertaken by a vehicle where departure and arrival are in two different MSs, with or without transit through one or more MSs or third countries; other provisions defining international carriage  
-Host Member State: MS in which a haulier operates other than the haulier’s MS of establishment  
-Non-resident haulier: a road haulage undertaking which operates in a host MS  
-Driver: any person who drives the vehicle even for a short period, or who is carried in a vehicle as part of his duties to be available for driving if necessary  
-Cabotage operations: national carriage for hire or reward carried out on a temporary basis in a host Member State, in conformity with this Regulation |
| II – International carriage | General Principle (Art. 3) | **International carriage** shall be carried out subject to **possession of a Community licence** and, if the driver is a national of a third country, in conjunction with a **driver attestation** |
| | Community Licence (Art. 4) | Specifies provisions to:  
Issuing of the licence; Ten year maximum validity of licence;  
Hauliers’ duty for keeping the licence; Uniform licence format; Serial number and recording of licence |
| | Driver attestation (Art. 5) | Issuing and format of attestation; Haulier’s ownership of driver attestation and duty to keep and use it or its certified copies; Validity of attestation set by MS, maximum 5 years; |
| | Verification of conditions (Art. 6) | Rules to carry out checks by MS to verify the conditions for issuing and keeping the Community licence and driver attestation |
| | Refusal to issue & withdrawal of attestation (Art. 7) | Cases where MS can refuse to issue or renew a Community licence or a driver attestation; cases where MS can withdraw Community licences or driver attestations |
| III – Cabotage | General Principle (Art. 8) | -Hauliers for hire or reward that hold a **Community licence** and whose driver holds a **driver attestation**, entitled to carry out **cabotage** operations.  
-Cabotage operations may start only **after unloading** of the goods from an incoming **international carriage**.  
**Up to 3 cabotage operations within 7 days** from the unloading of international carriage. Hauliers may carry out some or all of the cabotage operations in any MS under the condition but limited to **1 cabotage operation per MS within 3 days** of the unladen entry |
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Articles</th>
<th>Key provisions</th>
</tr>
</thead>
</table>
|        |          | into the territory of that MS.  
|         |          | -Hauliers must be able to show clear evidence of the incoming international carriage and of each subsequent cabotage operations. A list of evidence to be shown is listed. |
|        | Rules applicable to cabotage operations (Art. 9) | MS national provisions apply to the following: conditions governing the transport contract; weights and dimensions of road vehicles; requirements relating to the carriage of certain types of goods (dangerous goods, perishable foodstuffs and live animals); driving times and rest periods; VAT. |
|        | Safeguard procedure (Art. 10) | Procedures for the request for safeguard provisions in case the new Regulation creates "serious disturbance" to the national transport market of a MS and the type of measures the Commission may decide to adopt if the request is justified. |
|        | Mutual assistance (Art. 11) | MS required to grant reciprocal assistance in the application and monitoring of the Regulation. Exchange information via the national contact points established pursuant to Article 18 of Regulation (EC) No 1071/2009. |
| IV - Mutual assistance and penalties | Sanctioning of infringements by the MS of establishment (Art. 12) | -Sanctions for serious infringements or for any misuse of driver attestations are decided by MS of establishment of the haulier; potentially leading to the temporary or permanent withdrawal of Community licence.  
-Penalties need to be proportionate to infringement.  
-MS shall ensure that hauliers have the right to appeal against any administrative penalty imposed on them. |
|        | Sanctioning of infringements by the host MS (Art. 13) | -Exchange of information between host MS and MS of establishment in case of infringement of this Regulation or of Community road transport legislation. The host MS shall transmit to the MS of establishment, within 6 weeks of their final decision on the matter, the information regarding the infringement (description, type, penalties).  
-Host MS authorities can impose penalties on a non-resident haulier who has committed infringements in their territory during a cabotage operation. Penalties need to be imposed on a non-discriminatory basis. These penalties may, inter alia, consist of a warning, or, in the event of a serious infringement, a temporary ban on cabotage operations on the territory of the host Member State where the infringement was committed.  
-MS shall ensure that hauliers have the right to appeal against any administrative penalty imposed on them. |
|        | Entry in the national electronic register (Art. 14) | Serious infringements which have led to the imposition of a penalty by any MS shall be recorded by the MS of establishment of hauliers in the national electronic register of road transport undertakings. |
| V - Implementation | Penalties (Art. 16) | MS shall lay down the rules on penalties applicable to infringements of the Regulation and take all the measures necessary to ensure that they are implemented. Penalties provided for must be effective, proportionate and dissuasive. MS shall ensure that all such measures are taken without discrimination as to the nationality or place of establishment of the haulier. |
### Reporting (Art. 17)
- **Exchange of information** between MS and the Commission on the number of hauliers possessing **Community licences** and of certified copies for vehicles issued and number of **driver attestations** issued.
- **Commission** required to **drawing up a report on the state of the Community road transport** market by the end of 2013.

### Repeals (Art. 18)

### Entry into force (Art. 19)
Applicable from 4 December 2011, with exception of Art. 8 and Art. 9 on cabotage, which shall apply from 14 May 2010.

**Source:** SDG elaboration on Regulation (EC) No 1072/2009.

As set out at the start of this chapter, Regulation (EC) No 1072/2009 defines “**cabotage**” as “national carriage for hire or reward carried out on a temporary basis in a host Member State”, and states that any haulier for hire or reward who is a holder of a Community licence and whose driver, if he is a national of a third country, holds a driver attestation, “shall be entitled (…) to carry out cabotage operations, within the conditions laid down in Article 8, 9 and 10 of the Regulation”.

More specifically, Article 8 of the Regulation 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 MS to be carried out within three days of entering that MS without cargo.

Article 8 also lists the evidence that needs to be produced by the international haulier regarding cabotage operations and Article 9 indicates that, in a number of areas (unless otherwise provided in Community legislation) hauliers must abide by the laws, regulations and administrative provisions in force in the host MS.

Article 10 was included to provide a “safeguard procedure” for Member States related to the risk of “serious disturbance of the national transport market in a given geographical area due to, or aggravated by, cabotage” (see box).

Article 16 delegates to MSs the role of establishing the sanctions applicable to infringements of the provisions of the regulation, ensuring that “measures are taken without discrimination as to the nationality or place of establishment of the haulier”.
Box 2: Safeguard procedure

Article 10 and the safeguard procedure

The inclusion of Article 10 to Regulation (EC) No 1072/2009 is viewed as the result of a compromise emerging from the negotiations between Member States wishing to open up domestic road markets and those wishing to protect their national industries.

The compromise provides for a specific provision which allows MSs to apply for a temporary restriction of cabotage activities, either for a specific area within their national territory or for the whole country. The Commission must decide on the appropriateness of the requests to ascertain whether cabotage is causing "serious disturbance" to the domestic freight market.

The Regulation clarifies the term “serious disturbance” as "the existence on the market of problems specific to it, such that there is a serious and potentially enduring excess of supply over demand, implying a threat to the financial stability and survival of a significant number of hauliers”.

As of early 2013, although local industry groups (in the Dutch port of Rotterdam) and local governments (in the Italian region of Friuli) have asked their national governments to apply Art.10 in order to protect their regional markets, no requests for a safeguard procedure have been put forward by MSs. Stakeholders have indicated that this is due to national governments’ reluctance to comply with the justifications required by the Regulation, as well as the difficulties in determining what would be counterfactual in the absence of cabotage.

Although the Regulation increased the degree of harmonisation across Europe in relation to cabotage some differing practices remained. Following the adoption and the entry into force of the cabotage provisions on 14 May 2010, several MSs and stakeholders raised issues regarding its correct application. To clarify the interpretation, the Commission organized in 2011 a committee meeting to go through the main critical points on the cabotage provisions. This was then followed by the publication of a “frequently asked questions” sheet clarifying aspects such as the starting date of the cabotage period, the possibility of a cabotage operation to allow for several loading and/or unloading points (multi-drops) and the calculation of the 7-days period. The following summarises these clarifications.

<table>
<thead>
<tr>
<th>Article</th>
<th>Summary of provisions</th>
<th>Q&amp;A Clarifications 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 2(6)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definition of a cabotage operation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>“Cabotage operations” means national carriage for hire and reward carried out on a temporary basis in a host Member States</td>
<td></td>
<td></td>
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<tr>
<td>The term &quot;operation&quot; needs to be defined according to the common practice in the industry. It means &quot;the carriage of a consignment from the picking up of the goods until their delivery at the consignee as specified in the consignment note&quot;. &quot;A cabotage operation can involve several loading points, several delivery points or even several loading and delivery points, as the case may be&quot;.</td>
<td></td>
<td></td>
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</tbody>
</table>
### Article 8(2)

**Limits on the number of trips and days**

Once the goods carried in the course of an incoming international carriage have been delivered, hauliers shall be permitted to carry out up to three cabotage operations following the international carriage from another Member State or from a third country.

The last unloading in the course of a cabotage operation before leaving the host Member State shall take place within 7 days from the last unloading in the host Member State in the course of the incoming international carriage.

Within the time limit referred above, hauliers may carry out some or all of the cabotage operations permitted under that subparagraph in any Member State under the condition that they are limited to one cabotage operation per Member State within 3 days of the unladen entry into the territory of that Member State.

"Days" as contained in the Regulation refers to calendar days and not just a period of 24 hours. Therefore the overall period of 7 days referred to in Article 8(2) starts from 0h00 of the day following the last unloading in the course of the incoming international carriage. The last unloading in the course of the final cabotage operation must consequently take place at 24h of the seventh day at the latest.

A haulier may decide to carry out one, two or all three cabotage operations not in the Member State of the incoming international transport but in other Member States. In this case there is only one cabotage operation allowed in a given Member State and the operation has to be carried out within 3 days of the unladen entry.

Non-resident hauliers shall produce clear evidence of the incoming international carriage and of each consecutive cabotage operation carried out, as detailed in Art. 8(3) subparagraph 2.

Hauliers are required to keep documentation of every carriage carried out in connection with their cabotage operations. This must comprise all the details listed in Art. 8(3) subparagraph 2. These details are contained in the consignment note or bill of lading, normally in the CMR format.

No additional document is required in order to prove that the cabotage rules have been respected. This provision, however, does not mean that control authorities cannot use other evidence required by road transport legislation, e.g. the tachograph data, to establish whether a cabotage operation is carried out according to the rules.

The new rules on road cabotage are applicable on 14 May 2010. From this date this new regime will prevail over any national legislation which provides for diverging rules. This also means that national authorities cannot require any additional document to the one with which the haulier gives evidence of the details of each cabotage operation.

**Source:** SDG research (2012).
Despite these clarifications, there are still different interpretations of specific issues concerning the cabotage regime in different MSs. These different interpretations are discussed further later in this chapter.

As noted by the High Level Group Report on the development of the road transport market published in June 2012 (hereafter HLG Report7), harmonisation needs to cover a number of areas: technical conditions and costs of vehicle, working conditions and labour costs of manpower and the enforcement of existing EU rules on the various aspects of the road transport market (e.g. training, working conditions, access to profession, transport of dangerous goods, etc.). The scope of this Research Study is limited to the cabotage specific aspects included in Regulation (EC) No 1072/2009 though on some occasions we will report stakeholders’ views on the other aspects set out above.

2.2. National legislative framework

2.2.1 Introduction

This section provides an overview of the introduction of Regulation (EC) No 1072/2009 in Member States. However in order to better understand the different factors affecting the regulation of cabotage across Europe, it is necessary to explain some key background elements of the provisions:

- An overview of the geographic scope for the introduction of EU-wide rules on road freight cabotage, including the existing temporary restrictions on labour mobility applied to Member States joining the Union after 2004, but also any bilateral agreements which have conversely liberalised freedom of movement between some MSs
- A description of the impacts of introducing the Regulation in a selection of Member States, highlighting the main legislative changes required
- An analysis of other regulatory issues which affect the ability of non-resident hauliers to perform cabotage in other Member States, such as the rules on the posting of workers and insurance requirements.

2.2.2 The geographic scope for EU rules on road freight cabotage

At present all countries that are members of the European Economic Area – i.e. all EU MSs, Iceland, Norway and Liechtenstein - are subject to Regulation (EC) No 1072/2009 although accession of new Member States in recent years has changed the cabotage landscape.

The ability of hauliers from new Member States (joining the EU after 2004) to perform cabotage in older Member States (EU15) since their accession to the European Union has been governed by a system of temporary restrictions. These restrictions have been set at the national level through the pre-accession treaties and have had an impact on the development of cabotage across Europe, effectively limiting cabotage activities for the EU12 MS up to 2012. The matrix in Figure 1 shows the year in which restrictions were lifted based on the available evidence.

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The picture emerging from the analysis of the restrictions across Europe shows fragmented and gradual opening of cabotage, in particular for hauliers from the new Member States wishing to operate in EU15 countries. **Most restrictions were lifted in 2009** for the Member States acceding to the EU in 2004, although cabotage movements to Ireland and Sweden were liberalised earlier. Bulgarian and Romanian hauliers were not allowed to perform cabotage in most countries until 1 of January **2012**. This piecemeal market opening is also an important factor when trying to draw conclusions from cabotage statistics.

In contrast, there were also some bilateral (trilateral) agreements that liberalised cabotage activities between some Member States either fully or partially, before the entry into force of the Regulation. **Benelux** countries (Belgium, the Netherlands and Luxembourg) fully liberalised cabotage in 1991 and have repeatedly prolonged this agreement, most recently in 2008 through the **Conseil Interparlementaire Consultatif**. The rationale for this decision lies in the recognition that hauliers gain higher revenues per truck by being able to reduce empty runs across the Benelux countries.

A special agreement is also in place in the Republic of Ireland. The Irish government negotiated a derogation in relation to the haulage of road vehicles around the seasonal peak, running from the start of the calendar year to mid-February. In this period, cabotage rules are relaxed in Ireland to allow for seasonal peak demand to be met by overseas hauliers. In this case, the majority of hauliers that enter the Irish market are from the UK.

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**Figure 1: Cabotage restrictions, years in which bans were lifted**

| Country where cabotage takes place | BE | BG | CZ | DK | DE | EE | EL | ES | FR | IT | LV | LT | LU | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK |
|-----------------------------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| **2008**                          |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| **2009**                          |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| **2010**                          |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| **2011**                          |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| **2012**                          |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |

**Source:** SDG case studies, national laws and interviews with Ministry of Transport in MSs.

**Notes:** Green = full liberalisation (Benelux); EU15 = old MSs with no restrictions; MT and CY: no restrictions.
2.2.3 Introducing Regulation (EC) No 1072/2009 in Member States

The new rules on the access to the road haulage market required Member States to apply Articles 8, 9 and 10 related to cabotage from 14 May 2010. Although the entry into force of a Regulation is automatic, a number of Member States made some modifications to their existing regimes to bring them into line with the Regulation: in some cases (e.g. Spain, Italy and Germany), some of these changes were inserted into national legislation before the new Regulation was approved (see section 2.2.2 above) and amended where necessary once the Regulation entered into force; in other cases they were made in parallel (France) or straight after its entry into force (United Kingdom, Poland and Hungary). The table below sets out a summary of these efforts in a selection of Member States.

Table 4: Applicative measures by Member States in relation to Regulation (EC) No 1072/2009

<table>
<thead>
<tr>
<th>Member State</th>
<th>Additional Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Amendment of Austrian Road Freight Transport Act (GütbefG) of 31 August 1995</td>
</tr>
<tr>
<td>Belgium</td>
<td>Royal Decree of 10 August 2009</td>
</tr>
<tr>
<td>France</td>
<td>Article 33 of Law No 2009-1503 of 8 December 2009, Articles L 3421-3 to L 3421-10 of transport code, Decree of the State Council No. 2010-389 of 19 April 2010</td>
</tr>
<tr>
<td>Germany</td>
<td>Amendment of Article 17a of the Ordinance on International Road Haulage and Cabotage (GüKGrKabotageV) of 22 December 1998</td>
</tr>
<tr>
<td>Hungary</td>
<td>Amendment of Ministerial Decree No. 89/1988 Government Decree No. 156/2009</td>
</tr>
<tr>
<td>Latvia, Netherlands</td>
<td>No specific national legislation</td>
</tr>
<tr>
<td>Poland</td>
<td>Amendment of Road Transport Act of 6 September 2001: Ustawa o zmianie ustawy o transporcie drogowym oraz o zmianie niektorych innych ustaw z 12 lutego 2010 r. Dz. U. 2010 nr 43 poz. 246</td>
</tr>
</tbody>
</table>

Source: SDG Analysis (2013).

