



TransFair Policy Brief

The Road to Transparent and Fair Remuneration and Working Conditions in the Transport Sector

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THE TRANSFAIR PROJECT

Fair remuneration and decent working conditions in cross-border road transport and its enforcement are one of the top priorities in European debates about equal rights for workers on the move in Europe. After years of negotiation, the **mobility package I** has been adopted in 2020 bringing new rules for transport operators providing cross-border transport services and new tools for authorities to monitor compliance. Expectations are high that regulations have become clearer and enforcement will become more efficient.

Against this background, the EU project TransFair's **research** focused on economic aspects of road transport in Europe, working conditions of non-resident drivers and correct remuneration in a cross-border setting. TransFair also assessed

what challenges inspectorates encounter when monitoring transport operators' compliance and how drivers' rights and entitlements can be better protected. The **cooperation** of stakeholders was achieved by a series of bilateral and transnational workshops and actions between transport unions and Labour Inspectorates from different European countries. Multilingual leaflets were produced to **improve information** to drivers in European road transport.

This **policy brief** highlights key findings and project outcomes, provides good practice input for inspection authorities and makes proposals for an effective and practicable regulative framework to tackle labour law infringements in cross-border road transport.

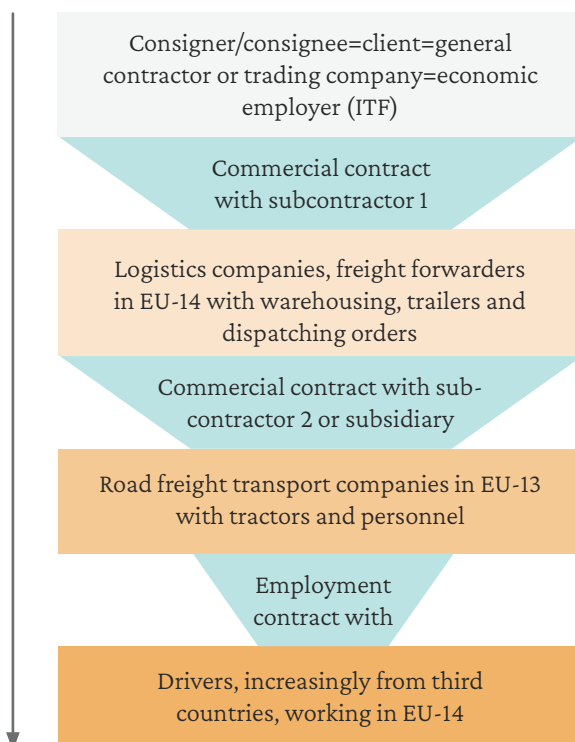
LONG TRANSPORT CHAINS IN EUROPEAN ROAD TRANSPORT

In the last decade, **cross-border road haulage massively relocated from Western to Eastern European transport operators**: From 2010-2019, companies established in EU-13 countries transported more goods abroad (+5,60% on average), whereas companies established in EU-14 transported less (-1,74% on average). Interestingly

though, **turnover from exporting road transport services** has increased in both parts of Europe, steeper in Eastern than Western Europe.

While hauliers established in Eastern Europe and their drivers carry out the actual cross-border transport, orders usually come from Western European logistics companies, where higher value activities, the customer management, the logistics, and the processing of orders, including the dispatching are processed. The transport order is contracted by a corporate client, for example a company from the automotive industry or a supermarket chain, that is the consigner or consignee of the goods. They are located at the top of the supply chain and hold the economic power over the chain. Consequently, **a long transport chain is established** (Figure 1), that draws on companies and workers from EU and third countries having different (power) positions in the chain. As competition is strongly based on cost factors, freight forwarders and clients apply high cost and performance pressure on hauliers who also engage in non-compliant practices. The **direct consequences of breaches of social regulation** – driver fatigue, too few rest and too long driving times as well as incorrect remuneration – **are borne by the last link in the chain, the drivers**.

Figure 1 : A typical cross-border transport chain



Economic pressures caused by long contracting chains and low rates of pay not only are to the economic detriment of workers but have adverse health and safety impacts for all road users. A key question emerges: **who bears the responsibility for road safety, the drivers' working conditions**

INFOBOX 1: ECONOMIC EMPLOYER RESPONSIBILITY THROUGH SAFE RATES, CLIENT LIABILITY AND DUE DILIGENCE IN TRANSPORT CHAINS

Safe rates systems aim to make the economic employer (the consignor/consignee of a transport service) responsible for decent pay, working conditions and safety in a transport chain. A safe rates system is a public or private regulatory system for the transport market passed through legislation or through agreements between economic employers, transport companies and unions. It sets minimum freight rates and shall guarantee predictable cost recovery for transport companies and owner drivers, and decent pay for all time worked. A safe rate is set through multi-stakeholder consultation, is obligatory and enforceable. A safe rates system was implemented in South Korea.

