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A European single market for road transport? From patchwork to a well- functioning and socially fair EU road transport market

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Highlights

The European market for road transport suffers from several imperfections: social conditions of workers are in a poor state and open market access for European transport companies within the EU is not fully implemented either. Some hauliers go around existing rules and make use of “letterbox” companies to circumvent labour laws of the country they are actually primarily operating in. Better protection of workers from such practices is essential. However, uncoordinated national initiatives to protect national workers (e.g. minimum wage laws, prohibition for drivers to have their regular weekly rest in the cabin of the vehicle) risk fragmenting the international road transport market in the EU.

In 2016 the European Commission published its Road Transport Strategy for Europe, and the Florence Road Forum brought together the most relevant stakeholders and experts to discuss one of the major endeavours of the strategy: establishing a free market for transport services and protecting the workers in the sector from unfair competition.



This *European Transport Regulation Observer* reflects upon the discussions at the first Florence Road Forum “A European single market for road transport?” that took place in Florence on January 23rd, 2017.

The Florence Transport Forums are a series of events bringing together academics, regulators, operators and important stakeholders to discuss current regulatory topics in all transport areas in the EU and global context. The *European Transport Regulation Observer* is part of the Robert Schuman Center Policy Brief Series and published regularly in the aftermath of each Transport Forum. It is aimed at highlighting some of the most interesting issues and remarks of the Florence Forums from the perspective of applied research, providing the readers with some news on the topic and additional suggestion for further readings.

Obstacles on the road to the European Single Market for road transport

A comment by Matthias Finger | FSR-Transport Director

This 1st Florence Road Forum was an extremely timely event, as it fits into the process of definition of the “[Road Transport Strategy for Europe](#)” of the EU. To recall, the EU’s road strategy has four equally important pillars, namely 1) well-functioning internal market, 2) fair competition and workers’ rights, 3) decarbonisation, and 4) making use of digital technologies.

To improve the overall functioning of the road transport sector, and ultimately to reach an “efficient, fair, and clean road transport sector”, a core part of the initiatives of the Commission addresses the interdependency between the functioning of the internal market on the one hand and the protection of the workers’ rights, on the other. Both come together under the umbrella of what we can call “fair competition”.

Yet, one has to acknowledge that things do not work well in European road haulage: working conditions in the road transport sector are not improving but rather deteriorating. At the same time, the current regime of cabotage rules is preventing the development of a functioning European market for road transport. As a

matter of fact, cabotage rules now serve as a protectionist measure.

Is this because of increasingly unfair competition due to “illegal cabotage” or other kinds of abuses perpetrated by haulers exploiting “posted workers”? Or is this rather because the overall political climate has changed as a result of growing nationalism and protectionism? Probably a combination of both. So, how can we address these causes?

It clearly emerged at the [1st Florence Road Forum](#) that a clear distinction has to be made between legitimate international transport on the one hand and exploitative “nomadic transport” on the other. Of course there is the need for better data on the latter phenomenon; yet “nomadic transport”, i.e., the fact that workers never return to their home country and live in their trucks for extended periods of time, seems to be a reality. Clearly, this is an abuse of the rules of the game. More research and data are also needed in order to know who – and in particular which countries – are behind such abuses.

But even before all the figures are in, one can already say that is necessary to clarify the rules in the following three areas, both for the small truck companies carrying out cross border operations as well as for bigger transport companies active in several Member States:

- **“Establishment” and “letterbox companies”**: we need to clarify and develop criteria for the so-called establishment, so that transport companies do not set up so-called letterbox companies in low-wage countries without operating there.
- **Cabotage**: the ultimate goal of cabotage should be to improve economic and environmental efficiency of road transport. Consequently, we must not try to enforce the current rules of cabotage that, admittedly, are unclear and have caused problems. Rather, we have to develop new and fairer rules that consider the needs of the transport sector as a whole.
- **“Posting of workers”** and their rights, such as weekly rest, rest in the cabin, or return “back home”: one must admit that such posting of workers is handled differently in the different Member States, some applying the Posted Workers Directive while others do not. Clearly, the road transport sector is to a large extent international in nature, so that the same rules that apply for example to construction