In Hungary, it was necessary to amend existing regulations in order to remove the need for registration to a national register by foreign vehicles. This was incompatible with Article 8 of Regulation (EC) No 1072/2009. Similarly in the UK the introduction of the new Regulation led to some changes, such as the removal of the requirement contained in the
Goods Vehicles (Licensing of Operators) Act of 1995 to have a UK licence to operate in the UK where a company has a Community licence.

In Poland, between May 2009 and the entry into force of Regulation (EC) No 1072/2009 in May 2010, the Road Transport Act specified that in order to perform cabotage operations on Polish roads, transport undertakings had to obtain a permit from the Ministry of Infrastructure. In order to apply for such permits, the transport undertaking had to obtain two positive references from Polish national road haulage organisations. Such permits had a time limit on their validity, but did not specify how many cabotage operations could be carried out within that period. After the entry into force of the Regulation, EU hauliers are no longer subject to the permit system, which is still in force for non EU hauliers.

By contrast, other Member States have not yet modified or updated their national laws following the introduction of the Regulation, as a result in some cases there is either incongruence between old and new provisions, or a legislative vacuum with regards to the applicable sanctions. Of the selected case studies, the Netherlands fall within this category. The Dutch government is in the process of drafting complementary legislation to Regulation (EC) No 1072/2009 in order to establish the necessary sanctions in case of infringements related to cabotage. A new legislative framework is expected to enter into force in early 2013. It was only in February 2013 that the Austrian government amended the Austrian Road Freight Transport Act in response to the entry into force of Regulation (EC) No 1072/2009.

2.2.4 Different interpretation of the Regulation

The analysis undertaken for this study has revealed that some specific aspects of Regulation (EC) No 1072/2009 do not appear to have been uniformly applied across all Member States. The following examples suggest that some differences exist in the interpretation of the provisions of this Regulation.

Partial loading and unloading during a cabotage trip, known as multi-drop traffic, is regarded as part of a single cabotage trip in some Member States such as Denmark, but not in others. In France, for instance, multi-drops are considered differently: partial loading/unloading is regarded as a cabotage operation. This reduces the scope for cabotage operators to maximise the distributions of loads within the seven-day period.

In Portugal, the national law governing cabotage was modified in 2009 with reference to the new provisions. However, the approved Decree regulates cabotage for vehicles heavier than 2.5 t, whereas the EU Regulation is designed to be applied for vehicles over 3.5 t and the vast majority of Member States has interpreted it in this manner. In the UK, all documents required to prove the legitimacy of the cabotage operations need to be carried on board of vehicles, a provision that does not seem to be applied in other Member States.

Further examples were presented during the hearing of the High Level Group and reported by the European Commission to stakeholders in January 2013. These relate, for example, to specialised oversize transport. Due to the heavy-haul nature of this type of transport and the general pace at which loads are commissioned and transported, transport of such loads is usually longer than seven days. This gives rise to concerns by some MSs over how to reconcile operational requirements with cabotage rules.

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8 Amendement to the Austrian Road Freight Transport Act : BGBl. I Nr. 32/2013.
9 This refers to specific sectors, such as the wind turbines one, where the nature (duration and weight) of the transport activities generated usually require trips longer than seven days.
2.2.5 Other regulatory issues

Regulation (EC) No 1072/2009 – and its related implementation and enforcement acts adopted in the national legislative systems - are supplemented by other European and national provisions setting the contest for the cabotage market in different MSs which, in many cases, create differences in the conditions road hauliers have to fulfil to operate cabotage operations in different countries.

In the course of this study we have encountered examples related to co-responsibility of the companies commissioning haulage (e.g. provisions where shipper, forwarder, forwarding agent are also liable if a cabotage infringement is identified, not only the haulier) and transport companies as well as between transport undertakings and drivers; to the presence of different regimes regarding insurance of vehicle fleets circulating in different MSs; and to the application of the Posting of Workers Directive (PWD) to drivers and, in particular, those performing cabotage activities.

With respect to the first issue, co-responsibility, it is difficult to assess the extent to which national authorities are shifting the burden from hauliers to customers. During the case analysis undertaken for this assessment, stakeholders from several Member States (Belgium, France, Germany and Austria) mentioned that in their countries fines can be applied to freight customers in view of their co-responsibility in respecting cabotage legislation.

Box 3: Co-responsibility example in the road haulage market

**The case of Germany**

German law foresees the possibility for control bodies to identify the co-responsibility of the contracting organisation, ruled in Article 7c of the GüKG. The Article states that any organisation contracting transport services to another enterprise on a commercial basis, must not allow this services to be carried out in the event he has the knowledge or negligently has no knowledge that the contracted enterprise:

- does not hold an allowance in accordance with Article 3, does not hold an entitlement in accordance with Article 6, or alternatively a community licence, or illegitimately uses the allowance, entitlement or licence;
- deploys drivers in a manner not compliant with provisions of Article 7b (1) sentence 1, or for whose he does not hold a driver attestation in accordance with Articles 3 and 5 of Regulation (EC) No 1072/2009;
- subcontracts services to another freight forwarder or haulier which carries out the services under the conditions listed in 1), or listed in 2).

In summary, the contracting party is required to request information from the haulier on the availability of the required documentation. The contracting party can be made responsible and fined if this was not the case.

Several stakeholders in other MSs where co-liability is not present in the law have spoken in favour of increasing the administrative controls for both service providers and customer companies to ascertain, when possible, where the failure to comply with the rules originate.

Also the HLG Report indicates that with such a high number of participants in the logistics chain, “ways must be developed to achieve joint responsibilities and liabilities”, claiming that this will also encourage cooperation between parties and lead to efficiency gains.
Other regulatory requirements, which are specific to some Member States, impose some additional burdens to non-residents wishing to perform cabotage and alter the actual costs of these activities. For instance in Germany, Article 7a of the Road Haulage Act\(^\text{10}\) establishes the requirement that all hauliers carrying out domestic road transport operations in Germany must hold liability insurance against the damage of goods carried. The minimum amount of insurance is €600,000 for each claim, and no less than €1.2 million for a year. The haulier has to guarantee that a certificate of this insurance is carried by the driver while carrying out transport operations. Some stakeholders from new MS have claimed this to be a high barrier for them in undertaking cabotage operations in Germany.

Similarly the application of Posting of Workers Directive\(^\text{11}\) to hauliers performing cabotage in other Member States is subject to different national interpretations. A recent study by the European Commission provides an overview of the degree of harmonisation in this field\(^\text{12}\), highlighting the lack of a uniform application of PWD to cabotage workers in most MSs. A summary of their findings is presented in Table 5 below. The study explains that with the opening up of the local markets to cabotage, the application of a minimum level of protection to the workers performing the cabotage service is becoming more urgent.

**Table 5: Application of the PWD to cabotage in selected Member States**

<table>
<thead>
<tr>
<th></th>
<th>LU</th>
<th>BE</th>
<th>IT</th>
<th>SE</th>
<th>NL</th>
<th>FR</th>
<th>EE</th>
<th>AT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applied to cabotage</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
</tr>
<tr>
<td>Unclear application to cabotage</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Source: SDG analysis of EC Study on PWD (2011).*

One of the difficulties highlighted in the study with respect to the application of the PWD to cabotage relates to the requirement of an “employment relationship” between the undertaking making the posting and the worker during the period of posting. However stakeholders in Sweden have pointed out that this would mean that there has to be a contract between the transport company and a service recipient operating in the state where the cabotage takes place. In Sweden such a contract is deemed to be absent when the contract with the transport company was entered into by a forwarding or freighting agency established outside the country of cabotage.

In Austria, cabotage operations count as postings of workers and are subject to the provisions of the Austrian Law Amending the Labour Contract Law (AVRAG). According to Article 7b of this Act, postings of workers are only permitted if a notice of this posting is submitted to the responsible authority (Ministry of Finance) at least one week in advance of the start of operations. The one week notice is not applicable to cabotage operations carried out at short notice. In this case it is sufficient to give notice before the start of operations.

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\(^{10}\) GüKG.

\(^{11}\) Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provisions of services.

\(^{12}\) A. Van Hoek & M. Houwerzijl (March 2011), *Comparative study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union*, European Commission. This study is the result of a research project commissioned by the European Commission on the legal aspects of the posting of workers in the context of the provision of services in the EU, as part of the TRANSPO pilot project launched in July 2009 “working and living conditions of posted workers”. 
**Box 4: Posting of Workers Directive for road cabotage activities**

**The case of Austria**

In order to prevent social dumping as a result of the opening of the labour market to the EU27 and to guarantee fair competition with domestic labour conditions, the following additional requirements for companies sending staff abroad (to Austria) were established in the Wage and Social Dumping Combat Act. The provisions of this law amended the Employment of Foreign Nationals Act (AuslBG) and the Austrian Law Amending the Labour Contract Law (AVRAG), both of these also apply to cabotage and relate to:

- Obligation to comply with the wage levels set out in Austrian legislation including classification criteria (basic pay, including overtime base salary but excluding extra payments, allowances, bonuses, premiums and individual contractual overpayments);
- Obligation to carry all wage documents in German on the vehicles during the exercise of cabotage operations.

Transport companies established outside **France** whose employees perform cabotage operations in this Member State are subject to the rules of posting under the Labour Code (Articles from L 1261-1 to 1263-2 and from R 1261-1 L to R 1264-3) as per the French Directive 2008/17 of 5 October 2008 on posting rules. The Decree of 19 April 2010 softened the rules of prior notification of posting foreseen by the Labour Code. Prior notification of posting is required only when the driver works in France for a period of at least 8 consecutive days. Most of the road haulage companies posting employees in France to carry out cabotage operations will not have to fill this notification.13

In summary, the existence of regulatory asymmetries across MSs is an obstacle to the creation of a level playing field in the road haulage market. The opportunities to perform cabotage and the related costs are affected by uncertainties over the application of the Posted Workers Directives (e.g. in the case of subcontracting), different levels of insurance requirements and non-uniform laws about the conjoint responsibilities of consignees.

**2.3. Future developments**

Overall, Regulation (EC) No 1072/2009 has led to a reduction in the uncertainties raised from the different national interpretations of the previous rules (Regulation (EEC) No 3118/93). The new Regulation has clarified the temporary nature of cabotage by introducing quantitative criteria to define the scope for this type of operation and it has linked it to international carriage operations - a requirement that had not been included in the previous rules. Moreover it harmonised the requirements for documentation, which were previously much diversified across the EU and in some cases represented a high barrier to entry for hauliers from foreign MSs.

Nevertheless some shortcomings still remain in the interpretation of current rules and application of sanctions: the way different MSs deal with multidrops or the existing

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differences between the type and level of sanctions levied for infringements of EU cabotage provisions are two key examples of these shortcomings.

Several stakeholders also claim that the current rule of 3 operations in 7 days is very difficult to monitor. The European Commission recently\textsuperscript{14} pointed out that the documentation checked by enforcement bodies to verify the compliance with EU rules can be easily falsified or hidden, thus making controls rather ineffective.

Some stakeholders also point out that in some cases the provisions introduced by Regulation (EC) No 1072/2009 might limit the contribution that cabotage could give to the improvement of efficiency of the road haulage sector: for example the allowance of a maximum of 3 operations in 7 days could limit the possibilities available to road hauliers to optimize their logistics chain and contribute to the reduction of empty running. Other rules might pose the same issue, such as the one that imposes the full unloading of the international carriage before cabotage operations can start or the one that indicates that a maximum of 1 cabotage operation can be done in a MS different from the one where the international carriage has been unloaded.

Future actions aiming at refining exiting rules with the aim of facilitating their monitoring and enforcement, along with their ability to improve the efficiency of the road haulage market, could reduce some of these shortcomings. Some examples in this direction could be the removal of the maximum number of cabotage operations (3) allowed in 7 days, the possibility to start cabotage operations even before a vehicle has been fully unloaded after an international carriage or the withdrawal of the link between cabotage operations and international carriage of goods (options suggested also by the HLG report as shown in the following box). However these and other options would need to be investigated in detail to assess all the possible economic, social and environmental impacts they could generate – through a methodology like the one used by the European Commission for carrying out impact assessments of policy options\textsuperscript{15} - before any decision is taken on their execution.

**Box 5: The High Level Group proposals on regulation of cabotage\textsuperscript{16}**

**Options for revision of road freight cabotage in the EU**

The HLG indicates that the current regime for cabotage operations needs to be amended to better achieve the goal of achieving a Single European Transport Area.

The HLG suggests that a distinction should be made between linked and non-linked cabotage:

**Linked cabotage.** Features: a) linked to an international carriage operation; b) not to be subject to Posting of Workers Directive; c) cabotage operations to be restricted to 4 days from the crossing of the border of the country where cabotage has to be conducted; d) no limit to the number of cabotage operations within the 4 days; e) no need to have fully unloaded the international carriage before cabotage can take place.


\textsuperscript{15} See http://ec.europa.eu/governance/better_regulation/impact_en.htm.

Aim: to further reduce empty running. Legal contest: it would be regarded as an international carriage operation.

**Non-linked cabotage.** Features: a) could be linked or not to an international carriage operation; b) to be subject to Posting of Workers Directive, that should apply to all cabotage operations of this type, no matter what form the contractual operation (e.g. freight forwarders, sub-contractors or neither); c) gradual introduction of this regime through a quota system encouraging the use of environmentally friendly vehicles (e.g. 50 days per year to Euro V vehicles, 30 days per year for other vehicles); d) subject to pre-registration and severe sanctions when infringements occur. Aim: opening up the domestic cabotage market of EU MS. Legal contest: it would be known simply as “cabotage”.

The proposal set out by the HLG is for a gradual and continuous opening of the road haulage market. It is suggested that the system above should be introduced gradually and with flexibility, taking into account the current road haulage environment (see pages 5-6 of the HLG Report).

In addition, as shown in this chapter, other regulatory aspects hinder the smooth functioning of the cabotage market in the EU, *in primis* the application of certain cross-sector social legislation to the road haulage sector, such as Directive 96/71/EC concerning the **Posting of Workers**. To date, EU MSs have developed a patchwork of rules regulating labour aspects of road haulage operations and there is no uniform application of the Directive 96/71/EC in the cabotage market. This is because the application of this Directive to a labour force as mobile as road drivers is rather controversial and difficult to monitor. At the same time, with the full opening of the cabotage market to EU12 road hauliers - that can rely on cheaper labour force - the need to harmonise different social and working conditions has been put at the top of the agenda by several stakeholders. A number of **alternative measures could be considered** to further harmonise these aspects: these could range from the introduction of specific labour rules within a new EU cabotage Regulation, to the promotion of more coordinated application of the existing PWD to the cabotage sector. Before any decision is taken in this area, all possible options would need to be assessed in detail to evaluate the social and economic impact of such changes. Finally, substantial focus needs to be put on the way existing and/or future provisions are **monitored and enforced** as any attempt to improve the current situation by means of modifying the existing legislative framework could be meaningless without the presence of an adequate enforcement system.

**KEY FINDINGS**

- Prior to the entry into force of Regulation (EC) No 1072/2009 there was a lack of harmonisation among different Member States on the rules foreign hauliers had to respect to undertake cabotage operations across the EU. In particular the criteria of the “temporary basis” that EU rules (Regulation (EEC) No 3118/93) needed to be verified for the undertaking of cabotage operations and had different interpretations across different MS.

- In October 2009, **Regulation (EC) No 1072/2009** was adopted with the aim of modernising and simplifying the rules for access to the international road haulage market through a harmonisation of the provisions relating to cabotage and minimising the administrative burden to the industry.
• Regulation (EC) No 1072/2009 was passed when the EU international road freight market was undergoing numerous changes, mostly driven by the 2004 enlargement, which gave the possibility to hauliers from new MS to compete with those of EU15 MS. While international road transport across the EU was immediately accessible to new MS, pre-accession treaties limited the ability of hauliers from new MS to perform cabotage operations in EU15 Member States by means of a system of temporary restrictions. Most restrictions were lifted in 2009 for the Member States acceding to the EU in 2004, although cabotage movements to Ireland and Sweden were liberalised earlier. Bulgarian and Romanian hauliers were not allowed to perform cabotage in most countries until 1 January 2012.