Economic employer responsibility in transport chains can also be achieved through **client liability legislation**. The **posting of drivers' directive** (Infobox 2) provides for the possibility to sanction consignors, freight forwarders, contractors and subcontractors for non-compliance with national provisions pursuant to this directive, including minimum wage. National legislators should now

(!) consider and implement this provision when the directive is transposed into national legislation. In Germany, client liability is anchored in the Minimum Wage Act (MiLoG). Clients can be held liable for the payment of minimum wage of subcontractors and even their subcontractors. This regulation has been successfully applied to achieve a **settlement** between a Czech driver employed by a subcontracting firm for Deutsche Post AG and the client. In the end, the driver was paid back pay by the client Deutsche Post AG.

Worker-based due diligence models are another way to attain economic employer responsibility. The **Road Transport Due Diligence' (RTDD) model**, implemented by two global unions, the ITF and the IUF, and the Dutch FVB's foundation VNB, involves active monitoring of human rights abuses in road transport supply chains. Trade unions and economic employers establish agreements and top-down auditing based on bottom-up investigations by trade unions to identify and fix abuses in road transport supply chains.

and correct payment? Highly promising concepts to tackle **economic employer responsibility** in road transport chains are on the political agenda

of the **International Transport Workers Federation** (ITF) and the **International Labour Organisation** (ILO) (Infobox 1).

CORRECT REMUNERATION – A KEY PROBLEM IN CROSS-BORDER ROAD TRANSPORT

Following year-long debates about the mobility package I, most recent amendments in **European legislation** concerning labour and social conditions and fair competition in European road haulage have already or will become effective soon. **Rules about international drivers' remuneration remain complicated** (Infobox 2). They depend on European legislation, national regulations about drivers' remuneration and are constantly changing also due to European jurisdiction by the European Court of Justice.

TransFair research exhibited that the **structure of drivers' remuneration in EU-13 is quite similar**. It mostly consists of a rather low minimum wage that is topped up with per diems, km-based payment, and bonuses. **Drivers on international journeys are often not paid correctly**. Non-compliance reaches from underpayment due to an incorrect specification of the place of drivers' employment contract to non-compliance with posting rules, from paying daily allowances based on driven kilometers instead of an hourly wage to incorrect

deductions from remuneration. Inspecting and assessing correct payment in road transport is a challenge for both authorities and drivers:

To assess the applicability of posting rules or host country labour and social rules and to find out about the (economic) employer's responsibility for workers' entitlements, it is essential to **track the transport chain**: Where have orders been imposed? Where have transport services been carried out? Who are the transport chain's corporate participants?

On the one hand, the **tachograph and driver's card** (Infobox 3) are an important means to record working time, driving time and rest time and to determine where the drivers have spent their working time. On the other hand, for clarifying liability in posting arrangements, the **CMR** (*Convention relative au contrat de transport international de marchandises par route*) provides useful information: consignor and recipient of the transport service, the freight carrier, and all subsequent freight carriers. A digital CMR and tachograph would be even more tamper-proof than their analogue or paper equivalents.

LABOUR INSPECTION IN CROSS-BORDER ROAD TRANSPORT – CHALLENGES AND GOOD PRACTICES

Comprehensive legislation in combination with complex, cross border business models in European road transport, pose challenges for enforcement bodies to monitor the compliance of transport operators, and to pin down infringements.

A key challenge is to **apply and interpret conflicting legal norms related to the remuneration of drivers**. Clear interpretations of current regulations are needed to avoid conflicts and potential judicial challenges of the administrative decisions made by the inspectors. The European Labour Authority (ELA) provides **detailed information and guidance for inspectorates to enforce European legislation**. In 2022, a focus is laid upon the

road transport sector, as a number of new rules following the mobility package I apply and new tools need to be implemented to improve enforcement and inspections outcomes.

