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THIRD-COUNTRY DRIVERS in european road transport



Report in the context of the ETF (European Transport Workers' Federation) project "Strengthening the capacity of workers' organisations to address social challenges in land transport in Europe"



Co-funded by
the European Union

Authors:
PAULINA BARANSKA and SÉVERINE PICARD

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Contents

Executive Summary	4
1. Defining the problem: social dumping practices and increased recruitment outside the EU	6
1.1 Uneven growth and driver substitution	7
Freight	7
Transport of passengers	8
Evidence of driver substitution	9
1.2. Is there a labour shortage in the road transport sector?	11
1.3. Recruitment channels for third-country drivers	13
Letter box practices	13
Temporary work agencies and recruitment intermediaries	15
Irregular work	15
1.4 Employment patterns	15
2. The legal framework applicable to third-country drivers	18
2.1. Third-country drivers hired by EU operators – a matter of principle and equal treatment	19
Working conditions	19
Recruitment	22
Severe exploitation of workers due to poor enforcement	22
2.2. Third-country drivers hired by non-EU operators	24
3. The labour conditions of third-country drivers	24
3.1. Working conditions	25
Remuneration	25
Posting	26
Driving and working times, and rests	26
3.2. Social security contributions	28
3.3. Labour and social rights unclaimed by third-country drivers	28
4. Conclusions and policy recommendations	30
4.1. Overview of challenges	31
Enhancing trade union capacity	31
EU funding to support counselling and support for complainants	32
Transnational union cooperation	33
Reaching out to other actors in the global value chain	33
Stronger social dialogue through framework agreements	34
4.2 Strengthening enforcement	35
Enhanced synergies with road transport authorities	36
Strategic litigation	36
Increasing the number of cross-border inspections	37
Domestic joint and several liability	38
4.3. Addressing the weaknesses of the current legal framework	38
An EU directive on subcontracting	39
Stronger rights for migrant workers	39
Conclusions	41
Bibliography	42

Executive summary

The past decade has seen a remarkable expansion of the EU road transport sector. The working conditions, however, have been deteriorating. Across the EU, trade unions are unanimous in denouncing the decline in real terms of remuneration levels and of the job quality of transport driving as an occupation.

At the same time, road transport operators appear to be struggling to recruit drivers. As a result, a rising trend has been observed, particularly in Member States in Central and Eastern Europe (hereafter 'CEE Member States'),^[1] in the recruitment of third-country nationals to fill vacancies. There are growing concerns about these third-country workers being exposed to particularly abusive practices and violations of labour and social rights.

In this context, the ETF is running a project on the application of the EU legal framework to third-country drivers. This project aims to provide trade unions with knowhow, capacity and policy recommendations to better protect third-country drivers in EU road transport, and to improve their working conditions.

The current report presents the outcomes of a study exploring the employment of third-country drivers in the European road transport sector by focusing on the four Member States with the highest rate of recruitment of third-country drivers: Lithuania, Poland, Slovenia and Spain. The applied research methodology included desk research on recent developments in European road transport, a comprehensive review of existing European legal frameworks in the sector, and qualitative interviews with trade union transport experts, to gain an in-depth understanding of the social challenges emerging in the EU road transport industry. The interviews were conducted between 17 March and 17 April 2023 in the study's four core Member States, and – to gain a broader overview of patterns of employment of third-country drivers – also in Western European countries where third-country drivers are at work on a regular basis.^[2]

The main finding of this report is that, while there is a substantial body of European legislation in the road transport sector regulating the establishment of road hauliers, and numerous aspects of the employment and working conditions of mobile workers, including legislation apply to

[1] **CEE Member States** (Central and East European) are: Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia. **WE Member States** (West European) are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and UK (until 2020). **'EU-27'** indicates those Member States that constitute the 27-member EU that has existed since the departure of the UK in 2020. Where the context is data from a period including years when the UK was an EU-member, "EU-27" indicates that all UK data has been excluded from what otherwise represents all Member States at the time in question.

[2] Interviews were conducted with the following trade union experts: Algirdas Paškauskas / LVPS and Audrius Cuzanauskas / LPSA LTUA (Lithuania); Tadeusz Kucharski / NSZZ Solidarność (Poland); Dušan Perš / NSDS (Slovenia); Francisco Rosado / CCOO (Spain); Hans Christian Graversen / 3F (Denmark) and Adrian Jones / UNITE (UK).

the employment of third-country nationals, there are major problems impeding the implementation and enforcement of these rules with regard to third-country drivers, most notably in CEE Member States.

As a result, non-EU workers, who are increasingly being recruited to work in the European road transport sector, are exposed to particularly exploitative working conditions by road transport operators. These abusive practices are also further contributing to the social dumping that has been burdening the European transport sector for the past decades.

In response, there is a need to enhance trade union capacity primarily in such areas as financial and personnel resources, thus enabling

trade unions to provide effective support and organisation for third-country drivers. Social dialogue at national and European level can also be explored with a view to providing a level playing field. Overall, the enforcement of existing legal obligations must be significantly strengthened.

The first chapter of this study broadly describes social dumping trends in the road transport sector as well as the increasing reliance on non-EU recruitment schemes. The second chapter reviews the legal framework applicable to third-country drivers. The third chapter presents the main outcomes of our qualitative interviews with trade union representatives in the road transport sector. The final section outlines trade union strategy and policy, as well as legislative recommendations.



1



**Defining
the problem:
social dumping
practices and
increased
recruitment
outside the EU**

1. Defining the problem: social dumping practices and increased recruitment outside the EU

This chapter presents data on the increasing recruitment of third-country drivers by EU-based operators. One explanation for this trend may be the prevalence of labour shortages in the sector. Our research, however, suggests that the increasingly unmet demand for drivers, in particular, to perform international transport operations is a consequence of deteriorating working conditions, on which account skilled drivers are not willing to undertake strenuous and badly remunerated jobs. To meet the demand for cheaper labour, third-country drivers have been increasingly recruited through labour subcontracting chains located in CEE Member States, where lower labour costs and lax social security and tax regimes prevail.

1.1. Uneven growth and driver substitution

Freight

Road freight transport has been growing for more than a decade. The volume of total road transport operations in the EU-27 reached an initial peak in 2019. Although the pandemic and the restrictions imposed by Member States reduced transport by 4% in 2019–2020, the sector recorded a remarkable recovery in 2021, when the volume of operations reached an all-time high (see

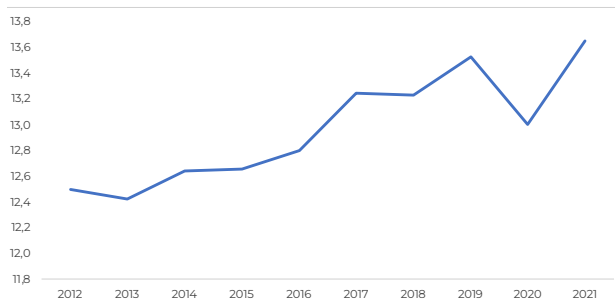
Figure 1). This upward trend is expected to continue through the rest of the current decade.

While the total volume of transported goods grew by 15% between 2012 and 2019 in the EU-27, the growth in road transport activities has been uneven among Member States. While WE Member States recorded a rise in tonnage of 3% in road transport between 2012 and 2021, road transport grew by 36% in CEE Member States during this period (see **Figure 2**). A 2009 study by the European Parliament indicated that this trend can be tracked back to the European Enlargement of 2004, whereby the accession of 13 new Member States recording strong economic growth created a larger flow of goods and increased demand for road freight in the EU (Samek Lodovici, 2009). Poland has been the leader in European road freight transport: almost 20% of total EU road transport was performed by vehicles registered in that country in 2021 (see **Figure 3**).