• The Regulation has led to a reduction in the uncertainties around different national interpretations of the previous rules. The new Regulation has clarified the temporary nature of cabotage by introducing quantitative criteria (e.g. the “3 operations in 7 days” rule) to define the scope for this type of operation and it has linked it to international carriage operations - a requirement that had not been included in the previous rules. Moreover, it harmonised the requirements for documentation that were previously very diversified across the EU and in some cases represented a high barrier to entry for hauliers from foreign MSs.

• Some shortcomings still remain in the interpretation of current rules and application of sanctions: clear examples are the different practice adopted by MSs with respect to partial unloading of cabotage operations (multidrops) or the existing differences between the type and level of sanctions applied for infringements of this Regulation.

• There is scope for an improvement in some rules set out in the Regulation with the aim of facilitating their monitoring and enforcement, along with their ability to improve the efficiency of the road haulage market. The removal of the maximum number of cabotage operations (3) allowed in 7 days and a revision of the provision that requires the full unloading of international carriage before a cabotage operation can start are two examples of measures that might be considered to overcome the current shortcomings of the Regulation.

• The harmonised functioning of the cabotage market in the EU is also challenged by other regulatory issues which are out of the scope of Regulation (EC) No 1072/2009. For example, to date there is a patchwork of provisions regulating labour aspects of road haulage operations and there is no uniform application of the Posting of Workers Directive in the cabotage market. At the same time, the extent to which clients of road haulage operations are co-responsible for the fulfil of existing rules (including the cabotage ones) or the insurance requirements imposed on vehicles circulating on the national networks varies widely across the EU. Also in this case, some actions could be considered to further harmonise labour laws applying to the cabotage sector as well as the way companies commissioning haulage operations are responsible for their legacy.

• All the options that could improve the efficiency of the road cabotage market in the EU by harmonising the different regulatory aspects that discipline this sector would need to be investigated in detail to assess all the possible socio-economic impacts they could generate before any decision is taken on their execution.
3. **ENFORCEMENT OF RULES**

3.1. **Introduction**

This chapter sets out the enforcement issues related to Regulation (EC) No 1072/2009 by looking at the organisation of control bodies tasked with cabotage enforcement; the application of sanctions for infringements; the available statistics on sanctions across Member States; the shortcomings of current enforcement practices and future developments in this area.

It should be noted that Regulation (EC) No 1072/2009 identifies two different types of infringements: those sanctioned by the MSs of establishment (Art. 12), and those sanctioned by the host MSs (Art. 13). As discussed in Chapter 2, it is however the responsibility of the **host MS** in which cabotage operations are taking place to **monitor compliance** with the EU cabotage provisions and communicate serious infringements to the MSs of establishment, that will then register them and levy further sanctions if needed. Our analysis therefore focuses on the enforcement carried out by the host MS, where information is also more readily available. However the proposed reforms at the European level (see for example page 26 of the HLG Report) highlight the need for greater inter-State, as well as intra-State coordination, which will require wider controls in the MSs of establishment.

3.2. **Control Bodies in charge of cabotage operations**

There are substantial differences across EU MS with respect to the competent bodies for the enforcement of cabotage provisions laid down by Regulation (EC) No 1072/2009.

In some Member States, a specialised authority has been set up in order to **monitor cabotage** and international transport as a whole. For example, in **France** the Ministry of Transport has a specialised control body of around 500 road transport controllers. Other MSs rely on national and local police forces, reporting to the Ministry of Interior. In the **UK**, roadside checks are carried out by an executive agency of the Department for Transport, the Vehicles and Operator Services Agency (VOSA) created in 2003. As detailed below, VOSA has a centralised information system to record international vehicle movements and infringements.

In the case of **Germany**, both a dedicated body (BAG – Federal Office for Goods Transport) and Police and Customs officials can enforce the cabotage regime. In Belgium, Italy, Spain and Hungary, multiple organisations are involved in the enforcement of cabotage provisions.

In addition, in several MSs there are a number of **control bodies** tasked with roadside checks focusing on **social legislation** which do not have competencies in relation to international transport. As highlighted in a recent study commissioned by the European Parliament\(^\text{17}\), a variety of enforcement agencies are involved in the enforcement of Directives 2002/15/EC (working times) and 2006/22/EC (enforcement coordination). These

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\(^{17}\) European Parliament (August 2012), *Overview and evaluation of enforcement of EU social legislation for the professional road transport sector*. See in particular chapter 3.
include specialised agencies under the Ministry of Labour, for instance in Greece, Estonia, Romania and Slovakia.

The table 6 below provides a summary of the enforcement bodies responsible for the enforcement of cabotage rules in the Member States that have been reviewed as part of this study. The table also indicate the MSs where other institutions are in charge of roadside checks relating to social legislation.

<table>
<thead>
<tr>
<th>Member State</th>
<th>Dedicated enforcement bodies</th>
<th>Presence of other bodies for road checks for social legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Local police</td>
<td>✓</td>
</tr>
<tr>
<td>Belgium</td>
<td>National and local police</td>
<td>✓</td>
</tr>
<tr>
<td>France</td>
<td>Contrôleurs des transports terrestres - specialised body within the Ministry of Transport</td>
<td>✓</td>
</tr>
<tr>
<td>Germany</td>
<td>BAG – Federal office for Goods Transport Police and customs</td>
<td>✓</td>
</tr>
<tr>
<td>Hungary</td>
<td>National and local police</td>
<td>✓</td>
</tr>
<tr>
<td>Italy</td>
<td>National and local police, customs</td>
<td>✓</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Road transport Inspectorate National police</td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>Inspectorate for Transport and the Environment</td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>General Road Transport Inspectorate</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>National and local police</td>
<td></td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Vehicles and Operator Services Agency (VOSA) – executive agency of the Department for Transport</td>
<td></td>
</tr>
</tbody>
</table>

Note: UK refers to Great Britain only, Northern Ireland is excluded. Source: SDG research (2013)18.

The presence of multiple enforcement bodies within one Member State is often seen as a potential barrier to effective controls in some MSs. In Belgium, six different bodies can in principle carry out cabotage enforcement, with the risk of duplicating efforts and overlapping responsibilities. In Hungary and Spain, as a result of recent devolution reforms, regional police bodies are tasked with roadside checks – however the interface between local bodies and national authorities can prove to be problematic, for example in the communication of data.

In Italy, the fragmentation problem is being overcome in some regions by the introduction of coordination between policing bodies and transport inspectors in the form of “Centri Mobili di Revisione”, a special task-force with representatives from different institutions in charge of monitoring cabotage through roadside checks. Similarly, in Poland, the specialised Inspectorate (Główny Inspektorat Transportu Drogowego) has laid out cooperation arrangements so that joint patrols and checks with police forces take place.

18 See also table 12 of the European Parliament study (2012), Overview and evaluation of enforcement of EU social legislation for the professional road transport sector.
In addition to fragmentation, a number of stakeholders from different Member States have expressed their concerns regarding resourcing at their national control bodies. In the Netherlands, road transport associations have issued complaints regarding the negative impact that cuts to the national budget could have on the Transport Inspectorate (ILT), reducing the number of staff.

Similarly, in Spain, stakeholders claim that sufficient resources should be granted to control bodies to improve their ability to perform wide-ranging controls. Furthermore, stakeholders in Italy maintain that further language training should be provided to policing staff to ensure they can deal with hauliers coming from other MSs.


Regulation (EC) No 1072/2009 states that Member States have to define the penalties to be levied for violations of cabotage provisions undertaken in their territory as well as those for infringements of Community road transport legislation by road hauliers registered in their country. Where such sanctions have been detailed in national legislation, they tend to cover both types of infringements of Regulation (EC) No 1072/2009, and on occasions also other violations of road transport legislation. In some cases this hinders the ability to report clear figures for cabotage violations. Often, infringement statistics report figures by type of sanctions levied or by code of national legislation violated which, for example, could include infringements to cabotage operations as well as other rules on international road haulage. Where possible this chapter focuses on infringements of cabotage operations specifically.

Member States have generally laid out a regime of sanctions which varies according to the type of infringement. In most cases, the lack of a community licence is sanctioned with a lower fine than the breaking of the “three operations within 7 days” rule. For example in Italy, if the relevant documentation has not been completed correctly, sanctions range between €600 and €1,800; however infringements relating to the maximum number of operations can be fined up to €15,000. By contrast, in some MSs such as Belgium and Spain, a fixed fine has been introduced of €1,800 and €4,601 respectively. A summary of the sanctions applicable to cabotage is provided in Figure 2 below.

Figure 2: Sanctions applicable to cabotage in selected Member States (€)

[Figure 2: A bar chart showing the range of sanctions (Max and Min) for cabotage violations in selected Member States such as AT, BE, DE, FR, UK, HU, IT, LT, PL, and ES. The chart displays sanctions in Euros ranging from 1 € to 1,000,000 €.]

*Additionally in France hauliers can be sentenced for up to 1 year of imprisonment (limited to hauliers from countries that are not allowed to undertake cabotage operations in France).

Source: SDG case studies, national laws and interviews with Ministry of Transport in selected MSs.
The figure shows that the range of sanctions varies widely among Member States, as well as within Member States. In addition to monetary penalties, several other sanctions can be imposed to hauliers that contravene the provisions of Regulation (EC) No 1072/2009. This may include the following:

- Seizing of the vehicle for a set period of time – this sanction is present inter alia in Italy in the form of “fermo amministrativo” and in Poland in the form of “impounding” in case drivers are not able to pay a fine on the spot and it is enforced until the full amount of the fine is paid; in the UK, impounding is allowed for, but used only in the event of repeat offences.

- Confiscation and sale of the vehicle – if the Polish authorities do not receive payments within 30 days, they might exercise the power to confiscate the vehicle and sell it off to third parties. In the UK, when an operator exhausts all appeals the vehicle is not returned and is sold.

- Temporary ban from cabotage activities – this may be enforced in France and in the UK, in the form of a one-year ban from performing cabotage, if a haulier reiterates the infringements over time.

### 3.4. Infringements statistics

As mentioned above, it is very difficult to gather data on infringements of the road cabotage rules as most national registers only record total infringements of road transport or classify them in a way it is difficult to detect cabotage. This section presents an overview of the cabotage specific statistics that have been made available to us.

Germany is one of the MSs that reports a breakdown of cabotage related roadside checks. In 2011, BAG (the enforcement body) carried out 118,009 roadside checks of goods vehicles registered in EU Member States, and detected a total of 612 infringements against European legislation on cabotage. In 2012, 477 infringements were identified following 106,542 inspections. The cabotage infringement rate increased from 0.2% in 2011 to 0.45% in 2012.

In the UK, up to the end of 2010, VOSA (the enforcement body) had issued 323 fines for the infringement of cabotage provisions following the identification of 449 offences. Furthermore, in the first 8 months of the 2012-2013 financial year, VOSA has issued 229 infringement notices relating to cabotage. In addition VOSA has also impounded a number of vehicles following the infringement of cabotage provisions. Overall, around 0.2% of inspections resulted in a cabotage infringement in the 2012-2013 period.

Information provided by the authorities in France for this study is specific for road side cabotage checks and shows that between 2010 and early 2011, 7% of vehicles stopped for cabotage controls were issued an infringement.

In Poland, official data provided by the Transport Inspectorate shows that the total number of cabotage infringements is very small. The GITD (the enforcement body) conducted 157,000 roadside checks of vehicles between January and October 2012. Infringements with regard to cabotage regulations were identified in only three cases, one of which involved a vehicle registered outside the EU.
In the remaining MSs reviewed as part of this study, cabotage specific information is not available. However some conclusions can be drawn looking at more general road statistics. In Lithuania, according to estimates put forward by the Inspectorate (the enforcement body), about 3% of all roadside checks have led to fines for infringements related to inadequate documentation – some of those would be cabotage operators from other MSs.

An analysis of available information for Italy shows that between January and October 2012, infringements levied for violation of international road transport rules (which includes also cabotage infringements) was less than 0.1% of total inspections (205 infringements issued following 220,965 roadside checks). Even if cabotage infringements accounted for the majority of these infringements, the number of infringements remains lower than the average shown above for Germany and the UK: this could be explained both by the different size of the cabotage markets in these countries and the type of enforcement procedures put in place.

The analysis of infringement data can also be used to verify if checks are undertaken in a non-discriminatory manner, as required by Art. 9 of Regulation (EC) No 1072/2009. The data available refers to the UK and Italy only: in the first case, 50% of all roadside checks targeted foreign vehicles (although these account for only 15% of total traffic tonne-km); in Italy, 10.1% of all roadside checks target vehicles from other EU countries instead.

### 3.5. Shortcomings and best practices of enforcement

Enforcement of cabotage rules before the introduction of Regulation (EC) No 1072/2009 was difficult to implement both because of a lack of clarity of the legislative provisions ruling the cabotage market and because of the weakness of the instruments used and the actions put in place to monitor them.

The new Regulation has certainly helped to define the scope of cabotage operations by providing a clearer definition based on specific criteria such as the 3 operations in 7 days rule and the link to international carriage. Despite the limitations of these criteria – as set out in Chapter 2 – these parameters undoubtedly set a clearer boundary for cabotage operations than the previous rules.

Regulation (EC) No 1072/2009 has also lowered the administrative burden for both enforcement bodies and the haulage industry in the monitoring and undertaking of cabotage operations. Since its introduction a single Community licence is accepted in all MSs, the harmonised drivers’ attestation has been put in place and a clear indication of the documents to be shown to prove the legitimacy of cabotage operations has been provided.

The extent to which the new rules can be effectively monitored remains an issue. In most of the countries analysed stakeholders (e.g. Italy, Spain, Austria) claimed that in many cases enforcement bodies – such as the police - do not have the means to check for infringements. In particular it appears very difficult to verify the start of cabotage operations, its link to international carriage, the calculation of the 7-day period and the identification of the number of journeys carried out within the period. The controls of these aspects are based on the documentation made available in the international waybill by road hauliers and/or drivers, who might have an incentive to provide only partial – if not false – information. In addition the complexity of some national provisions enacting the Regulation and the need to interact with drivers speaking different EU national languages, often

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19 For a supplementary view see also Section 4.4, in particular pages 95-97, concerning 5 types of infringements of the EP Study 2012 "Overview and evaluation of enforcement in the EU social legislation".
hinders the ability of enforcement bodies to carry out roadside checks in an effective manner – not least because they often lack sufficient human resources and budget to carry out their tasks.

**Box 6 : Monitoring of the link between cabotage and international carriage**

**Parliamentary Question E-005194/2912**

One of the most controversial points of current rules is the ability of enforcement bodies to check the link between cabotage operations and the international carriage of goods. To tackle this issue, in light of a number of claims raised by stakeholders on this matter, a Danish Member of the European Parliament in 2012 posed a written question to the Commission to verify if the situation could be improved by the introduction of a registration requirement at the national level proving the link between cabotage operations and international transport. Such a requirement would force foreign companies operating cabotage in any MS to prove that their first unloading is taking place as a result of an international journey. Commissioner Kallas rejected this suggestion on the basis that, according to Regulation (EC) No 1072/2009, no other document (other than those already listed in Art. 8) shall be required in order to prove that the conditions of linked cabotage are met.

Despite the fact that the Commission rejected this suggestion from a pure legal perspective, a careful assessment needs to be undertaken on whether the introduction of a similar register would help improve the effectiveness of sanctions against the abuse of the existing rules or would impose an additional barrier to the smooth functioning of the market. For example the effectiveness of the registration procedure suggested in the Parliament’s question would be subject to the willingness of the foreign haulier to communicate (exact) information to competent authorities on the link between their cabotage operations and the international carriage. The extent to which hauliers would provide this information will ultimately depend on the ability of enforcement bodies to monitor this procedure and levy sanctions against its misuse. To make this workable, the bodies carrying out roadside checks should be able, for instance, to get direct access to their national registers through their mobile devices (computers, telephones, etc.). Even this, however, might not be sufficient to prevent frauds: for example a foreign haulier might register the unloading of the international cargo a few days after its occurrence, thus extending the time it can undertake cabotage operations. A similar registration system is currently in force in Austria for the application of the Posting of Workers Directive to international carriage operations although a number of limitations have been raised by stakeholders of this system which are similar to those set out above.