Another challenge to effectively monitor compliance is that in different EU Member States different **enforcement bodies** (labour inspectorates, financial police/customs, road police on behalf of transport ministries) are **competent for the inspection of different, though interrelated, matters** (remuneration, social legislation, rest and driving times, road safety, vehicle inspection, market access). **Specialized units and topical training as well as sustainable and continuous cross-**

INFOBOX 2: POSTING OF DRIVERS – AMBIGUOUS RULES

The **posting of drivers' directive** lays down when drivers on international journeys are covered by the rules applying to posted workers, i.e. when they are entitled to host countries' minimum rates of pay and core employment conditions (such as leave, maximum working time, worker protection). **Experts assess the new directive ambivalently**: on the positive side, it is made explicit that posting rules apply in cabotage and do not apply in transit and bilateral operations. On the negative side, for cross-trade operations **several exceptions for the applicability of the posting rules** exist.

Moreover, the European Court of Justice case van den Bosch vs FNV specified that the posting rules only apply to road transport in case there is a **"sufficient link"** between the drivers' working activities and the territory where he/she carries out these activities.

Hence, clarification and enforcement will depend on the **concrete implementation and codification** of the directive and of European Court of Justice ruling into national legislation.

INFOBOX 3: MULTILINGUAL INFORMATION FOR DRIVERS ON INTERNATIONAL JOURNEYS: USE YOUR TACHOGRAPH!

Are you a truck driver in Europe?

You have the right to the minimum wage of the country you work in!



TransFair produced multilingual leaflets for drivers on international journeys to inform about basic labour rights and how best to enforce them.

The Belgian trade union BTB-ABVV published a booklet in 10 languages assisting drivers to use the vehicle's tachograph to document their working, availability and driving time.

The tachograph is a key instrument to have a proof of drivers' actual working time. Drivers should consider the tachograph as a useful archive of their working time documentation and should be advised and trained to read out the tachograph data.

The tachograph is also a key instrument for enforcement bodies to check on transport operators' compliance regarding rest, driving and actual working time, and correct remuneration.



border (Infobox 4) or cross-institutional cooperation (Infobox 5) could improve inspections and inspection outcomes.

Moreover, inspectorates use digital control devices as well as electronic data sharing, registration, and control tools in varying intensity to monitor transport operators' compliance. The Internal Market Information System (IMI), for instance, has significantly improved the communication among inspectorates of different countries. It has now been adapted for transport-related items. Transport-specific tools such as the European register for road transport undertakings and the Risk Rating System, still, seem to be underutilized. From the perspective of road enforcement, tachograph data can help to enforce correct implementation of labour legislation. However, the labour inspectorates are often not specialised in sectors such as road transport and its complex

rules or they are not responsible for specific types of inspections such as reading out the tachograph or stopping the vehicle on the road.

Finally, in the concrete inspection situation, inspectors must deal with language barriers both when it comes to inspect vehicle, transport and payroll documents and to communicate with drivers. Often drivers have information deficits about their entitlements and rights, lack trust in enforcement bodies and are unwilling to cooperate and provide information. Direct communication with drivers is key to get information about company infringements and to protect drivers. At the same time, drivers are vulnerable and afraid to be punished. Hence it is necessary to take drivers' vulnerable situation seriously, especially when originating from third countries. Drivers should become aware of the benefits that cooperation with labour inspectorates brings (Infobox 6).

INFOBOX 4: JOINT CROSS-BORDER AND CONCERTED INSPECTIONS IN THE TRANSPORT SECTOR

ELA supports the organization of **joint cross-border inspections** as well as cross-border concerted inspections. For conducting joint or concerted inspections, ELA provides **conceptual, logistical and technical support**, and **legal expertise**, as well as **translation and interpretation services**.

Benefits of such joint actions are manifold: national inspectorates pool investigative powers, expertise and resources, exchange about inspection practices and compare compliance behaviour and evidence. Insufficient resources, effortful coordination, including overcoming language barriers, lacking information on competences, contact points and expertise on cross-border aspects may challenge good outcomes of joint actions.

RoadPol, the European Road Policing Network, and ELA launch joint inspection activities with a focus on workers' rights and road safety. They bring **together enforcers from different authorities**, road police officers, customs, road transport, labour and social security inspectors, and ELA officials, to carry out joint roadside checks. Such activities are key to **consolidate relations and cooperation** at EU and national level between various authorities and stakeholders, to **exchange information and good practices** about the new road transport legislation and concrete inspection methods.