Uneven growth has been observed particularly in international road transport, which fell by 3% in the WE Member States and grew by 6% in the CEE Member States between 2012 and 2021. The greatest increase has been observed in cabotage operations, which grew by 109% during this period in the CEE Member States, compared with just 9% in the WE Member States (see **Figure 4**). Our

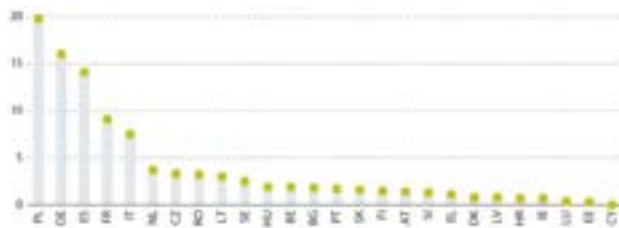
interviewees have highlighted that in 2023, cross-trade operations have become more important than cabotage[3].

Figure 1. Road freight transport, volume of operations in EU-27 countries ('in billion tonnes tonnes), 2012-2021



Source: Authors' elaboration based on Eurostat 2022: ROAD_GO_TA_TOTT

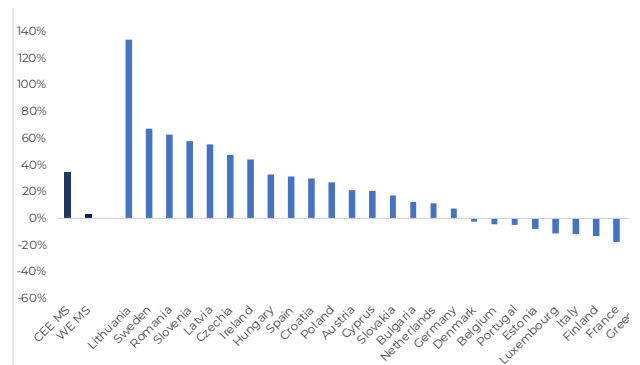
Figure 2. Road transport in EU-27 (without the UK), percentage change in volume (tonnage) 2012–2021.



*data not available for Malta

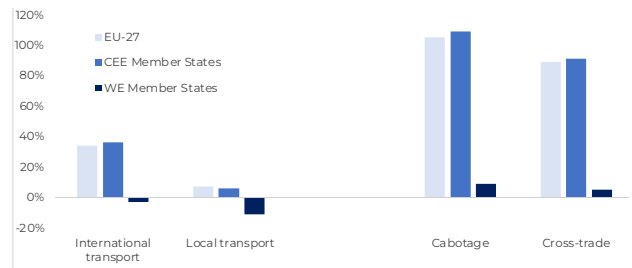
Source: Authors' elaboration based on Eurostat 2022: ROAD_GO_TA_TOTT

Figure 3. Share of EU road freight transport, analysed by country of vehicle registration (% based on tonne-kilometres, 2021)



Source: Key figures on European transport, Eurostat 2022

Figure 4. European road freight transport, percentage change in volume (tonnage), 2012–2021



*data not available for Malta

**CEE Member States % change in cabotage data missing for Croatia, Cyprus, Malta

Source: Authors' elaboration based on Eurostat 2022: ROAD_GO_TA_TOTT

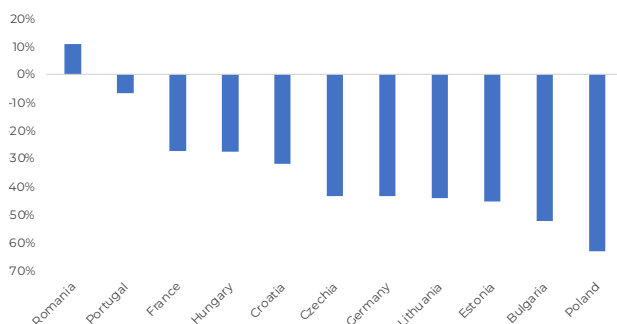
Transport of passengers

By contrast with the transport of goods, passenger transport by road has recorded a signif-

[3] 'Cabotage' refers to transport operations between several places within the same Member State by a road operator established in another Member State.

icant decline across the EU. Available data for the period 2013–2021 indicates that almost all EU countries experienced a sharp drop in total passenger transport (by buses and coaches in millions of passenger-kilometres), and that Poland recorded the greatest decline – of 63 per cent (see **Figure 5**).

Figure 5. Percentage change in total passenger transport by buses and coaches registered in the reporting country 2013 – 2021 (based on passenger-kilometres).



Source: Authors' elaboration based on Eurostat 2022: ROAD_PA_BUSCOA

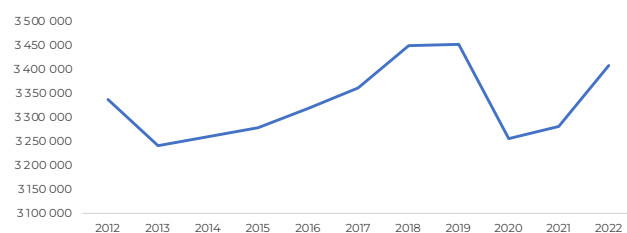
Evidence of driver substitution

During the same period as the growth of international road transport in CEE Member States, a number of studies have highlighted a substitution of drivers in WE Member States by drivers from CEE Member States (Vitols & Voss, 2019). This process has been coupled with declining levels of remuneration and deteriorating employment conditions in the road transport sector. As early as 2009, the European Parliament observed

that the growth of road freight in CEE Member States had “led to greater differences in labour costs across the Member States, with the risk of downward pressure on wages, and to stronger competition, with new Member States exhibiting lower average personnel costs than the old Member States, but higher investment rates” (Samek Lodovici, 2009). Moreover, several recent studies have evidenced increasing precarity and exploitative working conditions in road transport (Vitols & Voss, 2021).

Our research suggests that a similar substitution may now be beginning to take place, with CEE Member States drivers being replaced by third-country workers. The Eurostat data on the employment of heavy truck and bus drivers indicates that, while the overall employment levels are on a stable upward trend (if the COVID-19 crisis is disregarded), in the EU-27 (see **Figure 6**), the employment of third-country drivers has accelerated remarkably since 2016 (see **Figure 7**).

Figure 6. Employment of heavy truck and bus drivers in EU-27 (male EU citizens and third-country nationals), 2012-2022

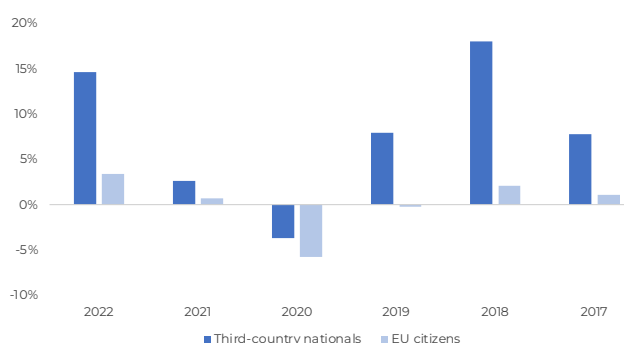


*missing data for female heavy truck and bus drivers

**employees only (missing data for the self-employed)

Source: Authors' elaboration based on Eurostat (2023), LFS, ISCO08 OC83_3D (data obtained upon direct request)

Figure 7. Year-on-year per cent change in the employment of heavy truck and bus drivers in EU-27 2016–2022



Source: Authors' elaboration based on Eurostat (2023), LFS, ISCO08 OC83_3D (data obtained upon direct request)

The highest number of driver attestations in 2021 were issued by Poland, Lithuania, Slovenia and Spain (see **Figure 8**). Moreover, we have been observing an increasing reliance by CEE Member States road transport companies on third-country drivers during the past decade.