However, if such a system was **linked to on-board information recorded** on the road vehicles through, for example, **GPS** or **tachographs** or **electronic fee collection systems**, the scope for fraud or infringements would be very much reduced as it would be possible to detect with a reasonable degree of certainty the day the national border was passed, if not the day the international carriage was completed and/or cabotage was initiated.

In the end, if the system is not designed correctly, and linked to remote information recorded automatically on board vehicles, such a registration procedure, even if based on the most sophisticated communication technologies, may impose costs higher than the expected returns in terms of improved control.

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A review of enforcement practices in Member States suggests that there is still a substantial amount of work to be done in the harmonisation of the number, types, size and resources of national bodies responsible for enforcement as well as of the procedures enacted by them and the penalties imposed on the violation of the cabotage rules. In this respect it is worth pointing out that the harmonisation seems greater in the field of social legislation where a number of actions have already been put in place at the EU level to create a level playing field, such as Directive 2006/22/EC (on common rules on roadside controls and an obligation on MSs to cooperate) and Regulation (EC) No 3821/85 (making the tachograph a central instrument for enforcing social legislation).

A further coordination between the different types of procedures aimed at checking compliance with different areas of road haulage regulations would improve the efficiency of the system. A best-practice example which offers a more wide-ranging solution to the problems of enforcement is the Operator Compliance Risk Score (OCRS) system in force in the UK. This aims to predict the likelihood that an operator will infringe the Regulations set out above and has been in operation since 2006.

**Box 7: Operator Compliance Risk Score (OCRS)**

**MONITORING ROAD HAULIERS IN THE UNITED KINGDOM**

The Vehicle and Operator Services Agency (VOSA) referred to in the UK case study has developed a predictive tool to be able to identify the likelihood of an operator being non-compliant with the requirements of freight road transport vehicles. This tool, known as the Operator Compliance Risk Score (OCRS) was set up initially in 2006 to measure the risks related to certain operators in relation to roadworthiness and traffic enforcement:

- The road worthiness data includes test history information, data relating to when the fleet was checked and actual checks undertaken at the roadside.
- Traffic enforcement data is based on a score relating to the number of infringements relating to driver hours and the number of infringements relating to overloading and other infringements.

The OCRS is used primarily by VOSA roadside examiners to choose which vehicles to check and is based on information initially gathered in relation to vehicles and operator details and included into VOSA's Mobile Compliance system. This system allows VOSA staff to focus on non-compliant operators and reduce the number of checks on compliant vehicles. The scoring system that is used to identify the level of risk of an operator follows the standard "traffic light" approach:

- Green for an operator with low risk;
- Amber for operators with medium risk; and
- Red for operators that are believed to be high risk.

The system has worked well since its creation with the industry as a whole supporting its adoption and its workings, while acknowledging that there were some areas that could be deemed discriminatory that needed to be changed or updated. In particular these areas of improvement focused on how complicated the system was the manner in which the results of the scores were being used by the wider transport industry. In response to this, VOSA undertook a major review of the OCRS in 2012 and implemented the new changes in October 2012. The main changes introduced were:
- Removal of the predictive scoring system (where new operators were given a score prior to any encounter based on the general score of their comparable operators. This has now been removed and replaced by a new Grey brand showing VOSA examiners that historical data is not available).

- Increase of the rolling period of enforcement record from 2 to 3 years (to ensure that there is a larger dataset to work from).

- Changes to the banding system (introducing the Grey band as mentioned above to bring the UK operators in line with non-UK operators).

- Weighting points to when the defect/offence occurred (allowing for older defects/offences to have less of an impact on the score than more recent ones).

- Straight to Red for serious offences (when the offence has been categorised as a “Most Serious Infringement” or the operator has been successfully prosecuted for an offence).

- Change in the number of points and penalties per defect (Points and penalties now relate to the severity of the defect/offence).

**Figure A: OCRS system process**

![OCRS score calculations from 30 April](image)

*Source: OCRS Guidance Notes, VOSA (2012)*

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21 Provided to VOSA by the Freight Transport Association.
Finally, from the analysis undertaken it followed that despite the progress made towards further cross-border co-operation among EU Member States encouraged by the European Commission – an example of which are the procedures set by Directive 2006/22 on enforcement of social rules – the exchange of information between MS is still too weak. This makes it difficult for the countries of establishment of road hauliers to impose sanctions for violations of EU rules committed abroad, as they need first to get information from the enforcement bodies of MS hosting cabotage operations. Moreover, there is not sufficient exchange of best practices and lessons learnt - a process that, at present, seems not to be effectively coordinated and appears to rely only on the willingness of each single enforcement body to share their information with similar bodies from other countries.

3.6. Further developments

Overall, our review of enforcement of EU cabotage rules indicates that there are substantial differences in the ways different MSs enact sanctions for infringements of EU provisions in this area. These differences relate to organisational and procedural aspects - such as the way enforcement tasks are delegated to (one or more) national enforcement authorities, the efforts these bodies can put in place and how these can be coordinated - as well as the type and level of sanctions.

The analysis undertaken shows that the control of cabotage operations can often be too fragmented in Member States. The reasons for this fragmentation are twofold. First, national laws have extended the responsibility for roadside checks to a variety of bodies without planning for coordination at different institutional and geographical levels. Second, some functions are duplicated as MSs need to control both the implementation of international transport regulations and social legislation.

However there are examples of coordination, within single MSs, between different policing bodies (national and local) – such as the Italian Centri Mobili di Revisione - and different Ministries (Interior and Labour) – as in Poland - that should be viewed as good practices. Control bodies should also be given the necessary budget and focused training they need in order to tackle cabotage monitoring and infringements.

Some Member States have set sanctions that are ten times higher than the sanction imposed for the same type of infringements by other MSs. It is hard to say that regulations are effectively the same across the EU if corresponding sanctions vary so greatly. Moreover, the amount of roadside checks undertaken by enforcement bodies is not uniform across the EU, which implies that the risk of being caught is very different between MSs.

As mentioned in the previous chapter 1, the European Commission is required to present by the end of 2013 an assessment of the current situation of the road cabotage market in the EU and of the implementation of Regulation (EC) No 1072/2009; the EC is also considering presenting a legislative proposal amending existing rules based on the results of this assessment. It is the view of the authors of this study that in the presence of the enforcement issues set out above, it is questionable whether further market opening for cabotage operations, or indeed any other regulatory reform of Regulation (EC) No 1072/2009, would be effective without better enforcement. Indeed this chapter reports evidence showing that, in some cases, the effectiveness of the entry into force of the new cabotage regime in 2010 has been challenged by the weakness of the existing monitoring and enforcement procedures at national level.
Regardless of the discussion on liberalisation, further harmonisation of cabotage enforcement procedures, as well as of other legislative provisions ruling road transport, should be considered. This is a view put forward by almost all stakeholders as it is would help to create a level playing field for road hauliers operators across the EU. Recently the HLG suggested additional measures that could be adopted in coming years to cope with current shortcomings. A summary of these are set out in the box below.

**Box 8: The High Level Group proposals on enforcement**

<table>
<thead>
<tr>
<th>Options for improving enforcement of road legislation in the EU</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The High Level Group</strong> indicates that the current regime for enforcement of road legislation needs to be improved as different enforcement practices lead to distortions in competition between hauliers who can be treated differently according to the countries in which they are operating.</td>
</tr>
<tr>
<td>The HLG suggests the following(^{22}):</td>
</tr>
<tr>
<td>- <strong>the Commission extend its current target of achieving common definitions of infringements and penalties</strong> in the areas of working and driving time to other areas of regulation;</td>
</tr>
<tr>
<td>- <strong>the targeting of controls</strong> to take account of the risk of non-compliance of any particular operator to be introduced under Directive 2006/22/EC1 on enforcement of social rules in road transport with respect to driving and working times should also be extended to other areas of regulation;</td>
</tr>
<tr>
<td>- <strong>mutual co-operation</strong>, currently regulated under Directive 2006/22/EC, needs to be extended to remove concerns of operators with respect to discrimination, and operators themselves must appreciate that if they wish to operate in international or cabotage markets that a sharing of information is a sine qua non of such operations;</td>
</tr>
<tr>
<td>- <strong>joint liability regimes</strong> involving shippers and freight forwarders should be introduced to encourage compliance throughout the logistics chain. The co-responsibility of transport undertakings and drivers for infringements of driving time regulations are quoted as an example of how joint liability can work in practice.</td>
</tr>
</tbody>
</table>

These options could be complemented by more specific measures that tackle certain shortcomings of the existing enforcement system of cabotage operations. For example, moving towards an OCRS-like system across the European Union is seen favourably by several stakeholders. Legislative efforts by the European Commission could move in this direction. In particular the entry into force of the "European Registers of Road Transport Undertakings" (ERRU)\(^{23}\), expected in 2013, could provide a joined-up approach to information sharing and coordination practices. Competent authorities would be able to exchange more information in real time and better monitor the compliance of undertakings with the rules enforced, including cabotage. The extent to which the ERRU can contribute to the improvement of controls of cabotage operations is subject to a number of technical issues that might hinder its effectiveness. For example, to make this register work in a similar way to the OCRS system, information registered in the ERRU should be made available in real time to roadside inspection officers and should contain all the relevant data needed to perform the controls.

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Other proposals could certainly be added to the list of possible improvements of enforcement procedures. However it is important to keep in mind that the choice of those to take forward should be assessed against criteria of cost-effectiveness to pick up those that can achieve the highest compliance to the EU rules at the lowest possible cost. In this respect the potential offered by enforcement systems able to dialogue with on board devices – such as GPS or tachograph – seem to have the highest potential.

**KEY FINDINGS**

- The new Regulation has clarified the temporary nature of cabotage operations potentially making the monitoring and enforcement of cabotage regulations simpler.

- Each Member State has adopted a different approach to enforcement with sanctions ranging from a minimum fine of €100 in Hungary to a maximum fine of €200,000 in Germany. This leads to a different risk level associated with cabotage infringements in different Member States.

- In some Member States there are multiple authorities in charge of monitoring and enforcing the requirements of the Regulation that leads to difficulties in coordination. In addition, a number of stakeholders have explained that often the enforcement bodies across Europe lack to monitor and enforce the cabotage provisions effectively.

- In addition to the national coordination issues there is little evidence of effective international cooperation in enforcing the provisions.

- Statistics in Germany and the UK show that cabotage related infringements are not significant and have been identified in no more than 0.2% of all roadside checks.

- The introduction of a system similar to that used in the UK (the OCRS) could facilitate enforcement within Member States.

- There are other potential improvements to enforcement that have been suggested by the High Level Group and other stakeholders. These need to be analysed in more detail and on a case-by-case basis to assess the cost-benefit of the impact of each proposal.
4. **MARKET REVIEW**

4.1. **Introduction**

This chapter presents updated statistical data concerning cabotage in the EU27 and analyses in detail the most recurrent issues and/or matters raised in different domestic markets. The analysis is mainly based on public information provided by Eurostat and, in some cases, it is supplemented by other national sources consulted during the course of this study. It is important to note that due to the manner in which cabotage data is collected there is some uncertainty around the values set out in statistics provided below.

Eurostat road freight statistics are based on a compilation of data collected by the individual EU MS. Each MS reports the activities of its national fleet on the basis of data collected through sample surveys issued to owners of vehicles recorded in the national vehicle register. As with any statistic derived from a survey, it is likely that the data is over or under estimated. This might be due to the process followed to infer the behaviour of the whole market (e.g. all hauliers from a MS) starting from a small sample. It may also be due to the reliability of the data collected (i.e. the accuracy and “truthfulness” of the answers provided by national hauliers to the questionnaires they receive).

During the study we have encountered some inconsistency in the available statistics, the most common issue was the reporting of cabotage operations in a MS by hauliers from other EU MSs that in principle were not authorised to undertake them. These aspects question the reliability of the data, but there is no way of knowing for sure whether the whole dataset is reliable or not. Furthermore, to date this is the only statistical information available at EU level which are collected following an agreed methodology and, as such, is the only data that can be used for this comparison. Finally, it must be pointed out that in some cases there are some gaps in the data provided for single Member States (such as Malta and the UK).

4.2. **Evolution of the road freight transport in the EU**

Figure 3 shows the evolution of the total inland freight market (including road, rail, inland waterways and pipelines) in the European Union. After a steady increase between 2006 and 2007, total volumes within the EU experienced a drop due to the economic crisis started in 2008. The largest fall in inland freight transport volumes was registered in 2009. In 2010, the market for freight transport once again started to grow, but it has not fully recovered its pre-recession volumes yet.
In 2010, the dominant mode in freight transport was the road sector accounting for a market share of 73%, followed by rail with 16%. Volumes transported on inland waterways accounted for approximately 6%, and the remaining 5% were transported through pipelines.

In line with the total market for freight in the EU, the market for road freight, as mentioned above, was strongly affected by the recession, decreasing in size by 10.1% between 2008 and 2009. Although the market for road freight slightly recovered in 2010, it decreased again in 2011. As a result, its volumes in 2011 were still 8.1% below those in 2008.
Figure 5 below sets out the evolution of the total market for road freight by country of registration of the vehicle.

**Figure 5:** Tonne-km generated in transports by road in the EU, by region where the vehicle was registered

![Graph showing evolution of road freight transport activity](image)

(Source: SDG analysis of Eurostat (2012).)

National specific data shows that the pattern of road freight transport activity was very different across the EU. As shown in Figure 6 below, between 2007 and 2011 the MSs that joined the EU in 2004 and 2007 have registered an increase in the road freight transport activity undertaken by their hauliers, due mainly to their increased share of the international transport market (discussed later in this chapter). By contrast, hauliers from EU15 MSs experienced a reduction over the same period.

**Figure 6:** Evolution of road freight transport activity in tonne-km between 2009 and 2011 and between 2007 and 2011 by nationality of haulier

![Graph showing percentage change in road freight transport activity](image)

(Source: SDG analysis of Eurostat (2012).)
4.3. National versus international transport by EU hauliers

In 2011, national transport by domestic hauliers accounted for the majority of road freight transport in the EU with a share of 67.2%. The remaining share was split between the various types of international transport, more specifically bilateral international (24.9%), cross-trade (6.6%) and cabotage operations 1.2%)24.

As set out in Figure 7, the importance of the national domestic transport is significantly higher for hauliers registered in the EU15 than for those registered in EU12 Member States. EU15 transport activities of hauliers registered in these MSs are focused on national markets (78%) as opposed to hauliers from the EU12 MSs which are predominantly (66%) targeted at international operations (including cabotage).

**Figure 7:** Share of national, bilateral international, cross-trade and cabotage transports by hauliers in the EU, the EU15 and the EU12 MSs (based on data in tonne-km)

Moreover, as shown by Figure 8 below, there are some differences in the relative share of different international transport operations across EU MSs. In general the size of bilateral transport activities is directly correlated to the size of the country (and its import and export markets), while cross-trade and cabotage play a higher role in smaller countries/economies.

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24 See Box 1 in chapter 1 for a definition of operations.
Figure 8: International road freight transport in 2011 by relation (share of international bilateral, cross-trade and cabotage transport in the activities of the hauliers from each Member State)


4.4. The role of road cabotage in the EU

This section analyses the evolution of the road freight cabotage market across the EU looking at the trends registered in total volumes as well as key events in the different MSs. Particular attention is given to the discussion of the changes in the supply of, and demand for, cabotage operations since the opening of the market to EU12 MSs.

4.4.1 Total volumes

Figure 9 shows that between 2006 and 2011, road freight cabotage increased from approximately 14 million tonne-km in 2006 to 19 million tonne-km in 2011. Although the market for cabotage is increasing, volumes are still small compared to the total EU road haulage market as discussed earlier in this Chapter.