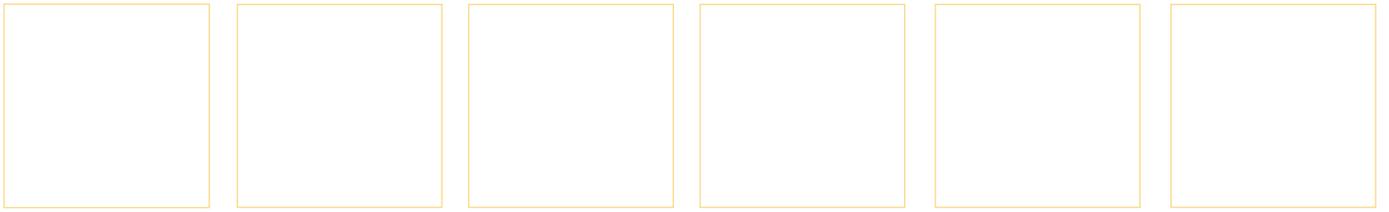


workers cannot be replicated here. Sector-specific rules and a common understanding of workers' rights based on precise criteria (such as weekly rest times, for example) need to be established. The current administrative burden and confusion around, for example, minimum wage rules as applied to transport operation crossing several countries, is indeed counterproductive.

Everybody agrees that we need a common set of rules that are fair, clear and enforceable. But at the same time we have to be pragmatic, especially in light of the following two elements:

- Indeed, **digitalisation** is rapidly entering the road sector. Such digitalisation will not only improve the efficiency of road transport, but it will also help address the enforcement challenge. For example, an electronic vehicle registration system could serve as a highly cost effective means to ensure compliance of truck companies with the applicable rules. in their constituency.
- **Timing** is important, as the legislative proposals pertaining to the “Road Transport Strategy for Europe” will be published by the Commission before the summer. This will be followed by discussion in Parliament and in the Council. However, if such discussion drag on, they will collide with European Parliamentary elections to be held in April 2019, voiding the entire Road Package.

In short, the road sector desperately needs clarity, and this urgently and especially before profound disruptions will outdate the current efforts. Of course, digitalisation can be useful for fair competition and for more efficient road transport. But it can also lead to profound disruptions, such as automated driving or platooning.



A European single market for road transport? From patchwork to a well-functioning and socially fair EU road transport market

A summary of discussions

Discussions at the Florence Road Forum addressed possible new initiatives on some of the long-standing issues in the regulation of the European road transport market. Discussions were structured around four discussion questions:

- How can the problem of “letterbox firms” in the road sector be tackled effectively?
- How to ensure proper enforcement of EU labour rules in the road sector?
- How can cabotage rules be made more clear and easy to enforce, so that the same rules apply across the EU?
- How to balance the free market and the protection of social rights of workers in the sector?

How can the problem of “letterbox firms” in the road sector be tackled effectively?

In order to save costs some European road transport companies set up so called “letterbox firms” in countries with low labour costs and weak enforcement of regulations. These companies then carry out transport operations predominantly outside the country where they are actually registered.

While strong empirical evidence for the scope of this problem is missing, it is a prominent issue and a classic example of social dumping or unfair competition in Europe.

At the Road Forum, initially there was some discussion about the actual scope of the problem in Europe. Many called for a more clear definition of what constitutes a letterbox firm and to distinguish it from regular legal subsidiaries of transport companies with operations in several countries. One argument (that does not only refer to the issue of establishment) recurred throughout the day: there is a substantial lack of data and figures, which makes it difficult to understand the depth of the problem and, consequently, to take informed decisions.

The matter of establishment is delicate for the European Commission: the rights to free movement and establishment are a part of the founding principles in the European Union and may not be curtailed in any sector (the principle is stated in the TFEU and, in particular, in the citizens’ rights directive 2004/58/EC). Regulation aimed at preventing social dumping therefore has to manage the tension between these two possibly conflicting objectives.

The Forum discussed, among other things, how existing regulation on “letterbox firms” could be both improved and better enforced. Today, the headquarters of a transport firm are already required to have more than “a letterbox”. In the so called “conditions for establishment” the EU Road Transport Regulation (1071/2009/EC) prescribes the existence of an operational centre in the country of registration. This includes offering work spaces and parking spaces for the vehicles employed.

During the discussion, it was pointed out that descriptions that are too detailed in the requirement for establishment can be a bureaucratic obstacle for firms. Concretely it was pointed out from the operators’ side that an operational centre should not be required to have parking spots at its physical address.