INFOBOX 5: INTERINSTITUTIONAL COOPERATION BETWEEN TRADE UNIONS AND ENFORCEMENT AUTHORITIES IN SLOVENIA

The Slovenian labour inspectorate launched a project called "Eliminating Conflict at Work" in 2017. Workers who have not received correct remuneration, including for work abroad, can turn to the project unit's task force and can submit a request to mediate their dispute. Such mediation is free of charge and it is a quick way for the worker to get settled his/her entitlements. If an agreement is reached and accepted by the task force, it constitutes an enforcement order which the worker can use as a writ of execution in court.

The task force cooperates with all trade unions, including the Slovenian transport union NSDS (Neodvisni Sindikat Delavcev Slovenije) and the trade union ZSSS (Zveza svobodnih sindikatov Slovenije). With those unions, the task force pursues cases of transport workers who have not been paid

correctly. The task force is a temporary project unit of the Slovenian labour inspectorate, and the project has a limited time span. It turned out to be a good practice to enforce in a simple and efficient manner workers' entitlements and would deserve a long-term and sustainable implementation.

The trade unions NSDS and ZSSS enhanced cooperation with enforcement authorities also through **several coordinated road actions involving the national tax authority and the traffic authority.** The actions aimed at informing drivers about their rights and possibilities to enforce them by distributing leaflets about entitlements and the activities of NSDS, raise awareness about non-compliant behaviour and instruct them to a correct usage of the tachograph.

INFOBOX 6: MULTILINGUAL LEAFLETS AND QUESTIONNAIRES FOR TRUCK DRIVERS

The Belgium labour inspectorate **prepared multilingual leaflets for drivers on the new rules following the mobility package I**. The leaflet provides information about the minimum wage, the applicability of the posting regulations, the right to return home, clues if a driver works for a letterbox company, about Belgian institutions and websites drivers can turn to for information and support.

The Norwegian labour inspection works with detailed and targeted but simple **questionnaires available in 15 languages**. The authority presents itself as in charge to ensure drivers' safe working environment. The questionnaire's preamble conscientizes that drivers on cabotage or combined transport tours in Norway are entitled to wages and working conditions according to Norwegian law. Therefore, any information that drivers provide can help ascertaining the rights they are entitled to.

TRANSFAIR OUTPUT

BTB-ABVV (2022): [URENBOEKJE](#) | [LIVRET D'HEURES](#) | [LOGBOOK](#) | [STUNDENBUCH](#) | [ПЪТЕН ДНЕВНИК](#) | [PONTAJ](#) | [ТАБЕЛЪ УЧЕТА](#) | [РАБОЧЕГО ВРЕМЕНИ](#) | [ÇALIŞMA SAATLERI](#) | [KAYIT DEFTERI](#) | [KARTA EWIDENCJI](#) | [CZASU PRACY](#) | [ČASOVÝ ZÁZNAM](#)

Sandra Stern (2021): TransFair Training material: Six tools to organise truck drivers in Europe. [EN](#) [DE](#) [SI](#) [CZ](#) [PL](#)

TransFair Leaflets for drivers on international journeys between Germany and Poland. [DE](#) [PL](#) [UKR](#) [RU](#)

TransFair Leaflets for drivers on international journeys between Austria and Slovenia. [DE](#) [SI](#) [BHS](#) [EN](#)

TransFair Leaflets for drivers on international journeys between Czechia and Belgium, Austria or Belgium. [EN](#) [CZ](#) [RU](#)

Bettina Haidinger & Ulrike Papouschek (2021): Cross-border road freight transport and fair work. Evidence from Austria and Slovenia. Vienna. [EN](#)

Olga Gheorghiev (2021): Third-country nationals and the road transport labour market in the Czech Republic. Praha. [EN](#)

Dominik Owczarek (2020): Employment of third country nationals and the role of temporary agencies in the Polish transport sector. Warsaw. [EN](#) [PL](#)

Lynn De Smedt & Frederic De Wispelaere (2020): Road freight transport in the EU. In search of a balance between the economic and social dimension of the internal market. A quantitative sectoral analysis. [EN](#)

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TRANSFAIR CONSORTIUM

The TransFair consortium consists of the research institutes FORBA (AT, coordinator) and KU Leuven/HIVA (BE), the non-profit organisation MKC (CZ), the trade unions ÖGB-vida (AT), BTB-ABVV (BE), NSZZ “Solidarność” (PL), NSDS and ZSSS (SI), OSD (CZ), catus (SRB), ETF, the worker advocacy institutions AK Wien (AT) and Faire Mobilität (GER) as well as national Labour Inspectorates (BE, SI).

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