In 2006, only a small percentage of cabotage operations, approximately 12%, was carried out by vehicles registered in one of the EU12 Member States. By 2011, this proportion increased to nearly 40%, while total cabotage volumes transported by vehicles registered in these countries increased more than fourfold. In contrast, cabotage volumes transported by vehicles registered in the EU15 Member States in 2011 were slightly lower compared to those in 2006.
Figure 9: Total volumes of cabotage carried out in the EU by country where vehicle is registered

![Graph showing total volumes of cabotage carried out in the EU by country where vehicle is registered from 2006 to 2011. The graph shows data for EU15 and EU12 countries.](image)


Detailed statistics by country show that the most active EU12 MSs were Poland and the Czech Republic. In 2011, vehicles registered in Poland carried out the largest share of cabotage volumes of all EU Member States with a share of 18% of total cabotage operations, compared to 7% registered in 2007. In the same period, the share of cabotage undertaken by Czech hauliers increased from 1 to 4%. Conversely, cabotage undertaken by EU15 hauliers has been decreasing. The share from Germany and the Netherlands, moved from 16% and 13% in 2007 to 10% and 12% in 2011 respectively.

Figure 10: Origin of most active cabotage operators in the EU in 2007 (left) and 2011 (right) (based on data in tonne-km)

![Pie charts showing the origin of the most active cabotage operators in the EU in 2007 and 2011.](image)

Note: "Other" include the rest of MS

In reviewing the destination country for cabotage operations, Figure 10 sets out the volumes of cabotage carried out in the main host countries as a share of total cabotage carried out in the EU in 2007 and 2011.

It is interesting to note that both in 2007 and 2011 most cabotage operations take place in EU15 Member States, which indicates that the entry into the cabotage market of the EU12 has not led to substantial changes to the demand for these transport activities. The Czech Republic is the most important destination market for cabotage operations amongst the EU12 Member States with a share of 0.4% in all cabotage carried out in the EU in 2011, but it is ranked only 13 when the whole EU is counted.

**Figure 11: Main host countries for cabotage in the EU in 2007 (left) and 2011 (right) (based on tonne-km)**

In 2011, Germany and France were the countries where most cabotage operations took place: all of cabotage operations carried out in 2011, 33% took place in Germany and 30% in France. This is primarily as a result of the size of the German and French markets. The overall size of the economy also explains the role of Italy and the UK in hosting cabotage activities. Nevertheless it should be noted that the relative role of the UK as hosting country for cabotage activities halved between 2007 and 2011: this can be partially explained by a decreasing in the total number of cabotage operations undertaken in the UK in this period (that moved from about 1.539 Mil tonne-km in 2007 to 1.272 Mil tonne-km in 2010) – in contrast to what happened in many other EU MSs. Though with a relatively smaller economy, Belgium and the Netherlands play a strong role among the hosting countries of cabotage operations thanks to the presence of important ports (Antwerp, Rotterdam and Amsterdam) as well as to the full liberalisation of the cabotage market undertaken within Benelux countries after 1992. Finally Sweden hosts cabotage operations from many hauliers driving from other countries bordering the Baltic Sea.

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25 UK data for 2011 are not available and Eurostat statistics report 2010 values also for 2011.
Box 9: Cabotage operators in the top three host countries

Country of origin of hauliers carrying out cabotage in DE, FR and IT

As set out in Figure 10, the most active hauliers in the cabotage market are based in Poland, the Netherlands, Germany, Luxembourg and Spain. This box gives a more detailed view on the main cabotage actors in the main host countries.

The largest players in the German cabotage market are hauliers from Poland with a share of 32%. This is not surprising given the close distance and the strong position of Polish hauliers in the total EU cabotage market. The largest cabotage providers following Poland are the Netherlands, Czech Republic, Austria and Luxembourg. Together with Poland, these countries account for 71% of the German cabotage market.

A similar situation can be observed in France where the most active cabotage operators are from bordering countries Spain (27%), Luxembourg (16%) and Belgium (13%). Polish hauliers are ranked fourth with a share of 11% even though there is no border between the two countries.

In contrast, the three main cabotage operators in the Italian market are based in countries that do not border with Italy – Germany (25%), Bulgaria (16%) and Poland (13%). The country of origin that is ranked fourth is Slovenia which does border with Italy. The strong presence of German hauliers in the Italian market can largely be explained by the strong trade relationship between these two countries.

The scope for cabotage operations is highly correlated to the degree of international transport between countries due to the requirement for cabotage to be linked to an international journey. However it also depends on the extent to which international transport operations are undertaken by foreign vehicles rather than domestic ones.

Figure 12 shows the road transport volumes for goods imported to a specific MS, and the share of vehicles registered in this country carrying out these transport operations. The figure clearly shows that the vast majority of imports in Germany and France are carried out by hauliers from other EU27 MSs. This observation is consistent with Germany and France being the two countries where most cabotage takes place.

Figure 12: Tonne-km generated in 2011 for international transports by road between EU27 countries, by country where the vehicle was registered

4.4.2 Penetration rates

The extent to which cabotage operations contribute to the supply of road freight transport services within a country differs across the EU. This can be assessed looking at the cabotage penetration rate, which is defined as the share of cabotage in the total national market for road haulage in a given country.

Figure 13 sets out the cabotage penetration rates in all 27 EU Member States with the exception of Malta. It confirms that all Member States with a penetration rate above the EU average are EU15 countries. The Member States with the highest penetration rates are Belgium, and Austria with 6.0% and 3.6%. Germany and France, the countries in which most cabotage takes place, also have penetration rates higher than the average.

**Figure 13: Cabotage penetration rates in 2011 relative to the national road haulage market (based on data in tonne-km)**

Overall, since 2006 the cabotage penetration rate has increased across the EU: it moved from 1.2% in 2006 to 1.7% in 2011. In the EU15 the share of cabotage increased from 1.3% to 1.9% between 2006 and 2011, while in the EU12 it remained broadly constant over the same period, however at a significantly lower level of 0.2%.

**Figure 14: Trend of cabotage penetration rate in EU27, EU15 and EU12**

**Source:** SDG analysis of Eurostat (2012).
As mentioned above, the increase in cabotage has occurred notwithstanding the fall in the volume of goods transported nationally. Before the opening of the cabotage market to a number of EU12 Member States on 1 May 2009, the growth of cabotage and of the national market as a whole were broadly in line. This was no longer the case from 2009 as shown in the figure below. Particularly in 2010 when cabotage operators benefited disproportionately from market recovery, at the expense of domestic hauliers, especially in EU15.

**Figure 15: Evolution of total cabotage volumes compared to the total national market**

![Graph showing evolution of total cabotage volumes compared to the total national market from 2005 to 2011, indexed to 2005=100. The graph shows a sharp increase in cabotage volumes after 2009, particularly in 2010, compared to the national market.](Image)

*Source: SDG analysis of Eurostat (2012).*

### 4.4.3 Net cabotage

The extent to which MSs are net importers or net exporters of cabotage also helps to understand the stance taken by stakeholders in different Member States. This is assessed through the use of the net cabotage indicator, which is defined as the total cabotage volumes carried out abroad by vehicles registered in a given country minus the total cabotage volumes taking place in this country.

Figure 16 below reports the net cabotage volumes registered by EU countries in 2011.

Once again, Poland is the highest net exporter of cabotage, but four other EU12 MSs rank in the top ten of net exporters. In contrast, the top eight net importers of cabotage are EU15 Member States.

As set out in more detail in Chapter 5, this phenomenon is primarily driven by the lower cost base of EU12 MS hauliers.
Figure 16: Net cabotage volumes in 2011 in the EU (based on data in tonne-km)

**KEY FINDINGS**

- Following the full opening of the market to new EU MSs on 1 May 2009 – with the exception of Bulgaria and Romania - the pattern of road freight cabotage decoupled from total national road freight markets.

- Between 2006 and 2011 there was a substantial increase in cabotage carried out within in the EU15, which is due to the growing activity of vehicles registered in EU12 MSs. Overall the proportion of cabotage operations undertaken by vehicles registered in one of the EU12 Member States increased from 12% in 2007 to nearly 40% in 2011.

- Close to two thirds of all cabotage volumes in the EU are carried out in Germany and France. Belgium and Austria are the countries with the highest cabotage penetration rates.

- 18% of cabotage volumes are transported by vehicles registered in Poland, while less than 1% of cabotage is carried out in Poland. This makes Poland the largest net exporter of cabotage. In contrast, 30% of cabotage volumes are transported in France, whilst only 1.5% of cabotage is carried out by vehicles registered in France making France the largest net importer of cabotage.
5. SOCIO-ECONOMIC IMPACTS OF FURTHER LIBERALISATION OF ROAD CABOTAGE

5.1. Introduction

Any analysis of the potential socio-economic impacts of further liberalisation of road cabotage must start from a recognition of what the various impacts have been to date in different Member States as a result of the measures introduced to date. This chapter provides a summary of the evidence on socio-economic impacts gathered from the selected case studies (10), presents a thematic review of the main findings and sets out the potential impacts of the proposed legislative changes at a European level. This analysis is not an impact assessment of the possible implications of full liberalisation or of other policy options that could be introduced to further open this market. This exercise would require a specific study based on the standard methodology used for impact assessment of EU regulation\(^\text{26}\), which was not within the scope of this study.

5.2. Evidence from case studies

The following summary sets out a review of the socio-economic impacts of cabotage as has emerged from the case study research. The full version of each case study is available in ANNEX A.

5.2.1 Austria

The Austrian road freight market has long been exposed to international competition, given its location at the heart of Europe. Historically, most cabotage operations have been carried out by hauliers from Germany, the Netherlands and Luxembourg. Slovenian hauliers entered the market in 2004 and have gained substantial market shares given that, on average, they have a cost base which is 20% lower than Austrian companies\(^\text{27}\).

The recession in 2009 caused a drop in total road traffic volumes as well as in cabotage volumes. From 2010 however, cabotage volumes in Austria increased at a higher rate than the total Austrian domestic market. This suggests that hauliers from new Member States have benefited disproportionately from market recovery in 2010 and 2011.

Meanwhile, the total number of heavy goods vehicles registered in Austria has continued to decrease. Stakeholders have suggested that a number of Austrian companies have set up subsidiaries in the so-called “flags of convenience” (FOC) countries, registering trucks where business and labour costs are lower. In parallel, they set up freight-forwarding divisions in Austria which in turn hire drivers’ crews from FOC Member States. This system,

\(^{26}\) http://ec.europa.eu/governance/impact/key_docs/key_docs_en.htm.

\(^{27}\) See Case Study Austria.
known as flagging-out, is fuelled by the consignees’ drive to reduce costs and it is estimated to be used by 50% of Austria’s large hauliers\textsuperscript{2829}.

\subsection*{5.2.2 France}

France is one of the countries where most cabotage operations take place (as discussed in previous chapters). France is also one of the countries in Europe where labour costs in the road transport sector are the highest. This creates a cost differential with other economies such as with neighbouring Spain (where labour costs have fallen substantially) and Poland (where labour costs have been structurally lower since accession to the EU). Moreover France is one of the MSs with stricter social legislation for road transport. For example French rules on driving times do not allow any distinction between driving and waiting time.

The total annual cost of a French driver has been estimated by the Comité National Routier in 2011 to be 1.3 times higher than the cost of a Spanish driver and 2.4 higher than a Polish driver spending 3 weeks/month outside their respective domestic market\textsuperscript{30}. The same study estimates that based on annual driving times and for the same scenarios, the cost per driving hour is €28.7 in France, €18.7 in Spain and €12.0 in Poland. As a result, the competitiveness of French businesses is significantly lower than some of its European counterparts. By contrast, in recent years, profitability of the French road freight sector has suffered. The Bank of France estimated in a 2011 study\textsuperscript{31} that over 25% of French road freight transport businesses were making a loss.

Stakeholders from the road cabotage industry all agree that “market prospects in France are bleak”. They also all share the view that the French road freight market is one of the most vulnerable to the potential full liberalisation of cabotage in Europe, because of its social legislation. Legislative efforts to extend these rules to foreign hauliers operating in France often fail because of operators finding ways to cheat the system.

\subsection*{5.2.3 Germany}

The German market is very attractive for cabotage operations: in 2011 Germany registered the highest volumes of road freight cabotage. The opening up of the German market to the EU12 has resulted in greater cabotage activity by hauliers from the neighbouring MSs of Central and Eastern Europe. However the domestic industry has been more resilient than that of many other EU15, not least because of the presence of some barriers to entry. For instance there is a requirement that hauliers affecting road transport operations in Germany hold liability insurance against the damage of goods carried amounting to no less than €600,000 for each claim, and no less than €1.2 million for a year. The haulier has to guarantee that a certificate of this insurance is carried by the driver while carrying out transport operations.

Nevertheless, hauliers from EU12 Member States significantly increased their participation in the German market from 0.3% in 2006 to 1.5% in 2011.

\begin{thebibliography}{9}
\bibitem{28} Hans-Joachim Schramm (2012). \textit{Impacts of Deregulation on International Road Haulage}. Institute for Transport and Logistics Management Secretary General of Verband der Tarifeure (IVT), Vienna.
\bibitem{29} See also Dieplinger M., Furst, E. and Lenzbauer, S. \textit{Flagging Out as a Popular Strategy of Road Freight Transport Companies. Evidence of Three Consecutive Research Projects in Austria}. European Transport Conference, 2010 Proceedings.
\bibitem{30} Etudes internationales Comité National Routier (2011).
\end{thebibliography}
Cabotage has also indirectly influenced the national road haulage market. Freight forwarders that can subcontract both foreign cabotage operators (often German subsidiaries relocated in FOC countries) and domestic road hauliers, exert downward pressures on prices. This has driven German hauliers to achieve greater efficiency and some stakeholders report that, over time, cost differences are gradually decreasing. According to BAG estimates, hauliers from Bulgaria and Romania retain approximately a 50% cost advantage on labour costs compared to their German counterparts. Due to the high efficiency of German hauliers, the advantage in total operational costs decreases to approximately 30%. Prices have generally gone down; however domestic companies are still able to charge a premium given their higher quality, reliability and punctuality.

5.2.4 United Kingdom

The progressive opening of the cabotage market introduced by EU rules since 1998 in the UK has led to an increase in the activity of EU hauliers. In particular, the introduction of the new cabotage provisions laid down by Regulation (EC) No 1072/2009 has ensured that several return journeys are carried out in a more efficient manner and with a full load.

Cabotage operations have also increased competition in the domestic market and reduced prices with the main source of competition coming from Irish drivers. This has had a downward pressure on wages and contributed to improve the international competitiveness of UK hauliers that – according to Eurostat data - between 2009 and 2010 increased by 98% the volume of cabotage activities, mainly undertaken in the Irish market. Domestic companies have expressed concern that some operators are taking advantage of the cabotage provisions and not adhering to the legal provisions although it has been acknowledged that the work of VOSA is clamping down on such practices.

Stakeholders feel that there is a need for renewed focus on monitoring and enforcement within the UK as there is a concern that some cabotage operators are not as focused on safety (with vehicles operating below EU standards) as domestic hauliers leading to higher risks on Britain’s roads. Some high profile accidents have come to light which have been caused by foreign drivers/hauliers whose vehicles may not have been maintained in an appropriate manner or where drivers may not have been following working time limitations. The greatest concern in the UK is not related to wage levels of foreign hauliers, rather it relates to ensuring that vehicles that are entering UK are adhering to appropriate safety standards.

5.2.5 Hungary

The share of cabotage by Hungarian hauliers has grown since market opening. Drivers’ wages are comparatively lower in Hungary than Western European ones; however they are slightly higher than e.g. Slovakian and Polish wages.

This lower cost base has attracted between 20 and 30 large European road freight companies to establish their subsidiaries in Hungary. While the presence of these companies is a large contributing factor to the growth of cabotage by Hungarian hauliers, it poses two main challenges for the national sector:

- Smaller, national companies find it difficult to grow and compete with the international conglomerates in the domestic market. The road haulage sector in this country is very fragmented, with 84% of companies employing less than five workers, and it is exposed to international competition from lower-cost neighbouring MSs.
• Experienced drivers are increasingly attracted to work in international operations outside Hungary. The movement of drivers abroad, coupled with the increase in the age limit for which drivers attestations can be issued, is likely to lead to a shortage of drivers in the coming years.