Lithuania is an extreme example of a country in which the share of third-country drivers in 2021 is estimated to have risen very high – reportedly to 65 per cent (82,000) of all heavy truck and bus drivers,[4] which is nearly double the total of Lithuanian drivers (45,000) (see **Figure 9**).

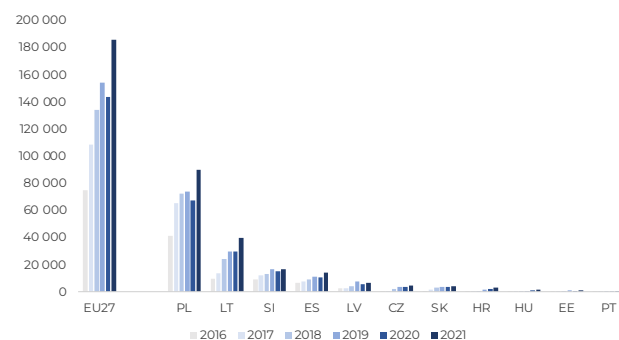
Although attestations can be issued for five years, third-country drivers tend to obtain a permit valid for shorter periods of one or two years. Thus, the same drivers may have their attestation renewed every year, which would be reflected in the number of driver attestations in circulation, but would not reflect the real number of third-coun-

try drivers employed in Lithuania. The question arises, why, given the unmet labour demand in the sector, drivers do not obtain longer-term attestations. The only plausible explanation is an intention on the part of employers to maintain third-country drivers in temporary, precarious employment, and to create a docile workforce, coerced into an acceptance of abuses of their labour rights.

Other countries that have noted a rising share of third-country drivers are Poland,[5] Slovenia and Latvia. However, this trend has not been observed in Western EU Member States, such as Belgium, France, Germany, or Italy, which record high levels of employment of heavy truck and bus drivers.

In summary, while road transport operators largely remain established in the CEE Member States, the workforce that performs international transport operations appears to be increasingly recruited from outside the EU.

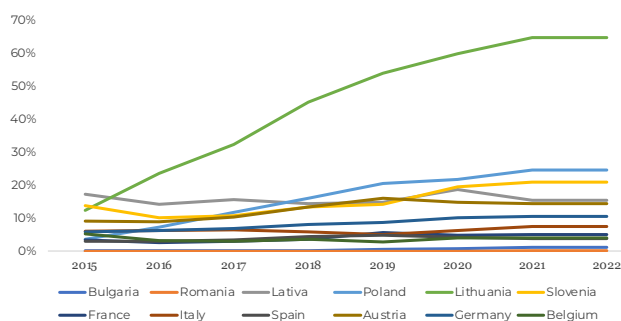
Figure 8. Number of driver attestations (1,000 and over) issued in EU-27 countries in the period 2016–2021



Source: Authors' elaboration based on European Commission data on driver attestations, 2022

[5] The estimate is based on the number of driver attestations in circulation, European Commission, 2022

Figure 9. Percentage share of third-country drivers in the employment of heavy truck and bus drivers in EU Member States 2015–2021



Source: Authors' elaboration based on Eurostat (2023), LFS, ISCO08 OC83_3D Heavy truck and bus drivers (missing data on third-country drivers in PL and LT) and European Commission, 2022

1.2. Is there a labour shortage in the road transport sector?

Recent research conducted by the industry association IRU reports a shortage of 380,000 truck drivers in Europe, which accounts for about 10 per cent of the total demand. The shortfall is expected to increase further (IRU, 2022). Similarly, a recent analysis by the think tank Transport Intelligence estimated the shortage of drivers in the EU at 400,000 in 2020. Poland is the most adversely affected country, with a driver shortage estimated at nearly 124,000 (Keckarovska, 2021), compared with just 30,000 just over a decade earlier (Samek Lodovici, 2009). Moreover, a 2021 European La-

bour Authority report on occupations experiencing a shortage of labour identifies heavy truck driving as a “top shortage occupation”, since 16 EU countries had reported shortages, and 6 EU countries had reported severe, high magnitude shortages of workers in this category (McGrath, 2021).

However, the term “labour shortage” may be misused in the road transport sector. Strictly speaking, a labour shortage arises when the demand for workers exceeds the supply of workers available who possess the required skills and are willing to work at a specific wage rate and in specific working conditions in a particular place and point in time.[6] Logically, labour shortages should be accompanied by mounting wages.

A labour shortage should not be confused with a high vacancy rate, which is the share of vacancies out of all jobs. While vacancies may be caused by a skills shortage, it has been observed that they can also arise because of poor working conditions, when skilled workers are not willing to undertake strenuous and badly paid jobs (Zwysen, 2023). This is precisely what seems to be the case among European heavy truck and bus drivers.

None of our interviewees considered that there was a labour shortage in the road transport sector. Looking at job vacancy rates in the transport and storage sector,[7] may provide some insight into the rising trend of unmet labour demand, in-

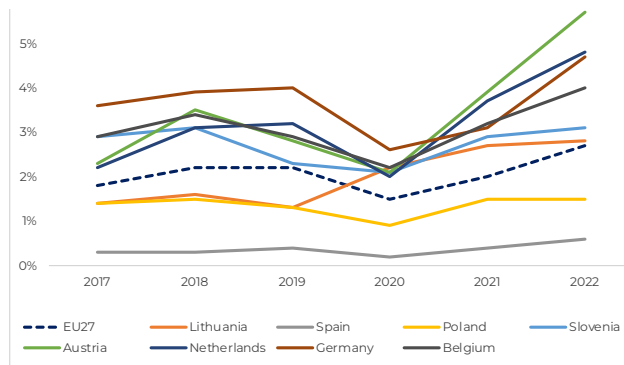
[6] <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/labour-shortage>

[7] No EU-wide data on labour shortages or job vacancies are available that relate specifically to Heavy Truck and Bus Drivers, or even to the higher level occupational group that includes them: Plant and Machine Operators. Consequently, in the absence of any more focused data, sector-level data on job vacancy rates in Transport and Storage, in selected member states, have been used

cluding demand for drivers, in the industry. Since the pandemic, the sector has experienced a steep rise in the job vacancy rates across Member States (see **Figure 10**).

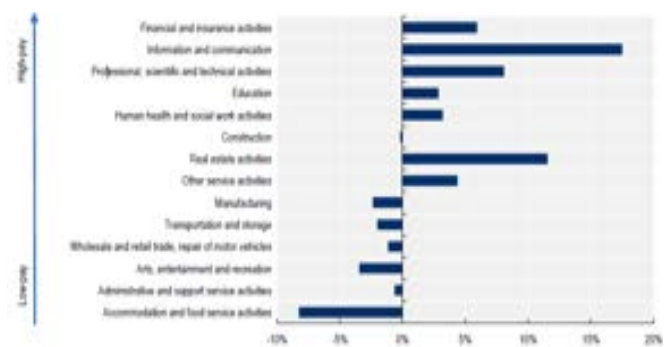
This is consistent with other study findings reporting a recent rise of vacancy rates in the sectors characterised by low levels of pay (see **Figure 11**). Authors also highlight poor working conditions, such as temporary work and unsociable hours, in sectors experiencing negative employment growth, such as the transport and storage sectors (Zwysen, 2023a).