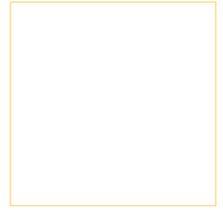
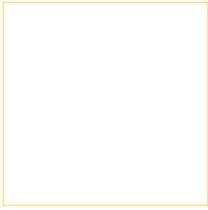
Others raised the argument that adding new rules about “letterbox firms” may not be the most urgent issue after all. In fact, many expressed the need for the correct transposition and enforcement of existing rules rather than new legislation.

For instance, Member States are already required to set up a national electronic register of Road Transport Undertakings, but as of yet many Member States do not comply.

Even with an improved legal framework, acting upon “letterbox firms” will remain a case by case decision that requires the assessment of every individual instance.

How to ensure proper enforcement of EU labour rules in the road sector?

From early on in the discussion it was pointed out that poor enforcement and a lack of cross border coordination are probably the biggest obstacles to a better function and fairer EU road transport market.



The organisation Eurocontrol Route (ECR) may be the most important one when it comes to cross border coordination of enforcement measures in European road transport. The voluntary association of European states dedicated to law enforcement in road transport is taking on a crucial role for the EU as for road transport there is no European Agency (whereas for railways, aviation and maritime transport such an agency exists). The discussion addressed this absence and the proposal was raised to develop ECR into a European Agency. However, politically this is not a realistic option in the foreseeable time yet there is agreement that ways need to be found to make enforcement more harmonious across Europe.

In the discussion it was pointed out that the most crucial problem faced today by enforcement agencies across Europe are the severe budget cuts most of them have undergone in recent years. Roadside checks are personnel intensive and require highly skilled inspectors. According to the ECR, due to budget cuts enforcement capacity decreased by 75% between 2011 and 2012.

Against this background, it was pointed out that some digital tools would allow a much more effective use of existing resources if they were applied. For instance, the data of digital tachometers could be used to enforce cabotage rules; enforcement officers could use it to control trucks' border crossings, but harmonized data standards would be necessary. While there are concerns about data protection there was also the argument that the availability of data on locations and movements of freight transports are not questioned by anyone in other transport modes. Most participants agreed that the lack of harmonized data is a severe obstacle to a more smooth and coherent enforcement of laws in road transport.

When it comes to road side checks some central and eastern European countries see a bias in current practices in some countries. Because of the existing perceptions, Polish trucks are far more likely to be controlled in some Member States, which is a real obstacle for Polish transport firms that have to bear the costs of the resulting delays.

How can cabotage rules be made more clear and easy to enforce, so that the same rules apply across the EU?

The cabotage rules are a restriction of the free market principle in the EU as they put restrictions on the ability of firms to provide their services wherever they want to in the European Union. It is seen as a justified means to avoid social dumping in the transport sector yet the details of the regulations are under discussion. Cabotage means the provision of transport services within the borders of another country. Cabotage operations are beneficial as they reduce empty runs which increases the efficiency of the operators and has a positive environmental effect. Regulation 1072/2009 therefore allows transport companies that are registered in an EU Member State to provide transport services in any other EU Member States "for up to three days but not exceeding seven days, following an international journey."

It can be difficult to determine which labour law to apply during international transport operations. As a principle, the rules of the country the worker is normally working in apply ("country of habitual work place"). Furthermore the posted worker's directive ([directive 96/71/EC](#)) that the European Commission is now proposing to amend ([COM2016\(128\)](#)), applies to workers during cabotage operations. Operators pointed out that fulfilling all the labour law requirements, including minimum wages, of all countries that are crossed during an international transport operation is extremely challenging, especially for smaller companies.

During the discussion it was pointed out that Germany, Austria, France and Italy have imposed stricter control on cabotage operations. According to several operators these function as a discrimination against foreign hauliers. It was stressed that most international transport operations are perfectly legitimate. These companies feel a disproportionate burden on their shoulders as international transport operations somewhat fall under the general suspicion of being illegal cabotage operations.

Another factor that was brought up in the discussion is the fact that combined transport operations are exempted from the cabotage regulation. Some transport companies use this as a loophole to carry out cabotage disguised as combined transport. One possibility would be to extend the cabotage rules to include combined transport.



The EU's cabotage rules

Nathan Zhivov, Policy Analyst, International Transport Forum, OECD

The EU's cabotage rules seem insufficient to meet their policy objective. They are an exception to the EU's broader single market (in which people, goods and services move freely), work against hauliers' incentives and leave unaddressed what lies at the heart of the issue.