5.2.6 Italy

The crisis in Italy makes it difficult to evaluate the impact of cabotage in isolation. Nonetheless, a regional focus on the border region of Friuli Venezia Giulia reveals that strong competition from neighbouring Slovenia has had an effect on the market since 2004. It is apparent that the lower-cost companies (those on the Slovenian side) have rapidly gained a large market share in North-Eastern Italy. Between 2004 and 2009, the number of road transport enterprises in the Friuli region has fallen by 20.8%, greater than the national average, compared to an increase of 218% in Slovenian hauliers crossing the border in the area.

The growth of cabotage in Italy has triggered a renewed focus by the industry’s main players on the competitiveness of the Italian road sector. Not only are Italian drivers more expensive than drivers from EU12 countries, but also labour costs make up a large share of total costs (between 40% and 60%). Fuel prices are one of the highest in Europe, the size of companies is very small on average and geographic fragmentation increases costs further. Under the pressure of cabotage, industry associations have been lobbying the Italian government to enact the necessary regulatory changes that would enhance the sector’s competitiveness. Meanwhile, they have brought a case to the regional court (TAR) against the imposition of “minimum costs” for safety standards. While acknowledging that these fixed costs reduce market competition, the TAR has referred the matter of compatibility with EU law to the European Court of Justice.

Stakeholders have also mentioned that the black economy presents a strong problem for the sector (for instance, 50,000 enterprises registered in Italy do not appear to possess any vehicles). In addition, trade unions state that cabotage rules are circumvented in Italy by aggressive “out-flagging” and fictitious sub-contracting agreements with EU12 drivers. They are in favour of a review of cabotage rules, as long as this would ensure compliance with national legislation on wages, social security, national level of transport tariffs and transportation costs. For example, they highlight the need for a thorough application of the Posted Workers Directive: at the moment, this applies to salary requirements, but not to social contribution levels paid by companies.

5.2.7 Lithuania

The Lithuanian market has not proven to be attractive for foreign hauliers despite the gradual opening of the cabotage market, given the small size of the internal market and intense cost-competition among domestic hauliers. Only some hauliers from neighbouring Latvia perform cabotage operations in Lithuania.

By contrast Lithuanian hauliers are active in the rest of Europe, primarily in Germany and France, Lithuania’s main trading partners. Lithuanian carriers are able to offer lower prices due to lower labour costs (drivers and support staff) compared to EU15 carriers. However Lithuanian drivers working abroad are not protected by unions and working conditions can be very poor.
5.2.8 Netherlands

Historically, Dutch hauliers have been very active cabotage operators across Europe, the Netherlands being the logistics base for much of the trade activities of the EU. Research by the Dutch Institute for Transport Policy (KiM)\(^{32}\) has shown that the single most important factor driving road freight volumes in the Netherlands in the past decade has been the “internationalisation” of the economy, measured in terms of imports and exports. This factor explains 35% of the growth in transport volumes in the Netherlands.

The link between trade and cabotage has weakened in recent years though: for instance Polish and Slovakian hauliers are more active in the Netherlands than would be expected from the trade relations between the countries, a fact that can be partially explained by the cost competitiveness of these hauliers vis-à-vis Dutch ones.

Full liberalisation of cabotage occurred in 1991 between the Netherlands, Belgium and Luxembourg, which lead positive long-term economic benefits to the Dutch economy: for example, hauliers gain a higher revenue per truck by being able to reduce empty runs. The presence of a harmonised socio-economic environment between the Benelux countries is an important factor of the success of the initiative.

In 2010 environmental benefits have also been estimated by the KiM\(^{33}\) in what is, to date, the largest study to date on the environmental impacts of liberalising cabotage in EU: in the event of full liberalisation of road cabotage at the EU level, it was forecasted a reduction of empty trips between 0.7% and 1.9% vehicle-km, leading to a reduction of between 0.5% and 1.6% in CO\(_2\) emissions (as a percentage of total road transport CO\(_2\) emissions) at the EU level.

By contrast, in recent years, many stakeholders claim that the opening of the cabotage market to new EU MSs has led to a deterioration of the profit margins of Dutch companies as suppliers try to cut costs by resorting to foreign cabotage operators. Some also argue that there could be a shortage of skilled drivers in the near future because the massive influx of foreign operators in recent years has reduced the number of Dutch skilled drivers. A recent study commissioned by the Dutch Ministry of Industry and Environment\(^{34}\) argues that these concerns could be particularly challenging given current restrictions on cabotage are to be eased in the European Union. The study claims that an easing of current cabotage restrictions will not be favourable for the Dutch road haulage sector: such a measure is expected to lead to strong price competition between Dutch hauliers and companies using vehicles registered in lower wage countries, that may force some Dutch companies into bankruptcy and put pressure on employment and working conditions in the Netherlands. Moreover, according to the study, there is also the risk of a negative effect on the environment as road transport would become more competitive.

However, according to Dutch hauliers, at the moment in the Netherlands the main problem is the lack of a proper regulatory regime for cabotage.


\(^{34}\) Ministry of Industry and Environment (2013). The impact of untightening of cabotage.
5.2.9 Poland

The road transport sector in Poland has expanded in recent years, with 10% growth in employment levels in the industry between 2009 and 2010 alone. The growth of international transport activity and cabotage in particular, is a key determinant of this growth. As shown in chapter 4, 18% of cabotage volumes in the EU are transported by vehicles registered in Poland: this is due to the cost advantage of Polish hauliers as well as to their relative proximity to big cabotage markets.

Polish companies have a significant advantage in terms of labour costs over most EU Member States. Despite a gradual increase in the salary levels in the Polish road haulage industry, labour costs are estimated to be to be in the range of 50%-60% of those in Germany, France or Italy. The increase in remuneration levels will lead to an improvement of the social conditions of Polish drivers, albeit it may also cause Polish haulers to be less competitive in comparison to drivers from other Member States, such as Bulgaria and Romania which have cabotage access since 2012.

5.2.10 Spain

Road freight activity in Spain has suffered from a sharp contraction in volumes in recent years. The number of company licences in 2012 was back to the same levels of 1999 and, in 2010 alone, 8,600 enterprises left the Spanish market. There was an 11% reduction in the number of authorisations requested by road hauliers. Cabotage operations have also been declining in line with the national market.

Spain can be viewed as an example of the link between cabotage and trade activities. Over time, Spanish hauliers have exploited their competitive advantage over their French counterparts and have gained substantial market share across the Pyrenees, coupling cabotage with cross-border trade. On the other hand, the increase in cabotage activity by Polish hauliers in Spain is a reminder that cabotage might not be directly linked to transport activity between neighbouring MSs.

The practise of out-flagging is regarded as illegal employment by Spanish stakeholders. The sector is pressing for more stringent controls on companies’ practices and accounts to tackle what is perceived as “widespread illegality” in the sector.

5.3. Summary of findings by socio-economic theme

This section discusses the key evidence that has emerged from the case study analysis. Most of the findings relate to the effects identified across the EU because of the opening of road cabotage to EU12 MSs, rather than specifically to the provisions in Regulation (EC) No 1072/2009 as this has actually been the major driver of the change in total cabotage operations across the EU.

The introduction of the Regulation has also had some impact on the sector, but these impacts relate more to the analysis of the clarity of the rules and the manner in which the rules are enforced (as discussed in detail in chapters 2 and 3) rather than the implications for further liberalisation. Nevertheless, the fact that the stricter rules came into force with the opening of the market has ensured that there are clearer requirements to all operators and have limited the potential for old MSs to apply *ad hoc* barriers against new entrants from the newer Member States.
5.3.1 The impacts of the recession

The gradual liberalisation of cabotage has coincided with a general decline in road transport activity during the 2008-2009 recession in Europe. These effects are difficult to decouple from the reforms to cabotage Regulation, although some impacts can be identified.

At the trough of the downturn, commercial road activities were low across Europe as a result of a dramatic decline in industrial production and consumer confidence. Thus many of the traditionally strong markets such as Italy, France and Spain became less attractive to foreign hauliers. At the same time, other MSs such as Poland were less affected by the downturn and saw their domestic companies grow.

While road freight transport volumes have not yet recovered from the economic crisis that started in 2008, two main trends have been identified. Firstly, companies from EU15 MSs have intensified the practice of flagging-out to exploit the favourable labour cost differences and regain competitiveness. Secondly, companies from EU12 MSs have made greater use of cabotage opportunities offering cheaper alternatives to European consignees looking to reduce their costs.

Market entry by EU12 cabotage operators has exposed the inefficiencies of road freight markets in many MSs affected by the recession; this is after all what liberalisation is supposed to do – increasing the competitiveness of the EU economy as a whole. The presence of cheaper and more efficient hauliers has increased competitive pressures and led the main industry associations to request the necessary changes to the Regulation and taxation levels for their national markets. These requests have come in parallel with lobbying efforts to improve the effectiveness of controls on foreign hauliers.

5.3.2 Operating costs

Our review of trends in cabotage activities across Europe has confirmed that severe imbalances exist in the operating costs of the industry. For instance, fuel costs vary widely across Europe, especially in relation to the different levels of taxation. The figures below illustrate the operating costs of cabotage operations in a selection of MSs an also the relative cost advantage of polish road hauliers which has been discussed in various sections of this Report.

**Figure 17: Labour costs of cabotage operations (€/h)**

Labour cost differences also persist with a large divide between EU15 and EU12 Member States. However differences also exist between these two geographical blocks. Labour costs in the road transport sector in Spain are lower than those in France; and Bulgarian companies can enjoy a lower cost of labour than Hungarian ones.

However, the competitive pressures exerted by cabotage and the internationalisation of the sector in general result in an overarching trend in remunerations identified in the case studies: growing salary levels in the EU12 as opposed to stable or even declining levels of remuneration in the EU15.

This process could lead to a convergence of labour costs in the sector in the long term. At present, it is perceived very differently by stakeholders. In the EU12, governments view it as an indication of improving social standards while companies fear that growing salaries could hinder their competitiveness in foreign markets. In the EU15, it is feared that a downward spiral in operating costs can reduce service quality and reliability. The problem would be a transitory one in any case: the adjustments of labour market demand and supply will lead to a levelling of labour costs between EU12 and EU15, a process which is already on-going across the EU, as shown by the figures below.
However it is not possible to forecast how long the transitory period will be. As labour costs are determined by the sum of wages and taxes, much will depend on the speed to the different MS will align their labour taxations systems. Moreover external factors could affect this process: for example the 2009 economic crisis modified the pattern of labour costs variation both in the EU12 and EU15 MSs and it is difficult to predict how the trend will evolve in coming years.

5.3.3 Social legislation

Operating costs do not just depend on salary levels: a large share of costs is also determined by regulatory requirements imposed by the host Member States in the field of social legislation.

Social legislation includes, inter alia, the application of Directive 96/71/EC on the posting of workers and Directive 2002/15/EC on working times and conditions. The growth of cabotage operations (and labour market opening more widely) has triggered specific legislation in some MSs such as Austria and France. The existing insurance requirements in Germany also represent a legislative measure that effectively increases costs for any cabotage entrants.

One of the impacts of cabotage liberalisation has thus been more stringent application of social legislation. Even in MSs where this has been enacted, however, illegality in the sector has become a widespread issue. The challenge posed by a mobile and highly internationalised road transport sector remains the harmonisation of social standards and enforcement practices across the European Union.

5.3.4 Labour market impacts: drivers

The growth of cabotage is having a variety of impacts on the labour market of drivers across the EU. In some MSs such as Poland and Slovakia there has been a considerable growth in employment in this sector, with positive consequences on the national economy. Conversely the number of workers has reduced significantly in EU15 MSs such as Italy and Spain.

A key consequence of cabotage is enhanced labour mobility. This is viewed as a positive aspect when it addresses the mismatch of labour demand and supply in many MSs. However this reallocation is also perceived as a threat in many national markets.

In the Netherlands, industry associations are concerned that the influx of Polish drivers in recent years is preventing young people in the country to enter the profession. Should foreign drivers return to their home countries in light of higher salary levels – because of the salary convergence discussed above - the Netherlands would suffer from a structural drivers shortage. Similarly in Hungary, national shippers are concerned that more and more drivers are attracted by the opportunities offered in international transport and continue to leave the domestic market.

In general, road transport jobs are not considered to be very attractive because they demand flexible working times, high physical effort and carry a high risk of accidents and fatalities in return of a low average wage. Cabotage increases the burden on drivers by requiring additional geographical mobility and increasing the legal responsibilities of drivers. Often these higher burdens are not compensated by higher pay, but rather they are accompanied by difficult working conditions (e.g. sleeping in the vehicle, driving longer
hours in search of free parking spaces) in foreign environments. This is true not only with regard to road transport, but also other sectors of the economy where some jobs are no longer desirable by EU15 citizens making the influx of foreign workers the only way of filling the lack of supply.

5.3.5 Road transport efficiency

Some cases of full liberalisation of cabotage already exist within the EU. The Benelux region represents an example of successful market opening in the presence of a harmonised socio-economic environment. National governments have repeatedly prolonged this agreement given its efficiency benefits, which include higher revenues per truck, greater economic integration of national businesses and a reduction in empty runs although set on the backdrop of three countries with a similar level of economic activity.

Another practical example of liberalisation beyond current EU rules that led to efficiency savings is offered by the special derogations obtained by Ireland in relation to the automotive car industry. As passenger cars are registered at the start of the year, there is a peak in the number of cars sold and transported. As the national sector cannot cater for this seasonal peak in demand, Ireland has requested and obtained a relaxation of cabotage rules during these periods. This example shows that cabotage can be a solution to the temporary mismatch of supply and demand in MSs.

5.3.6 Environmental considerations

Economic efficiency is in turn linked to environmental efficiency. As the analysis of Eurostat data by the European Commission and the KiM show\(^{35}\), restrictions on cabotage appear to be limiting efficiency by contributing to unnecessary empty running. Current rules force hauliers to leave the host country within 7 days. However due to imbalances in trade flows and the mismatch of haulage demand with available supply, loads are not necessarily available for the entirety of return trips.

This leads to 22% of all vehicle-km in the EU being empty runs. Empty running levels are higher in own account transport operations (30.6%) than in hire or reward ones (21.4%). Moreover they are particularly high in domestic transport (27.3%) and lower in international transport (13.6%)\(^{36}\). A reduction in empty runs has been witnessed in traffic flows to and from the UK as well as across the Benelux countries thanks to cabotage, although there is no data relating to the actual amount of reduction.

A consequence of the reduction in empty runs is a lower environmental impact of the road sector through a decrease in vehicle emissions for those trips that do not need to be made any longer. However, depending on the future rules relating to cabotage, increased movements may actually lead to increased emissions and potentially to some traffic switching from rail to road (although this is likely to be small) leading to a further increase in emissions.


5.3.7  Safety and congestion impacts

The opening of the cabotage market results in a greater number of foreign vehicles and foreign drivers circulating across the EU. This aspect of cabotage has raised concerns with respect to safety and accidents. Stakeholders from some MSs (including the UK, Germany and the Netherlands) are keen that a reduction in operating costs does not result from lower safety standards resulting in greater risk for all road users in host countries.

We have found no statistical evidence to support the view that foreign hauliers are involved in a greater number of accidents than domestic ones. Likewise, it is currently not possible to quantify the impacts of cabotage on other aspects such as road congestion.

5.4.  The current debate on further liberalisation of the cabotage market

As mentioned above in this study the legislative provisions introduced by Regulation (EC) No 1072/2009 were thought to be “transitory” and the Commission was asked to review the features of the cabotage market in 2013 to understand if further market opening was feasible in the existing socio-economic conditions. This was the result of a compromise between those that supported further market opening of the road haulage market in light of the establishment of a common transport policy and those that claimed further harmonisation of the framework conditions under which hauliers from different countries operate to be introduced first.