Figure 10. Job vacancy rate in the transport and storage sector in selected EU Member States, 2017 – 2022



Source: Authors' elaboration based on Eurostat, 2023 [JVS_A_RATE_R2]

Figure 11. Average percentage change in employment, by industry across selected OECD countries, Q1 2022 relative to Q1 2019 in high and low pay sectors



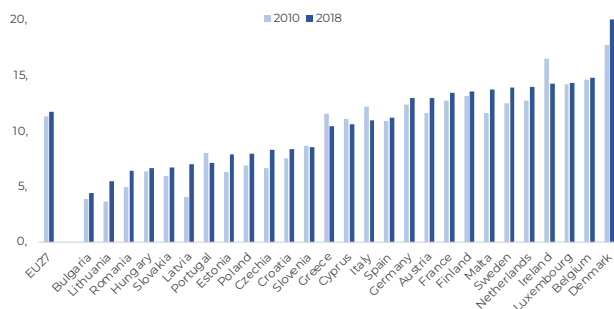
Source: (OECD, 2022)

All interviewees stated that the increasing precarity and the exploitative working conditions are very likely causes of recruitment difficulties in the sector. The respondents commonly cited “long hours, low pay” as the main reason that workers were not taking up driving as an occupation, and that young workers were not willing to be trained in the profession. Indeed, the available Eurostat data on earnings in the transport and storage sectors between 2010 and 2018 show a very modest increase in wages in Purchasing Power Standard, with some countries, such as Greece, Cyprus, Italy and Ireland recording a decline. Moreover, CEE Member States tend to show higher increases than WE Member States, where the wages in these sectors seem to have stagnated, with the exception of Sweden, Netherlands and Denmark (see **Figure 12**). Overall, when compared with other sectors in all EU-27 countries during the period 2010–2018, the transport and storage sector recorded the smallest median wage increase in real terms (see **Figure 13**).

Among bus and coach drivers in particular, the pandemic caused job losses without adequate

financial compensation. Many drivers may have turned to other activities to sustain a living.

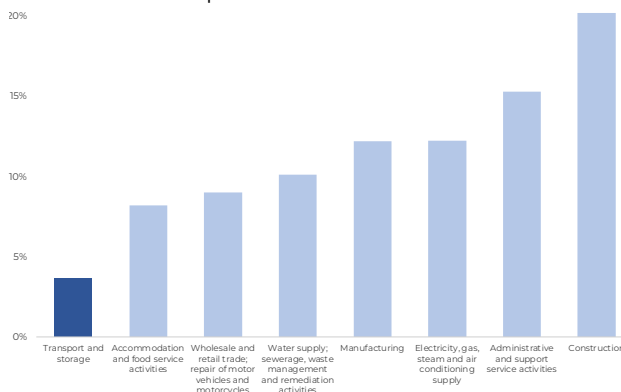
Figure 12. Comparison of median hourly earnings in the transport and storage sector (in Purchasing Power Standard) in the EU-27 countries in 2010 and 2018



*latest available data is for 2018

Source: Authors' elaboration, based on Eurostat, 2018, [EARN_SES_PUB2N]

Figure 13. Percentage growth of median hourly earnings (in Purchasing Power Standard) in selected industry sectors in the EU-27 in the period 2010–2018.



*latest available data is for 2018

Source: Authors' elaboration, based on Eurostat, 2018, [EARN_SES_PUB2N]

Drivers are recruited from third countries, mainly former Soviet and Yugoslav republics as well as Asian countries, as “preferred workers” since they are “easier to manage” – a euphemism used by our interviewees to describe exploitative terms and conditions that third-country drivers are willing to accept, or are (at least up to a certain point) coerced into accepting.

Thus, the increasing recruitment of third-country drivers may be a consequence, not of any labour shortage in Europe, but rather of a recruitment strategy allowing road operators to maintain low labour costs in the sector.

1.3. Recruitment channels for third-country drivers

The following paragraphs describe the main recruitment channels EU companies rely on to hire third-country drivers for the performance of tasks within the EU internal market.[8]

Letter box practices

The most common pattern of employment of third-country drivers appears to be direct employment by EU road transport operators.

However, a frequent observation shared by our interviewees was that the recruitment is regularly made through the operation of letter box companies, with an aim of avoiding labour and social security contributions costs. These letter-

[8] It may also be that, depending on the existence of bilateral agreements, a company established in a third country carries out operations on the territory of a Member State with its own employees. The legal implications of such scenario will be briefly addressed in Chapter two.

box companies do not respect the conditions for genuine establishment as a road transport operator required by Regulation 1071/2009, such as owning a fleet of vehicles, and being continuously engaged in operational activities and effective administrative and commercial activities.[9]

Our respondents have observed that such companies are mainly registered in countries with low labour costs, low standards of administration and low tax regimes, such as CEE Member States. For example, in Slovenia, companies engaged in recruitment appear to be mainly letter box companies registered by Macedonian or Serbian nationals, and in Poland they tend to be owned by Belarussian, Russian, Ukrainian or Lithuanian citizens. The Lithuanian trade union experts interviewed for this research have also described a trend among Lithuanian road transport operators to relocate their companies to neighbouring Poland, with its lax labour and tax regimes (see **Box 2**). These letter box companies tend to recruit third-country drivers to perform transport operations in the EU internal market, often as subsidiaries of large road operators headquartered in Western Member States. Our interviewees confirmed this pattern in the UK and Denmark, where third-country drivers are reportedly hired by letter box companies registered in CEE Member States, as subsidiaries of Danish, Benelux or UK parent companies.

While our interviewees reported that the letter-box phenomenon is significant, we have not been able to identify any official EU estimations on the

scale of the problem. This lack of data leads to suspicion that there are major enforcement issues with regard to business establishment.

According to our interviewees, third-country drivers often perform transport operations in, or from, Western European headquarter countries. However, the law of reference for the employment relationships and social security contributions tends to be the law of the Member State where the employing company is registered. This trend is also correlated with the highest number of driver attestations being issued to third-country nationals by Poland, Lithuania and Slovenia.

Use of letter-box company based in a CEE Member State in the employment of third-country drivers



[9] Article 5 of Regulation 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator

Temporary work agencies and recruitment intermediaries

According to participants in our interviews, third-country drivers can also be recruited through temporary work agencies based in CEE Member States, which themselves have recourse to other intermediaries based in third countries. This pattern obscures employment relationships and legal liabilities. As such, it presents a high risk of further exacerbating the precarious terms and conditions in the employment of third-country workers.

Also, a commonly identified practice observed in all the countries studied is the use by road operators of recruitment intermediaries, usually based in a third country, who recruit workers to work as drivers in the EU, often for a fee paid by the worker to that intermediary. This leaves third-country drivers with a debt, often as high as \$5,000 USD, to be paid in return for employment in the EU. As a result, **third-country drivers may work “for free” for the first months of their employment in the EU road transport sector.**

Irregular work

Our interviewees underlined the existence of irregular employment of third-country drivers who have no work permit, particularly in the CEE Member States. In Lithuania and Poland, instances have been reported of third-country drivers working on tourist or student visas. Cases have also been reported of drivers working without any type of visa across the interviewed CEE Member State, as illustrated in a Slovenian example (see **Box 3**). Our research has not identified any official data permitting the scale of this phenomenon to

be quantified specifically in respect of the road transport sector.

Employment patterns

The employment of third-country nationals into the EU can take several forms. The worker may be recruited from a third country by an EU company (either directly or through a temporary work agency) and assigned regular tasks in a single Member State. Another possibility is that the third-country worker is recruited for highly mobile tasks, performing operations from one Member State to another.