The EU's cabotage rules arise from a desire to protect domestic hauliers and drivers who must comply with costly domestic regulatory requirements, especially relating to labour costs. In an otherwise open market, they aim to protect against hauliers and drivers from competitors that use other countries' lower costs, especially lower wages. This type of competition is considered unfair, undermining appropriate regulatory standards and dignified driver remuneration. At the same time, there is a recognition that cabotage can help capture the environmental, efficiency and cost benefits of minimising empty truck trips. The rules balance these considerations by allowing three cabotage trips within seven days of an international trip before a haulier must return home.

These rules have at least four problems. Most importantly, they aim at the symptom, not the problem: different cost levels across EU countries motivate both international hauliers' reason to compete in domestic markets and domestic hauliers' perceptions that such behaviour is unfair. By targeting international hauliers' behaviour, cabotage rules do not change this.

Second, the current rules work against the hauliers' incentives. They distinguish between international and cabotage trips, but hauliers' cost minimisation incentives do not. Hauliers obtain no benefit from complying with the current rules. In turn, they have reason to push the boundaries, complying with the letter (rather than the spirit) of the rules or ignoring them completely. This reduces voluntary compliance, making enforcement activities necessary. However, current enforcement activities are largely manual and only detect a limited proportion of non-compliance, undermining their deterrent effect.

Third, the current rules have ambiguities, including around what is a "trip" or "home." These create room for different interpretations among EU members which, in turn, makes it difficult for hauliers to comply.

Finally, vehicle automation technology may soon present a greater threat to domestic hauliers and drivers than lower cost international competitors.

There are, however, several other measures available. Equalising cost differences addresses the core problem and, therefore, would be the ideal solution. Ironically, liberalising cabotage might accelerate this equalisation process and remove hauliers' incentive to use lower cost countries. It would also bring road cabotage into line with the EU's broader single market approach. The negative impacts on domestic hauliers and drivers of doing so make this politically unlikely in the short term. However, if the purported driver shortages in high cost countries are real, those negative impacts may not be as large as feared.

If this option is unfeasible, there are still other measures could usefully be taken. Taking advantage of new technology and giving hauliers incentives to comply with existing cabotage rules may improve compliance. Measures might include granting greater cabotage access in return for providing regulators with real time monitoring of truck locations. Technology for such a mechanism is already being used for a different purpose as part of Australia's Intelligent Access Program. Also, clarifying what is a "trip" or removing the maximum number of cabotage trips could make compliance and enforcement easier. Ultimately, however, these are second best solutions that leave the core issue unresolved until it is dealt with directly.



Another proposal that was formulated was to simplify cabotage rules by allowing an unlimited number of operations in a limited amount of time per year. That, in combination with digital tachographs, to effectively keep track of drivers could be a beneficial solution.

States a focus needs to lay on defining the conditions under which Member States will engage in the process by enacting and enforcing national legislation that will not leave room for noncompliance.

How to balance the free market and the protection of social rights of workers in the sector?

The general process of liberalization has come to a pause in the field of road transport and it seems that it will not continue before further harmonization of social legislation is achieved. Therefore, the benefits of a consistent free market approach cannot play out in this field. All sides agree that, while posing a limitation to the freedom of service provision, the cabotage rules are currently indispensable yet they need to become more simple and effective.

Some rules concerning social aspects are in place namely on driving times and rest periods (561/2006/EC). Yet rules about how long drivers can rest in the cabin before having to return home already differ. New issues emerge such as the growing number of light vehicles that are used for freight transportation to avoid regulation. This phenomenon has led some to call for stricter regulations while others warn of imposing unnecessary burdens on the owners of such vehicles. More research is needed to make more informed regulatory decisions as clear numbers about the scope of such problems seem to be missing.

It was pointed out that cabotage should not be the core aspect of new legislative initiatives. It became clear that, on a general level, the European Commission is now focussing on three essential goals: first, upholding the integrity of the open internal market, second, supporting worker's rights in the sector by insisting on European wide standards, and third, ensuring fair competition.

There are plenty of arguments to convince Member States to work together more closely. Combatting social dumping in the sector is not only required from a worker's perspective but essential for the future of the sector that is already facing shortages of new drivers and has to improve its reputation.