This debate is still on-going. The need for further market integration at the EU level is being pushed by several EU institutions. With reference to the transport market, this is a recurring issue in European transport strategies and many actions have already been taken to address it across the different transport modes (air, rail, road, maritime). However, as highlighted in the 2011 Transport White Paper, there is still a need to remove remaining barriers to entry. Cabotage is one of the crucial topics listed in the outstanding questions of the transport liberalisation agenda: this is proved by a recent position expressed by the Commission that indicated the opening of cabotage as a key priority for improving market performance. Further liberalisation in the road transport market is also on the agenda of the European Parliament that – however – puts great attention first on the need to understand whether framework conditions (effectiveness of controls, evolution of employment conditions, social and safety legislation, etc.) have evolved in such a way that “further opening-up of domestic road transport market, including the removal of remaining restrictions on cabotage, could be envisaged”.

From the analysis undertaken the reasons behind the current claims of further liberalisation in the cabotage market are twofold. Firstly, there is the need to improve the efficiency of the market by reducing empty runs and contributing to optimization of load factor. Secondly, there is the overarching goal of creating a European Single Transport Area where road hauliers from different MSs are free to get access to the transport profession in

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37 Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system; COM(2011) 144 of 28.03.2011.


different countries as well as to undertake transport operations across the EU. It is clear that the two issues, empty running and full market integration, have a different standing in the EU policy debate. Moreover, although they are linked to each other, it appears that they need to be tackled in a different way and also have different timeframes.

As shown above (5.3.6), the issue of empty running is usually higher in national transport rather than in international flows and certainly more critical for own account transport than hire or reward. Cabotage is often quoted as a measure that can help address this issue. Indeed, optimizing the load of vehicles running international carriage by allowing them to undertake cabotage operations in the countries they cross can certainly contribute to this cause. However, it would need to be accompanied also by other actions targeted specifically at the segments where most inefficiency occurs, such as the “own account transport” sector, or at promoting new technological solutions that optimize the usage of vehicle fleets. It could also be argued that if cabotage is linked predominantly to ensuring the efficiency of road transport, then it is appropriate to limit when it is allowed to when it is linked to international transport, as set out by existing EU rules, as this way it would allow foreign hauliers delivering international cargo to optimize their return trips.

By contrast if cabotage is seen as a mean to liberalise the road freight market to achieve the overarching goal of full integration, then its provisions should be ruled in a different way. For example there is no reason why it should be linked to international operations: this would actually constitute a barrier to the free movement of road hauliers. At the same time a fully integrated EU road freight market would need further harmonised framework conditions. Indeed as pointed out by the ITF such harmonisation of socio-economic-legal conditions is complementary to liberalisation and a prerequisite for fair competition40.

When drafting its conclusions on future developments of the cabotage market, the HLG clearly had in mind the two different perspectives set out above. For this reason the HLG proposed to separate the provisions relating to linked cabotage, which they structured as a tool to promote the technical operational efficiency of road cargo, from those governing non linked cabotage, which they outlined in terms of policy options that could gradually lead to a full liberalisation of the road haulage market41.

Indeed, any review of existing cabotage rules would benefit from the introduction of a distinction of these two perspectives. This would help to identify the amendments that should be made to current legislative provisions. For example, to address the need to tackle empty runs, a refinement of current provisions could probably be sufficient to optimize the usage of international carriage. Some of the amendments already listed in Chapter 2 to clarify Regulation (EC) No 1072/2009 – such as the removal of the maximum number of operations to be undertaken in 7 days, the possibility to start cabotage operations even if international cargo has not been fully unloaded or to undertake more than one cabotage operation in MS different from the one where the international carriage has been unloaded – could help address this. To be effective they would need to be accompanied by an improvement of enforcement of the Regulation as already discussed in Chapter 3.

On the other hand, the move towards further integration of the market needs to be properly assessed, taking into account all the likely socio-economic impacts. In particular great attention should be given to any situation that could pose the question of unfair

41 See Chapter 2 for a detailed description of the HLG proposal on linked and non linked cabotage.
competition among hauliers from different Member States. In this respect there is the serious risk that - given the striking differences in social legislation (and associated costs) present in different countries - what would determine the success of road hauliers in an open and competitive market would not be their relative economic efficiency, but rather their ability to get access – legally or illegally – to the most favourable labour provisions. Such a risk should not be a deterrent for further market opening, but rather suggests the need for a gradual, governed process where liberalisation and harmonisation of the rules come together. A first step to be done is to make sure that none of the actors seek to “cheat” - which can be incentivised by ensuring appropriate enforcement and ensuring that the entire supply chain is liable for any illegal activity (as is already the case in some Member States). If a common ground is established, the opening-up of the road haulage markets could lead to efficiency improvements that will allow the industry purchasing transport operations to gain from lower costs, benefiting their profitability but also the whole economy. The possibility given to the EU12 MSs to enter the EU road cabotage market is an example of a gradual and partial opening of the market between countries with very heterogeneous socio-economic conditions. This has led to positive outcomes – such as the reduction in transport costs experienced in several EU15 MSs or the new business opportunities raised for EU12 hauliers. It has also lead to some drawbacks such as reduced profitability of EU15 operators, safety concerns, the risks of driver shortages, etc.

For the future, the approach of a gradual and flexible opening of the road cabotage market accompanied by further harmonisation of social legislation and enforcement procedures indicated by the HLG seems to be the correct one. The policy options and measures to be chosen to implement it needs to be selected carefully though and reflect the short/medium and long term goals agreed and set on the agenda of the EU in the coming years.

**KEY FINDINGS**

- The **main driver** of changes in the road cabotage market in recent years has been the **opening of the market to EU12 MSs**. The introduction of Regulation (EC) No 1072/2009 has also had some impact on the sector, but these impacts relate more to the clarity and enforcement of the rules rather than the implications for further liberalisation.

- The gradual opening and liberalisation of cabotage has coincided with a **general decline in road transport activity** during the **2008-2009 recession in Europe**. These effects are difficult to decouple from the reforms to the cabotage Regulation and EU enlargement, although some impacts can be identified.

- The possibility given to EU12 MSs to enter the EU road cabotage market has led to positive outcomes including: the **reduction in transport costs** experienced in several EU15 MSs and **new business opportunities** for EU12 hauliers. It has also lead to some drawbacks such as **reduced profitability** of EU15 operators, **safety concerns** and potential **driver shortages** to name three.

- From the analysis undertaken it seems that the need for further market opening are driven by: the need to reduce **empty runs** and the overarching goal of creating a **European Single Transport Area** where road hauliers from different MSs are free to get access to the transport profession in different countries as well as to undertake transport operations across the EU.
Any review of existing cabotage rules would benefit from the introduction of a distinction between the two goals mentioned above. This would help to identify the changes that should be made to current legislative provisions.

The proposal put forward by the HLG report to distinguish between linked and non-linked cabotage operations goes in this direction.

A fully integrated EU road freight market would also need more harmonised framework conditions: such as the harmonisation of socio-economic-legal conditions and rules which can be complementary to liberalisation.

Looking forward, a gradual and flexible opening of the road cabotage market accompanied by further harmonisation of social legislation and enforcement procedures indicated by the HLG seems to be the ideal approach. The policy options and measures to be chosen to implement it need to be selected carefully and reflect the short/medium and long term goals agreed and set in European Transport Policy.
6. CONCLUSIONS AND RECOMMENDATIONS

6.1. Conclusions

The EU road cabotage market has experienced significant changes in recent years as a result of: the entrance into the market of hauliers from EU12 MSs and the introduction of a new regime for cabotage operations, laid down by Regulation (EC) No 1072/2009.

Any future review of the internal market in road freight transport should be based on the lessons learnt from these changes.

The adoption of Regulation (EC) No 1072/2009 has removed national interpretations of the previous rules and thus increased certainty in the sector. The new Regulation has clarified the temporary nature of cabotage by introducing quantitative criteria (the “3 operations in 7 days” rule) to define the scope for this type of operation, potentially making the monitoring and enforcement of cabotage rules simpler. This has also been facilitated by linking international cabotage to international carriage operations (not included in previous rules). Finally, it harmonised the requirements for documentation that were previously very diversified across the EU and in some cases represented a high barrier to entry for hauliers from foreign MSs.

It is generally agreed however that improvements can still be made to the Regulation in particular in relation to the interpretation of current rules and enforcement. The first of these is needed as there are areas, such as in relation to partial unloading of cabotage operations (multidrops), which are dealt with differently in different MSs. On enforcement, each MS has adopted a different approach to monitoring, enforcing and sanctioning infringements which make illegal cabotage operations more or less risky depending on the country where it is undertaken. For example, fines can vary from a minimum fine of €100 in Hungary to a maximum fine of €200,000 in Germany. In addition, a number of stakeholders complained that often the enforcement bodies across Europe lack the resources to monitor and enforce the cabotage provisions effectively, not least because there is little national and international cooperation among the authorities in charge of monitoring and enforcing the requirements of the Regulation.

As mentioned throughout the study, EU enlargement in 2004 had a significant impact on cabotage operations across Europe as it gave the possibility to hauliers from new MS to compete with those of EU15 MS. Pre-accession treaties limited their ability to perform cabotage operations in EU15 Member States by means of a system of temporary restrictions, most of which were lifted in 2009 for those that entered in the EU in 2004. By contrast, Bulgarian and Romanian hauliers were not allowed to perform cabotage in most countries until 1 January 2012.

While it is not possible to assess the exact impact of the Regulation on cabotage trends, it is clear that the opening up of the market to new MSs was one of the major causes of the changes in cabotage volumes across the EU. This can be seen in the data relating to cabotage following the 2009 recession, where cabotage operations carried out by EU12 MSs increased substantially compared to activities of EU15 hauliers.
The entrance of the new Member States into the EU cabotage market introduced new providers of cabotage operations: in 2011 Polish road hauliers carried out the most cabotage operations, surpassing the volumes of German and Dutch hauliers, which used to be among the most active operators before EU enlargement. Overall the proportion of cabotage operations undertaken by vehicles registered in any of the EU12 Member States increased from 12% in 2007 to nearly 40% in 2011.

By contrast, EU enlargement did not alter the main destination countries for cabotage. The MSs with the highest penetration rates of cabotage activities are still Belgium and Austria, while in terms of total volumes the main destinations are the biggest EU15 economies: Germany, France, Italy and the UK.

The increased activity of EU12 hauliers, especially Polish ones, in the recent years can be partially explained by the fact that they can offer lower prices thanks to the lower labour costs in comparison to most EU15 MSs. This cost advantage is attributable to different wage levels (that over the long term should level out), but also to different social protection systems that impose different labour costs on firms from new and old MSs. This poses a crucial question that needs to be addressed in light of any future liberalisation: is it fair in an open and competitive market that the success of firms is (predominantly) driven by their ability to get access to more favourable labour market provisions? Competition seeks to ensure total economic efficiency which should not focus exclusively on labour market and social security provisions.

The EU Posting of Workers Directive has been used to minimise the differential in labour costs between EU MSs. However the analysis undertaken in this study reveals that there is no uniform application of this Directive in the cabotage market and that it does not address differences in national social insurance regimes.

Other regulatory issues challenge the smooth functioning of this market. For example, the extent to which clients of road haulage operations are co-responsible for potential infringements by cabotage operators or the insurance requirements imposed on vehicles circulating on the national networks. Both of these areas are interpreted differently in different MSs and a harmonisation of these issues would benefit the market as a whole.

It is difficult to decouple the effects of recent reforms to cabotage rules from the effects of the wider economic downturn in Europe. Nevertheless, the analysis undertaken reveals that the presence of such heterogeneous conditions across the EU has had different socio-economic effects in different countries. The analysis in this study shows that, overall, cabotage has put downward pressure on transport costs in several EU15 MSs and has created new business opportunities for EU12 hauliers. This has however been counterbalanced by the reduced profitability of EU15 operators, safety concerns and the potential of driver shortages going forward. All these factors are likely to be amplified in the short term with further market opening unless the liberalisation is carried out in a gradual manner and it is accompanied by stronger enforcement regimes at a national level.


6.2. Recommendations

The two main factors that are driving further liberalisation are further reducing empty running and creating a European Single Transport Area. Each of these factors needs to be addressed separately to ensure that the overall goal of increasing the efficiency of the road transport market is achieved. The proposal put forward by the HLG report that distinguishes between linked and not linked cabotage operations seeks to do just this.

A fully integrated and correctly functioning EU road freight market would also need further harmonised framework conditions including the harmonisation of socio-economic-legal aspects. An example of lack of harmonisation is given by the different application of the Posting of Workers Directive in the cabotage market across the EU.

Looking forward, the most appropriate approach seems to be a gradual and flexible opening of the road cabotage market which is accompanied by further harmonisation of social legislation and enforcement procedures. The policy options and measures that are applied to ensure this need to ensure that they reflect the short/medium and long term goals set out in European Transport Policy.

To ensure efficiency and reduce empty running a different approach to the “3 in 7” rule could be considered through the removal of the maximum number of cabotage operations (3) allowed in 7 days and/or a revision of the provision that requires the full unloading of international carriage before a cabotage operation.

Enforcement could be facilitated if the start of cabotage operations were linked to border crossing rather than unloading, something that will be easier to monitor thanks to on board equipment such as GPS or road user charging devices. A number of further measures could be introduce to improve the effectiveness of enforcement: the introduction of a system similar to that used in the UK (the OCRS) could facilitate enforcement within Member States; greater cooperation and exchange of information between national and international bodies responsible for enforcement of road legislation would also facilitate this. There are other potential improvements to enforcement that have been suggested by the High Level Group and other stakeholders. All these measures need to be analysed in more detail and on a case-by-case basis to assess the cost-benefit of the impact of each proposal.

The goal of achieving a fully integrated European Transport Area requires a detailed Impact Assessment of the socio-economic effects of different options that could be put in place and of their timing implications, given the great imbalances that still exist between different the framework conditions (in particular labour aspects) in different MSs. In this respect, and in addition to the enforcement aspects mentioned above, it seems clear that a decision needs to be taken on whether or not to further harmonise labour laws applying to the cabotage sector as well as the way companies commissioning haulage operations are responsible for their haulage choices (co-responsibility) before full opening of the market is implemented.
KEY FINDINGS

- Improving the efficiency of the road haulage market through the twin goals of reducing empty running and that of creating a Single European Transport Area should be addressed through separate measures.

- The proposal put forward by the HLG report – that distinguishes between cabotage operations linked to international carriage from those not linked to it - goes in the right direction to separate the two goals mentioned above.

- In relation to reducing empty running:
  
  (i) a different approach to the “3 in 7” rule currently in force could be considered. Examples are the removal of the maximum number of cabotage operations (3) allowed in 7 days and/or a revision of the provision that requires the full unloading of international carriage before a cabotage operation;

  (ii) enforcement could be facilitated by linking the start of cabotage operations to border crossing rather than unloading, as this will be easier to monitor thanks to onboard equipment such as GPS or road user charging devices;

  (iii) there is scope for the adoption of other complementary enforcement measures – such as the introduction of more innovative control systems or better inter-institutional cooperation between MSs - though an analysis of their potential cost-benefit impacts is recommended before any decision regarding their implementation is taken forward.

- As for the overarching goal regarding the creation of a Single European Road Transport Area:

  (i) further opening-up of the market needs to be accompanied by deeper harmonisation of the socio-economic and legal conditions across the EU;

  (ii) enforcement practices, labour provisions applying to road cabotage operations and the way different actors of the logistics chain are responsible for infringements of cabotage rules, seem to be the areas where further harmonisation is required with more urgency;

  (iii) as a result of the existing imbalances between framework conditions in different MSs, the most appropriate approach seems to be a gradual and flexible opening of the road cabotage market;

  (iv) it is recommended that a detailed Impact Assessment is undertaken of the socio-economic effects of different options that could be put in place and of their timing implications.
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SUMMARY OF CASE STUDIES

Summary for Austria

Before the entry into force of Regulation (EC) No 1072/2009, the Cabotage Monitoring Ordinance regulated the requirements and the necessary documentation to be carried during cabotage operations in Austria. Following the entry into force of the Regulation this ordinance is no longer applicable, and lack of clarity existed about the documentation necessary to be carried during cabotage operations up to February 2013, when the Austrian Ministry of Transport adapted national regulations to the provisions of Regulation (EC) No 1072/2009 with an amendment of the Austrian Road Freight Transport Act. Of particular interest to cabotage operations are amendments of Articles 7 and 17 in this law. In addition, Austria has exercised the right to apply the Posting of Workers Directive to cabotage operations. Therefore, cabotage is subject to the provisions of Austrian labour laws.