According to our interviews, large countries such as Spain and Poland record significant employment of third-country drivers in local transport, whereas in the UK the local market is dominated by British drivers. Third-country drivers working for Spanish road hauliers may also depart from Spain to perform short bilateral operations, as they mostly carry perishable agricultural products to the UK, France or Germany.

Our interviewees in CEE Member States report that third-country drivers are employed to perform international road operations that are mainly bilateral and involve cabotage (see the example in **Box 3**). For these third-country drivers, the country of departure is often different from the country of establishment of the direct employer. Drivers mostly depart from a Western Member State such as Germany or Belgium to carry goods to Benelux or to Scandinavian countries on a bilateral and cabotage basis. France, Austria and Italy are also popular destination countries.

Relocation of Lithuanian potential letterbox practices to Poland



A Polish road transport company with **Lithuanian** owners has its **main office** registered in the city of Białystok, **Poland** on 17 November 2020, at the following premises (in a **rented room**).



The company also has a **registered branch** in the town of Sejny, Poland (a small town close to the Polish-Lithuanian border), at the following premises (which appears to be a **private flat**).

- The company has **no official website**, where the information on the transport services available should be provided.
- The company is using **leased trucks** and is on the **verge of bankruptcy** (as reported by third-country drivers who have made a complaint about the company to ETF).
- **Labour rights violations have been reported** by third-country drivers (Belarusian and Ukrainian) employed by the company.

As reported by third-country drivers in their complaint addressed to ETF, the Belarusian and Ukrainian workers were employed by the company in **March 2023** to perform transport operations in the EU internal market and, **as of 31 May 2023, had not returned home** or to Poland. In fact, they were "**constantly on the move**".

The drivers have not been issued with the "carte professionnelle des conducteurs" (the professional driver's attestation) and, as a result, have personally had to cover the cost of fuel and other expenses related to the vehicle use.

The company **has failed to pay the drivers their due remuneration according to the posting rules**, and the **calculation of their wages has been based solely on their driving hours**. The drivers had a verbal agreement (evidenced with a screenshot) with the company that they would be paid **€85 a day** (which would be double the Polish national minimum wage), but the company **has denied** this and claimed to be **paying in accordance with Polish regulations**.

Working patterns and irregular work of third-country drivers employed by a Slovenian road transport operator

- Third-country drivers employed to perform international transport operations



The following screenshot presents the terms of the employment contract concluded between a Serbian driver and a Slovenian road transport company. The contract states that the driver shall perform domestic and international passenger transport in **Slovenia, EU and third countries**. In practice, the third-country driver almost exclusively performed operations within **Austria, Germany, France, and Italy**.

- Third-country drivers perform irregular work

Below is a tachograph record of a **Bosnian** driver employed by the company. It shows the dates and times when the driving was performed, along with kilometers covered that day.

The **Slovenian** trade union NSDS has been receiving complaints from **Bosnian** and **Serbian** drivers employed by the company. The company instructed the drivers to start performing their tasks before their work permits had been issued.

The tachograph records show that the driver performed work as from 16 May 2022, however, the work permit was only issued on 20 June 2022. As a result, the drivers performed irregular work for at least one month, without having any labour protection or social coverage.



Slovenian Social Security Institution (ZZZZ) certificate issued for the Bosnian driver, showing the work permit's starting date as 20 June 2022.



2.

**The legal
framework
applicable to
third-country
drives**

2.

2. The legal framework applicable to third-country drivers

This chapter provides a broad overview of the working rights of third-country drivers. Our core message is that a third-country driver recruited by an EU-based employer to perform tasks within the European Union should be guaranteed the same working conditions as an EU driver. The severe exploitation of third-country drivers described in this study is largely due to the poor enforcement of legal obligations.

Chapter 2 briefly touches upon the situation of third-country drivers hired by non-EU operators.

2.1. Third-country drivers hired by EU operators – an equal treatment principle

Working conditions

The general EU migration directives^[10] lay down the principle that, once granted a work permit, third-country workers enjoy working conditions equal to those enjoyed by nationals of the

Member State they reside in. Equal treatment covers working conditions, including pay and dismissal, health and safety at the workplace, and the right to join a trade union. Third-country workers must also enjoy equal social security rights, even if Member States may decide to limit such rights for workers employed for less than 6 months.

Third-country workers who continuously reside in an EU Member State for more than five years enjoy additional rights to equal treatment with EU citizens as regards education, social security, and access to public services.

In some cases, a third-country driver can be posted from a company operating in a non-EU country to a branch in the EU. This can only happen if the driver has worked for a certain time with the company before being transferred. Transferees are also expected to return to their previous positions once the EU assignment ends. For these intra-corporate transfers, the directive

[10] **The Single Permit Directive** 2011/98 establishes common rules for the issuance of a single residence and work permit for third-country nationals who wish to stay in the EU for longer than 3 months.

The Long-Term Residents Directive 2003/109 establishes the conditions and rights for third-country nationals to acquire long term residence status after 5 years of continuous residency.

The Intra Corporate Transferees Directive 2014/66 sets the conditions under which third-country workers can be posted from a company operating in a non-EU country in a branch in the EU.

The Seasonal Work Directive 2014/36 sets the conditions for entry and seasonal employment in the EU. This directive does not apply to the road transport, as it cannot be considered as work dependent on a specific time period, event or season

prescribes that the remuneration must not be inferior to what an EU national would have received in a similar position.

In other words, from the moment that a driver is legally employed by an EU road transport operator, the applicable employment terms and conditions, as well as the conditions under which the worker can be posted within the EU internal market, are the same as for EU drivers. In particular, the Mobility Package[11] and the road transport social provisions are fully applicable.

▪ Applicable employment law[12]

The Rome I Regulation determines which national law must govern the employment relationship of a third-country driver. The country in which, or from which, the driver habitually carries out the work is particularly important in determining the applicable employment law. To the extent that the third-country driver is hired by an EU operator in order to perform work in the EU, the habitual place of work can only be located in an EU Member State. Box 4 below provides an overview of the indicators that help in determining that habitual place of work.

In the exceptional case that no habitual place

of work can be determined, for instance if the driver works in different countries without a regular pattern, the applicable law may be the one that applies in the place of business through which the employee was hired.

Use of letter-box company based in a CEE Member State in the employment of third-country drivers

- I. The place from which the worker carries out his or her transport-related tasks
- II. The place to which the worker returns after completing these tasks, where the worker receives instructions concerning them and organises the work
- III. The place where the worker's work tools are to be found
- IV. The place where the vehicle aboard which the work is habitually performed is stationed
- V. The place where the "home base" is located, it being understood that its relevance would be undermined if a closer connection with another place were to be shown.

Source: (Picard, Publication forthcoming)

▪ Posting rules

The *Lex Specialis*[13] applies in full to third-country drivers. This directive defines the transport road operations that constitute posting and those that do not.

[11] The 'Mobility Package' is a set of EU rules adopted in July 2020 covering market and social aspects of road transport. Among other topics, the Mobility Package imposes new criteria for the establishment of road operators and limits the number of cabotage operations that can be carried out in an EU Member State. Importantly, the Package sets specific rules for the application of posting standards to drivers and for the conditions in which rest can be taken. Further information can be found on ETF website at: [ETF: European Transport Workers' Federation | Mobility Package: Next Steps - ETF: European Transport Workers' Federation \(etf-europe.org\)](https://www.etf-europe.org/mobility-package-next-steps)

[12] Detailed description of Rome 1 and related rules can be found in: Picard (publication forthcoming), *Fair mobility in transport – the application of posting and related rules*, publication by ETF

[13] Directive 2020/1057 of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/46/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulations 1024/2012

2.