In light of the experience of ongoing problems of poor enforcement and transposition of directives by Member



Further Readings

Florence School of Regulation Transport Area, 2017, Florence Road Forum Summary of presentations

The Florence Road Forum took stock of existing initiatives and looked at new approaches to solve some of the most pressing issue in the European road transport market. The sector is suffering from some major imperfections. Some hauliers make use of “letterbox” companies to circumvent labour laws of the country they are actually primarily operating in. Often drivers are paid under the labour laws of a given country, despite spending the majority of their time in other countries. Protection of workers is essential. However, uncoordinated national initiatives to protect national workers (e.g. minimum wage laws, prohibition for drivers to have their regular weekly rest in the cabin of the vehicle) fragment the international road transport market.

Representatives of the European Commission, major stakeholders as well as leading academics engaged in the discussions which addressed four central questions:

- How can the problem of “letterbox firms” in the road sector be tackled effectively?
- How to ensure proper enforcement of EU labour rules in the road sector?
- How can cabotage rules be made clearer and easier to enforce, so that the same rules apply across the EU?
- How to balance the free market and the protection of social rights of workers in the sector?

European Commission, 2016, Summary of the results of the public consultation on the revision of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009

This public stakeholder consultation was launched on 15/6/2016 and was open for responses until 15/9/2016. It collected the opinions of stakeholders on two legislative initiatives: Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 which were adopted as part of a package of measures aimed at modernising the rules governing admission to the occupation of road transport operator and access to the international road transport market. As a global objective, the Regulations aimed to support the completion of the internal market in road

transport, its efficiency and competitiveness, while guaranteeing a level playing field.

The consultation assessed stakeholders views on, among others, costs associated with compliance for transport operators and enforcement by appropriate authorities, the clarity of current cabotage rules, the scope of the problem of “letterbox firms” according to operators and operators’ views on enforcement of current social legislation. The report on the results reveals, among other things, that existing cabotage rules are viewed as problematic by a vast majority of stakeholders.

McGauran, K., 2016, “The impact of letterbox-type practices on labour rights and public revenue. Four case studies on the use of letterbox companies and conduit entities to avoid Labour Laws, Social Premiums, and Corporate Taxes”, Centre for Research on Multinational Corporations (SOMO)

The use of letterbox-type companies by employers to circumvent and avoid labour law, Collective Labour Agreements (CLAs), social security contributions and corporate taxes is currently undermining the European Social Model and public finances. Letterbox companies or conduit entities, that is, legal entities established on paper in any European Union (EU) jurisdiction without or with a minimal link to economic material activities carried out in that jurisdiction, enable ‘regime shopping’ for lower taxes, wages, labour standards and social contributions that apply in countries of legal residence.

European Transport Workers’ Federation (ETF), 2012, “An ETF manifesto for the improvement of working conditions of professional drivers in Europe”

In 2008, the ETF and its member organisations started a series of interviews with professional drivers to collect practical evidence on their working and living conditions. The interviews targeted non-resident drivers (drivers working from a country other than their own). In total, up to present (2012), approximately 1000 interviews were conducted, mostly in improvised parking areas where migrant drivers congregate to spend their weekends. The result of this 4-year work is too alarming for the sector and too shocking for a Social Europe. Wages and working conditions of professional drivers are degrading. A significant number of road transport operators ‘shop’ for cheap labour around Europe, to save on costs and increase their profit. There are EU laws to prevent these



‘schemes,’ but they are either insufficient or not enforced. Meanwhile, illegal, inhuman practices tend to become rule, and the bad players set the benchmark for the whole industry.

Buelens, J. (ed.), 2016, “From social competition to social dumping”, Mortsel: Intersentia (Chapter 3 and Chapter 7)

The realisation of the single market has taken place without any adjusting or accompanying economic and social policies. Its effects on social and human relations go far beyond the economic and commercial areas its authors had in mind. It has in fact led to changes in European society that are so far-reaching that they could very well be characterised as mutations. This book looks at the phenomenon of social dumping in the wider context of liberalised social competition as steered by the European Union. It contains a number of testimonies by people who actively fight social dumping, with special attention paid to the harrowing dumping practices in the road transport sector. Some of the authors also examine the phenomenon of social dumping in relation to compliance with the fundamental right of all workers to respect for their dignity as human beings. In this respect, the underlying question is whether, by tolerating legislation that allows human dignity to be violated by social dumping, the European and national legislators in fact infringe on this key fundamental right. (Provided by Publisher)

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FSR Transport

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The FSR-Transport Area's main activities are the European Transport Regulation Forums, which address policy and regulatory topics in different transport sectors. They bring relevant stakeholders together to analyse and reflect upon the latest developments and important regulatory issues in the European transport sector. These Forums inspire the comments gathered in this European Transport Regulation Observer.

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