In practice, controls mostly take place at the roadside and are carried out by the local police. There is no distinct unit exclusively responsible for monitoring compliance with road haulage legislation. However, the Austrian Commercial Chamber claims that the abolition of the requirement to carry cabotage control sheets (regulated by national law) makes checks difficult. In Austria, the organisation contracting transport services is required to request proof of compliance with provisions of Austrian labour laws from the contracted haulier. If it does not request proof, it is also liable for any infringement by the haulier.

After the opening of the domestic market to hauliers from the 2004 Accession countries in 2009, the share of non-domestic hauliers experienced a strong increase, from 2.7% in 2008 to 3.6% in 2011. Since its peak in 2006, cabotage operated by Austrian hauliers abroad has shown a gradual decrease. As a result, in 2011 Austria switched to being a net-importer of cabotage operations.

The Austrian Chamber of Commerce claims that Austrian road freight hauliers face serious competition. Since the main criterion for contracting hauliers is price, Austrian hauliers have a substantial disadvantage in competition against hauliers from new Member States. Although in Austria the Posting of Workers Directive applies to cabotage, the Chamber of Commerce believes that foreign hauliers largely do not comply with its provisions. This is mainly due to the administrative burden in combination with a lack of control. Furthermore there is the suggestion that foreign hauliers carry out three cabotage operations on a single day, leave the country, only to return the next day, and to carry out legally three more further cabotage operations.

Summary for France

France is the second largest market in Europe for cabotage operations as a result of its location making it an important transit country in Europe. Some French operators also carry out cabotage operations in neighbouring countries. The Regulation is in force according to
its requirements and there is a specialised control body in place that has undertaken a large number of checks in recent years. These checks have identified, more than anything, infringements of social legislation rather than infringements relating to the cabotage provisions.

High social security costs and stringent working condition requirements have led to French hauliers becoming less competitive when compared to companies from other Member States. This largely explains the high level of cabotage operations by foreign hauliers in France, and the small share of cabotage undertaken by French hauliers abroad, coupled with the geographic location of the country being at the crossroads of Western Europe, and the structure of the French economy, centred on domestic demand with a foreign trade deficit.

**Summary for Germany**

The ordinance on International Road Haulage and Cabotage (GüKGrKabotageV) of 2008 anticipated the entry into force of Regulation (EC) No 1072/2009. This ordinance established the requirements to carry out cabotage in Germany and the documentation necessary to carry on the vehicle. After the entry into force of the Regulation, the German Road Haulage Act was amended by a list, setting out in detail infringements against the Regulation and applicable fines. No major amendments of German law were necessary, as most provisions of the Regulation had already been in force.

A particularity in German legislation, stated in the Road Haulage Act (GüKG), is the requirement for hauliers wanting to carry out domestic transport services (including cabotage) to hold liability insurance of €600,000. According to foreign hauliers and the Federal Office for Goods Transport this forms an important barrier to entry in the German market. In addition, the contracting party is required to request information from the haulier on the availability of the required documentation. The contracting organisation can be made responsible and charged with a fine if this was not the case.

The German Federal Office for Goods Transport (BAG) check compliance with the laws related to road haulage. Monitoring compliance mainly takes place by means of roadside checks. However, both the Federal Office and industry stakeholders mentioned that monitoring compliance with the current law is not straightforward and infringements against certain requirements, e.g. empty entry, are almost impossible to monitor. This appears to be an EU-wide issue given that stakeholders from various Member States mentioned this concern.

Between 2005 and 2011, the total market for road haulage in Germany increased by 12%. In contrast, the share of cabotage in the market for 'hire and reward' proved to be more dynamic and increased from 2% to 3% over the same period. In addition, and especially after 2008, German hauliers lost substantial parts of their cabotage volumes transported abroad. As a result, cabotage volumes transported in Germany in 2011 were three times as high as cabotage carried out by German vehicles abroad.

Despite the existence of barriers to enter the German domestic road haulage market (e.g. the requirement to hold liability insurance against goods damage), hauliers from the 2004 Accession countries significantly increased their participation in the German market from 0.3% in 2006 to 1.5% in 2011. Stakeholders claim that this is mainly due to significant
lower staff costs in these countries. After the further opening of the market to hauliers from Bulgaria and Romania in 2012, industry associations expect a strong entry into the German domestic market, given staff costs in these countries are approx. 50% lower those in Germany. In contrast, the BAG believes that a further opening will not have a significant impact on the domestic market, as high barriers exist and German freight forwarders preferably contract domestic hauliers rather than dealing with uncertainties related to contracting east European hauliers. However, freight forwarders do apply pressure to German hauliers in order to keep prices low.

Summary for the United Kingdom

Cabotage operations in the UK have developed substantially in recent years and, apart from Irish hauliers, there has been a shift in the origin of the operators that are carrying out the cabotage operations with more cabotage being undertaken by Eastern European hauliers. Monitoring of cabotage in United Kingdom is carried out by VOSA which also monitors compliance with other HGV, road related requirements (such as road worthiness). Its roadside checks are carried out both on foreign operators and on domestic operators; the share of foreign operators that are checked is about 47%. VOSA has also developed a system to monitor compliance with all road related laws, the OCRS. This system is a risk based tool that provides VOSA with an assessment of the probability that an operator will infringe one of the laws. This system was recently updated to improve its functionality.

The main concern in the United Kingdom is not related to wage levels of foreign hauliers as competition is seen as a good thing for the sector, the greater concern relates to ensuring that the vehicles that are entering United Kingdom are adhering to the appropriate safety standards.

Summary for Hungary

The entry into force of Regulation (EC) No 1072/2009, lead to a number of changes in Hungary including no longer having a centralised database monitoring cabotage activities in the country, as the former “cabotage report” was found to be contrary to the Regulation. This has led to a number of difficulties in monitoring and enforcing cabotage across the country as a result of the number of authorities involved under the new regime. These difficulties have made enforcement very difficult and there is no evidence that any penalties have been issued in relation to cabotage in Hungary.

Eurostat statistics, however, show that the ratio of cabotage carried out on Hungarian territory is remarkably low, ranging from 0.056% to 0.21% of annual road freight traffic. Representatives of the industry have stated that the number of cabotage operations performed by Hungarian road haulage companies abroad is also very low, and they occur mainly as linked cabotage.

The opinion of the Ministry, the National Transport Authority and the industry seems to be fairly uniform on the matter of further market liberalisation. That is that under the present state of social and economic conditions, the cabotage operations enabled under Regulation (EC) No 1072/2009 are adequate and appear to ensure the right level of freedom in road
freight transport. The Hungarian Road Transport Association would like to see the Regulation simplified by removing the provision regarding the maximum number of cabotage operations, but would leave the constraint of 7 days unchanged.

**Summary for Italy**

The European cabotage rules were already being applied in Italy before the entry into force of Regulation (EC) No 1072/2009, given that the previous national rules (Italian Transport Ministry Decree of 3 April 2009) were similar to the EU Regulation. However the new Regulation has raised the number of operations that hauliers can carry out within the 7 days limit from 2 to 3. The Ministry has also laid out a set of sanctions which vary depending on the type and recurrence of cabotage infringements. Vehicles can be impounded if drivers fail to pay fines on the spot.

Cabotage activities have grown in Italy by more than 100% between 2000 and 2010. The main contribution to this growth has come from EU12 hauliers, and in particular Slovenia and Poland. At the same time, the Italian market for road freight transport has been suffering since the onset of the economic crisis in 2008: the number of HGV registrations in 2012 was among the lowest in Europe and heavy traffic was still below its 2000 levels.

As a result, the industry is concerned about the growing market share of foreign hauliers in Italy. The analysis of traffic flows in one of the regions most exposed to competition, Friuli Venezia Giulia, shows a sharp increase in foreign traffic together with a significant decline in the number of local companies. Local authorities and national governments have promoted more coordination of the control bodies in recent years to improve the effectiveness of enforcement procedures, focusing on legal/language training and regional cooperation.

In addition, wage and working conditions mean that Italian hauliers are not very competitive abroad. They suffer from high labour costs, high fuel costs, as well as geographical and economic fragmentation. Cabotage might be responsible for some of the erosion of domestic companies’ market shares, especially in bordering regions. In light of this, it seems that lower fiscal and bureaucratic burdens, together with industry consolidation, are the most effective solutions to reinstate the competitiveness of Italian hauliers in the long-run.

The analysis above shows that several stakeholders believe there is a need to review the EU and national rules related both to cabotage and to wider road transport competitiveness. As for EU legislation on cabotage, stakeholders claim that there is a need for greater enforcement of existing rules before considering any other amendment to current legislation. In particular they believe there is a need to harmonize the different social and working conditions of drivers from different Member States before any further opening of the market is taken forward.

As for national rules, a series of provisions have undergone further scrutiny as a result of the introduction of the new cabotage regime in 2010, such as the rules on “minimum costs for freight transport”. The National Logistics Plan has also incorporated several proposals to improve the effectiveness of enforcement actions in the near future.
Summary for Lithuania

In Lithuania there were no legal national acts were passed or changed as a result of the entry into force of Regulation (EC) No 1072/2009. Road cabotage is regulated by this Regulation and penalties for infringements related to all documentation (including cabotage) are set by the Code of Administrative Infringements of Republic of Lithuania. We have been informed that there are no specific procedures for control of road cabotage in Lithuania. Cabotage operators are checked in the same way as any other freight carriers – that is they are all subject to random checks. During roadside checks carried out by the Road Transport Vehicle Inspectorate, officers check all documents related to vehicle and goods carriage and also compare cargo transportation documents with rest and driving period data.

Although the contribution of Lithuanian hauliers to cabotage operations in other EU Member States grew by 78% between 2006 to 2011 when measured in tonne-km, the involvement of Lithuania in the EU cabotage market is rather low. According to Eurostat data, in 2011 Lithuanian road hauliers accounted for about 0.33% of the cabotage market in other EU Member States. Regulation (EC) No 1072/2009 has also had little impact on the Lithuanian freight market as the market is too small for foreign operators to be interested in carrying out cabotage operations there. Furthermore, the scope of entry for foreign hauliers – especially EU15 ones - is rather limited as they face strong competition from internal freight hauliers that are able to offer lower prices due to lower labour costs (drivers and support staff). Lithuanian freight hauliers have a competitive advantage in road cabotage due to salaries, related taxes as well as social security. However we have been told that Lithuanian drivers working abroad are not protected by Lithuanian professional unions nor by foreign professional unions therefore actual working conditions of drivers can be very poor.

Representatives of the Ministry of Transport and Telecommunication of Lithuania and the State Road Transport Inspectorate under the Ministry of Transport and Communications stated that further clarification is necessary at the EU level on specific details of the cabotage rules provided in the Regulation especially related to monitoring (how to make sure that it is actually road cabotage and whether it is the first or fourth operation). Also it was suggested from Lithuanian stakeholders that a more appropriate approach would be to set a maximum period for cabotage without setting the number of cabotage operations and allow road cabotage in cases of partial delivery (multi-drop) without having the requirement to unload all goods transported internationally to optimise transportation costs and reduce empty running.

Summary for the Netherlands

In the Netherlands, the cabotage regime is currently being reformed and the new Road Transport Act will be passed by the national Parliament in 2013. The industry associations are expecting some significant changes especially to the control and enforcement system and the related sanctions. At present, the authorities tasked with enforcement (the ILT Inspectorate and the road police) lack the necessary powers to impose fines and intensify controls due to the legislative vacuum and recent budget cuts.
Dutch hauliers have traditionally had a dominant market position across the EU thanks to the flow of goods from its ports and airports and the presence of large haulage companies. Dutch operators are the second most active cabotage service providers with a 12% market share at EU level, however hauliers registered in Poland and Slovakia have increased their market presence both in the Netherlands and abroad, in competition with Dutch hauliers.

The combined impact of the recession and of market entry by EU12 hauliers has contributed to changing attitudes towards cabotage. Industry associations, including those who were once in favour of full liberalisation, are calling for the government to intervene in order to limit the negative socio-economic effects of cabotage, such as illegal contracting by shippers, companies being forced to close down and drivers’ shortages. In this respect, the Dutch Association of Transport and Logistic (TNL) recently declared that it is against any EU action targeted at further liberalising the cabotage sector and that a further harmonisation and enforcement of current rules is first necessary to level the differences between old and new EU Member States.

On the other hand, it must be pointed out that the full liberalisation of cabotage in the Benelux region represents an example of successful market opening in the presence of a harmonised socio-economic environment. The national governments have repeatedly prolonged this agreement given its benefits, which include a reduction in empty runs and CO2 emissions, as well as greater economic integration.

**Summary for Poland**

Poland was excluded from the EU cabotage market due to interim restrictions for new Member States between 2004 and 2009. Regulation (EC) No 1072/2009 came into force soon thereafter, in May 2010. The Polish road haulage market is policed by its own enforcement agency, and there is a clear system of sanctions for violating the cabotage rules written into the Road Transport Act, which governs commercial road transport activities.

Whilst there has not been much growth in the cabotage market within Poland itself, Polish hauliers have taken over a large proportion of cabotage markets in the EU15 Member States, and are now the largest providers of cabotage services in the EU.

Polish stakeholders are broadly content with the scope of the current regulation. Whilst they are not against further liberalisation of the rules governing this sector, they are keen to shift the focus of the EU on the harmonisation of the implementation and enforcement of the existing rules.

Polish road haulage companies continue to be very competitive abroad, thanks to low labour costs in comparison with the EU15 Member States. Given the continued growth of the Polish economy throughout the economic crisis, this will drive the demand for Polish road haulage services both in international and cabotage traffic. Whilst the continued economic growth will lead to a gradual increase in the salary levels within the Polish road transport industry, increased competition from Romanian and Bulgarian drivers may keep Polish salary levels in check.
Summary for Spain

In 2008, Spain adopted cabotage provisions very similar to those contained in Regulation (EC) No 1072/2009, with the Ministerial Decree ORDEN FOM/2181/2008. The entry into force of these provisions was needed to clarify the existing regulations in Spain which, prior to 2008, only referred to Community law at a high level with no detailed provisions. The government ensured, in consultation with stakeholders, that such provisions would be in line with the forthcoming European rules.

The responsibility for controls lies with the Ministry of Fomento, in coordination with policing bodies. However several enforcement problems exist in Spain. These include the issue of coordination between regional police and national authorities, as well as the difficulty to identify so called “ghost companies”. A general fine of €4,601 has been set for cabotage infringements; however this is a lower sanction than in many other MSs.

Cabotage activities in Spain are not as widespread as in other EU15 Member States. Most cabotage is undertaken by Portuguese hauliers which enjoy a lower cost base and dominate cross-border trade activities, while Spanish companies are in turn more competitive in the French market. The Spanish market has become less attractive to foreign hauliers in recent years, particularly given the continued recession and the collapse of the construction sector. The whole industry is downsizing, with the number of certified licences in 2012 on the same levels as 1999. However a less attractive domestic market, together with higher cabotage activity by Spanish operators abroad, have resulted in positive net cabotage volumes for Spain.

A general reform of the road transport sector is going to be introduced by the Spanish government in 2013. Legislative changes will focus on increasing the competitiveness of the sector by reducing the number of authorisations needed and implementing an online system to speed-up bureaucracy.

Cabotage will also be under review, considering that it was listed as the second most important area of reform in the 2012 National Inspection Plan consultation of stakeholders. In particular, industry associations advocate for improved controls in the Spanish territory and suggest that a larger share of controls should take place in the form of company inspections rather than road checks. These measures are advocated primarily to tackle illegal practices that industry groups claim are taking place regarding Spanish companies who delocalise to Eastern Europe and then operate under the cabotage regime in Spain, exploiting more favourable fiscal and labour laws abroad.

The Spanish government is currently not supportive of further market opening at the European level. Legislative efforts are currently focused on improving the effectiveness of controls and promoting harmonisation of rules and sanctions within the existing regulatory framework.
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