If an operation constitutes posting – for instance, a cabotage operation – the core employment terms and conditions (including remuneration and working time) of the host Member State will be guaranteed to the third-country driver, on top of the conditions set out by the employment law of the habitual place of work. If the operation does not constitute posting – for instance, a simple bilateral operation between the establishment of the haulier and another Member State – the third-country driver will only be covered by the employment law of the habitual place of work.

- **Social security**

In addition to the equal treatment principle contained in the migration directives, Regulation 1231/210 extends the application of EU rules on the coordination of social security systems to third-country nationals and their families. This has two main implications.

First, the rights a third-country driver as to social security benefits are equal to those of an EU national. However, Member States may decide to introduce a six-month qualifying period for the worker to start enjoying these rights. According to a recent ETUI report, third-country workers employed in the EU for a short-term period are often excluded from social security coverage and entitlements (Rasnaca & Bogoeski, 2023).

Second, employers are subject to EU obligations when it comes to the social security contributions for third-country drivers. As a basic rule, social security contributions must be made

in accordance with the law of the place of work. When the driver is working simultaneously in two or more Member States, other criteria will apply to determine where the contributions must be paid, having regard to the worker's residence and place of business establishment. In any event, social security contributions made outside the EU are highly irregular as they cannot be recognised by social security institutions in the EU.

- **Social legislation**

The whole EU labour law *acquis*, including the social standards applicable in the road transport sector, applies in full to third-country drivers. This means that the driving time, the rest periods and the working time of third-country drivers must be calculated in the same way as for EU drivers.

Where a third-country driver carries out international transport, the question may arise as to what should be considered as “a base” for the purpose of work organisation. The driving and rest time Regulation prescribes that drivers must be able to return either to the Member State of the employer's establishment or to the driver's place of residence within each period of four consecutive weeks. According to the European Commission, the “place of residence” should be understood as the place where a person usually lives, for at least 185 days in each calendar year, because of personal and occupational ties. Where the occupational ties and personal ties are to different places, the driver's place of residence should be regarded as being the place of his or her personal ties, provided that the person returns there regularly, for example, for family reasons.[14]

[14] European Commission (2021), Mobility Package I – Social rules, Questions and Answers Part 2

In our view, nothing prevents the employer from organising a return to the third-country driver's residence if it is outside the EU.

Recruitment

Any road transport operator operating in the EU must have a Community licence. This licence depends upon a number of conditions being fulfilled, including that the company has a genuine establishment with effective activities in an EU Member State. Third-country road hauliers must therefore establish a branch or subsidiary with effective economic activities.^[15]

In addition, employers are under an obligation to obtain a driver attestation for every third-country driver they employ.^[16] This is to allow Member States to check whether the drivers are lawfully employed. It also serves to confirm the qualification of the drivers. There is, however, no obligation to obtain such an attestation for third-country drivers who have a long-term residence status (that is, over five years of continuous lawful residence). The attestation can be requested for a maximum duration of five years.

Severe exploitation of workers due to poor enforcement

Chapter three describes frequent violations of the rules on genuine business establishment and, as a result, the circumvention of labour laws that should normally govern employment contracts as well as posting rules. Instances of letterbox com-

panies have been observed with EU or third-country operators registering a branch or a subsidiary in Central or Eastern Europe, without conducting any economic activity in that Member State, but hiring third-country drivers for the purpose of routinely performing tasks in other countries.

Our interviews have also highlighted frequent violations of labour law and the social standards applicable in road transport. Rules on working and driving times, rest periods and returns home are not respected. In the event of roadside checks, it is the driver who is fined for infringements with the consequence that tachographs and other enforcement tools are often tampered with.

Furthermore, instances of third-country drivers starting to work while waiting for their work permit to be issued have been observed. Such irregular work exposes the driver to labour rights' abuses while being dependent on the employer to obtain the work permit. Third-country workers may have to put up with some degree of abuse for fear of losing the legal employment.

Finally, our interviews have highlighted that third-country drivers can be recruited through temporary work agencies. Such a practice is problematic, given the driver attestation requirement. The attestation has to be requested by the transport operator who owns a Community licence and is the driver's employer. As a result, it should not be possible for a temporary work agency to recruit third-country drivers with a view to putting them at the disposal of a user company.

[15] Regulation 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator

[16] Regulation 1072/ 2009 on common rules for access to the international road haulage market

2.

2. Third-country drivers hired by non-EU operators

National law or a bilateral agreement between an individual Member State and a third country, or both, may authorise third-country operators to carry out operations on the territory of that Member State. The EU *acquis* will not apply to such operations, and the applicable social conditions will be exclusively regulated by the bilateral agreement and domestic law.

For instance, the social conditions applicable to UK drivers performing work in the EU and vice versa are laid down in Annex 31 of the Trade and Cooperation Agreement between the EU and the UK (TCA).

Another important international agreement is the European Agreement Concerning the Work

of Crews of Vehicles Engaged in International Road Transport (AETR). At the time of writing, the agreement covers 49 countries including all EU Member States.

These international agreements establish substantial rules on working times, driver fatigue, rest and tachographs that are broadly similar to the EU *acquis*. In addition, the TCA allows posting of drivers to take place between the EU and the UK.

Lastly, Article 1.4 of the Posted Workers Directive specifies that non-EU operators must not be given more favourable treatment than EU companies. The EU legislator has not elaborated on this point. This article may, however, be interpreted as meaning that non-EU operators should not be able to undercut the terms and conditions of employment that would normally apply to EU operators.



3.

A woman with blonde curly hair, wearing a red quilted vest over a blue and white plaid shirt and blue jeans, is smiling and talking on a mobile phone. She is standing in front of a large blue truck. The image is split diagonally by a white line. The top-left portion is a teal background with a white number '3.' and a white dot. The bottom-right portion contains the text 'The labour conditions of third-country drivers' in white.

**The labour
conditions of third-
country drivers**

3.

3. The labour conditions of third-country drivers

This chapter describes abusive practices in the employment of third-country drivers, particularly those employed by transport operators located in CEE Member States, as reported during interviews with trade union experts. The interview grid explored such social conditions as levels of remuneration, working patterns, working times and rest periods, access to social security protection, as well as awareness of labour and social rights, and the need for trade union support and for policy improvements in the protection of third-country drivers' rights.

The following section outlines the key outcomes of these interviews.

3.1. Working conditions

Remuneration

There have been diverse accounts of pay levels among third-country drivers working in the EU, but all confirm declining remuneration in real terms.

In Spain, third-country drivers hired by Spanish companies performing local and international transport operations are predominantly legally employed, and are covered by sectoral collective bargaining agreements, "enjoying similar levels of pay as national/EU drivers". In Slovenia, third-country drivers

employed by Slovenian operators tend to obtain the legally required national minimum wage (c. €1,200 per month), topped up by subsistence allowance.

By contrast, a Polish trade unionist described the earnings of third-country drivers hired by companies established in Poland, and working in the local and internal EU market, as "starvation wages", which are only calculated for hours worked, with no subsistence allowance. Companies in Poland resort to particularly abusive practices, such as hiring third-country drivers, and offering accommodation for their families or helping family members find a job "in return for withheld wages". Moreover, the Lithuanian interviewees confirmed that wages for third-country drivers were lower than for Lithuanian workers, particularly "when they are employed by a Lithuanian-owned company registered in Poland", in which case, "accounts of earnings of as little as €600 per month (below the Polish national minimum wage) among third-country drivers" have been observed.

It is true that the short-term driver attestations mentioned in Chapter one are a significant factor in the reported low wages for third-country drivers. The claimed "labour shortage" of drivers (discussed earlier) ought to be conducive to permanent employment contracts and to rising wages in the transport sector, also among third-country workers. Yet, this process has been hampered by the precarious working and living conditions

created for third-country drivers who are hired on temporary contracts tied to the duration of their attestations, which are held by the employing companies. As a result, the bargaining power of third-country drivers is quite poor, and they remain dependent on the transport operators for their employment in the EU. This situation has been conducive to abusive practices in the remuneration of third-country drivers, as well as to other violations of their labour rights, such as irregular and undeclared work, cash-in-hand payments that fail to reflect the national minimum wage and social security contributions, and the withholding of wages. Additionally, as highlighted in Chapter one, the imposition of a recruitment fee results in a significant lowering of remuneration levels.

Posting

As described in Chapter two, a driver performing road operations that constitute posting to another Member State is entitled to receive the remuneration levels and daily allowances of that host Member State.

According to our interviews, Spanish and Slovenian companies tend to respect the posting rules in the employment of third-country drivers, as they are “covered by the same rules as national drivers”. Posting occurs, for example, when a driver departs from Spain, where the hiring company is established, to carry goods involving cabotage operations in a host Member State, which would typically be France or Germany, and would be paid wages according to levels defined by national minimum wage or sectoral collective agreements in that host Member State.

This is the opposite of what is reported among drivers working for employers formally registered in Poland and Lithuania. According to the Polish respondent, “Third-country drivers are not remunerated as posted workers when the posting occurs; they receive Polish wages only,” while in Lithuania, “the posting rules are not respected very often”. As reported during the interviews, third-country drivers employed by Polish road hauliers perform mostly international transport, bilateral or cross trade, including cabotage operations, between WE Member States such as Germany, Austria, France, the Netherlands, Belgium, and within the Scandinavian countries. The same working patterns for third-country drivers have been reported by the Lithuanian trade union experts. Yet, when posting of these workers occurs, such as when they perform cabotage operations within those WE Member States, third-country drivers are not usually paid the wages established by national minimum wage rules or collective agreements in those WE Member States. These remuneration levels are often much higher than those in CEE Member States. As explained by a CEE Member State trade union expert: “This is because the posting rules are complicated and it’s very easy for the companies to trick a third-country driver unaware of the Mobility Package into not being paid the posting wages.”

Driving and working times, and rests

As reported by the Spanish trade unionist, “tachograph rules, daily and weekly driving times and rest periods are respected, as they are strongly enforced in Spain and a heavy

3.

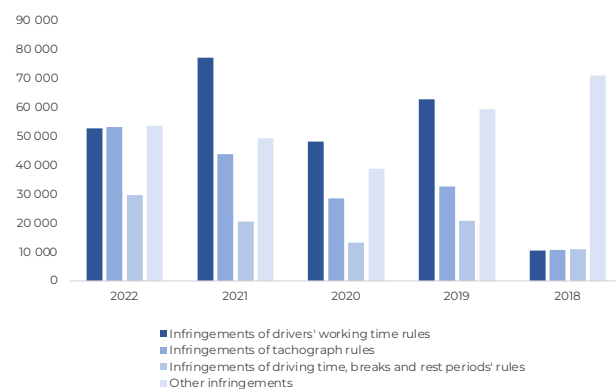
penalty is imposed on companies for non-compliance”.[17] Third-country drivers are required, on an equal basis with Spanish drivers, to return home to take proper rest periods. This is in accordance with the legal requirement that drivers must be able to take a weekly rest within each period of four consecutive weeks when they return to the Member State of the employer’s establishment, or return to the drivers’ place of residence.[18] A similar level of enforcement is reported in the UK and Denmark.

By contrast, it has been reported that third-country drivers employed by companies based in CEE Member States, particularly Poland, do not return home for the monthly rest periods. These drivers sleep “for months” in the cab of a truck, or in camps set up by the employing companies on city outskirts in WE Member States. The Polish trade unionist confirmed that third-country drivers employed by Polish road hauliers “are constantly on the move”. If they happen to return “home” to Poland they are tricked into signing for an unpaid holiday leave for this period and end up staying in campsites with no proper sanitary facilities. Similar practices by Lithuanian and Slovenian road haulage companies have been reported. While these tend at least to respect the rules on driving and rest times, this is not the case with the Polish companies that coerce third-country drivers into as much as 16 hours of daily driving time.

All the interviewees from CEE Member

States confirmed that tampering with tachographs or timesheets is common. This way, companies avoid paying wages for the actual time worked. These abuses are facilitated by poor enforcement and by the fact that penalties for breaches of the rules are imposed on the drivers, not the employers, in these CEE Member States. This is consistent with, for example, Polish data on road checks collected by the Polish General Inspectorate of Road Transport. The figures indicate that the infringements of drivers’ working time rules recorded a rapid growth in 2019 compared to the previous year and have occurred with a frequency surpassing that of all other infringements of Mobility Package provisions. Tampering with tachographs is the second most frequent single type of infringement of the regulations (see **Figure 14**).

Figure 14. Selected infringements of road transport regulations identified in road inspections in Poland 2018–2022



Source: General Inspectorate of Road Transport, Poland, 2023

[17] This Spanish respondent’s statement seems to apply to labour inspections.

[18] Article 8a of Regulation (EC) No 561/2003

3.2. Social security contributions

During the interviews, we asked whether, and if so where, third-country drivers have had their social security contributions paid by the employing company. While third-country drivers employed by companies in WE Member States tend to have their social security contributions paid, those employed by companies in CEE Member States fall prey to some unlawful practices. The Polish respondent confirmed that Polish employers pay social security contributions for third-country drivers. However, social security contributions are not paid in respect of undeclared working time or irregular employment (in cases where a driver works without any permit), which seems to occur more often in Poland than in other countries studied. As a result, the employers' contributions paid for drivers are often less than the actual amounts due, and drivers who are irregularly employed are not covered by any social security protection.

Similarly, the Slovenian trade unionist reported that, when drivers eventually return home for a rest period, their employment contracts are terminated, without any notification to the workers, and they then unknowingly continue working without any payment of social security contributions on their behalf. Instances have also been reported of drivers' performing undeclared work and not being registered with social security institutions. Moreover, there have been instances when Lithuanian companies have failed to pay social security contributions, taking advantage of the fact that "third-country drivers hardly ever live in Lithuania" and are unlikely to enquire about it.

While not raised by our interviewees, it is also likely that fraudulent violations of the EU social security rules are also taking place through the use of letterbox companies, which permit employers to get away with making their contributions in Member States with lower social security costs.

3.3. Labour and social rights unclaimed by third-country drivers

During the interviews, all the respondents reported a low level of awareness of labour and social rights among third-country drivers, particularly in the first year following their arrival in the EU. This is mainly due to language problems, as these drivers often do not speak the language of the country where the employing company is registered. Third-country drivers tend to gain awareness of labour and social rights as they work in the sector and come into contact with better informed colleagues. Even then, however, they may be reluctant to claim their rights for fear of losing the job. It has been observed by our interviewees that it is often not until third-country drivers have experienced a serious violation of their labour rights that they decide to take some action. Such has been the case of the recent strike, reported in the German and Polish press, of third-country drivers hired by a Polish transport company to carry goods in Germany and neighbouring WE Member States (see **Box 5**).

4.



**Conclusions
and policy
recommendations**

4.

4. Conclusions and policy recommendations

4.1. Overview of challenges

This report has highlighted a number of challenges with regard to third-country drivers.

Recruitment of third-country drivers through private labour intermediaries is often the first step towards exploitative working conditions. Whether they are established in the EU or in third countries, private labour intermediaries are largely unregulated. Informal and opaque recruitment processes obscure employment liabilities and are the source of abusive practices, such as charging the worker high recruitment fees.

This report has also highlighted problems with irregular migration. Our interviewees reported instances of third-country drivers' being obliged to perform work before the required work permit is delivered. There are also cases of drivers working on tourist or student visas. Besides working irregularly, third-country drivers are also asked to work during undeclared working hours, which can involve of cash-in-hand remuneration or fake self-employment, or both.

The employment of migrant workers takes place in a broader context of poor compliance with applicable labour laws and regulations. A substantial body of sector-specific legislation is in

force in the road transport sector, aimed at tackling social dumping practices and ensuring adequate protection with regard to rest and working times. Yet, our findings concur with previous studies, all pointing at serious weaknesses of enforcement.[19]

Generally, third-country drivers have a poor awareness of their rights and are kept in vulnerable positions through the use of successive, precarious contracts. Several of the trade union representatives interviewed for this study, especially in Member States with ports of entry into the EU, have highlighted the difficulty they have had in organising migrant workers, owing to language barriers and, above all, a lack of human and financial resources.

In the light of these multiple challenges, our recommendations are threefold: to enhance trade union capacity, to strengthen enforcement of existing legal rights, and to remedy the weaknesses of the applicable legal framework.

Enhancing trade union capacity

All interviewees have underlined the importance of informing and organising migrant workers better. This requires adequate financial and

[19] See for instance: Picard (publication forthcoming), *Fair mobility in transport – the application of posting and related rules*, publication by ETF; Vitols & Voss (2019), *Social conditions in logistics in Europe: focus on road transport*, publication by ETF; Vitols & Voss (2021), *Driver fatigue in European road transport*, publication by ETF

human resources. It also requires trade unions to reach out to workers, both in the EU and in third countries, and throughout the global value chain.

EU funding to support counselling and support for complainants

Trade unions need to develop a better capacity for reaching out to these workers, both within EU Member States and in third countries where drivers are recruited. The lack of human and financial resources is a concern that was voiced by nearly all trade union representatives interviewed.

Some initiatives are already in progress. For example, Lithuanian trade unions are providing a help-desk for third-country drivers. Information on their labour rights has been translated in eight languages. Court representatives, or even offices, in countries such as Ukraine are informing drivers on their rights, should they be recruited to work for Lithuanian transport operators. There are plans to establish similar offices in Central-Asian countries, but these plans are dependent on securing additional financial resources.

Counselling services and support for complainants need to be further developed, particularly in the CEE Member States that are most prominent in recruiting third-country drivers to work in the EU internal market. Our interviews have also shown that language barriers stand in

the way of trade union activities aimed at supporting third-country drivers' labour rights.

An important way to assist trade unions in these efforts is to secure stable and adequate funding. To this end, the German labour movement has put forward demands for structured and continuous funding from the European Union.[20] The need for a European financial intervention finds its justification in the increased cross-border nature of labour migration in the EU. This is especially true in the road transport sector, where a great number of tasks are routinely performed outside the Member State in which drivers were recruited.

These financial resources would be used to set up permanent consultation and advice facilities, such as advice centres, in EU countries. Building upon their experience of providing support to posted workers,[21] the German unions see these services as being complementary to trade union work, and close interaction is therefore necessary. The aim of these facilities should be to provide migrant workers with advice on their legal and social rights. In addition, they should be able to offer advice and support in individual cases, to help achieve better enforcement of workers' rights. The different advisory structures across EU Member States should also be given the means to exchange and coordinate their activities.

The demand for dedicated EU funding is supported by a number of sectoral unions, including ETUC, EFFAT, UNI Europe, ETF Europe and EFBWW.

[20] Resources | Fair Working Conditions (fair-labour-mobility.eu)

[21] Fair Working Conditions (fair-labour-mobility.eu)

Transnational union cooperation

In parallel with improved counselling and support of complainants, our interviews have highlighted the need for a strategy coordinating transnational trade union efforts. In this respect, trade unions could develop joint campaigns for awareness raising and organising. Cooperation between trade unions in the host and the home country is clearly an essential condition for the setting up of such campaigns.

Reaching out to other actors in the global value chain^[22]

Recent years have seen the emergence of human rights due diligence as a new standard of care in global value chains. Large corporations are increasingly expected to anticipate potential abuse of human rights in their activities. The United Nations has defined human rights due diligence as the process through which business enterprises “identify, prevent, mitigate and account for how they address their adverse human rights impacts.”^[23]

In concrete terms, due diligence offers the possibility for unions to put pressure on the main clients of transport operators, exposing the exploitation of workers in their supply chains. Under human rights due diligence, corporations are required to map their global value chains accurately, including logistics and related transport operations, with a view to identifying potential risks

to workers’ fundamental rights. Where such risks are identified, companies are expected to take all necessary measures to prevent, or at least mitigate, the adverse impact. Remediation mechanisms also need to be in place.

Companies disclose in their public reporting how they have conducted due diligence, and with what outcomes. Currently, the quality of many of these processes remains questionable, largely owing to the insufficient involvement of trade unions in the risk mapping. However, the growing engagement on the part of labour and civil society with human rights in global value chains has increased public scrutiny of, and thus reputational risks for, companies performing poorly. In addition, several countries, as well as the European Union collectively, have introduced, or are about to introduce, mandatory due diligence in their legal frameworks, creating further legal risks for the clients of road transport operators.

The momentum is therefore quite strong for unions to take ownership of the human rights due diligence agenda.

Some important initiatives are starting to appear in the transport sector. Notably, in 2021, the Global Trade Union Federations ITF (the International Transport Federation) and IUF (the International Union for Food and other sectors), together with the Dutch trade union FNV, established a Road Transport Due Diligence Foundation. The Foundation seeks to reinforce good labour condi-

[22] See Picard (2023), *Human Rights Due Diligence – a trade union toolkit*, publication by UNI Europa. This toolkit and accompanying trade union checklist contain a complete analysis of human rights due diligence as well as a checklist of actions for unions wishing to engage.

[23] United Nations Guiding Principles on Business and Human Rights, 2011

. The Road Transport Due Diligence Foundation

The Road Transport Due Diligence Foundation (hereafter the Foundation), was established in November 2021 by the FNV, the International Transport Workers' Federation ('the ITF') in cooperation with the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations ('the IUF').

This initiative seeks to reinforce good labour conditions in road transport supply chains by increasing the cooperation between multinational customers and trade unions representing workers in the supply chain. Under this model, companies enter into voluntary agreements committing them to **respect for labour standards** laid down in EU labour law and global human rights due diligence instruments.

The Foundation then works with networks of drivers and independent trade unions **to monitor compliance** with the standards. Concretely, the networks share information with the Foundation's "monitors." The monitors complete the information with desk research and other resources.

Remedial actions are implemented through discussions between the Foundation and the multinational customers.

tions in road transport supply chains by influencing the multinational customers who use those supply chains (see Box 6 below). The Foundation was instrumental in resolving the industrial dispute at the Polish Mazur Group in 2023 (see above Box 5). The European Transport Workers' Federation ensures the coordination between this initiative and the road transport trade unions across Europe fostering exchanges of information within the union family.

In a similar vein, our UK interviewee has described how his union negotiates, with retailers, a set of standards that should be respected throughout the value chain. The union expects to be involved in the process of selecting subcontractors and to be in a position to provide comments, for example, on the applied safety standards, or on known infringements of working or rest time regulations, that could result in a company not being selected.

Stronger social dialogue through framework agreements

While collective bargaining would normally be considered an essential tool for improving workers' working conditions, our interviewees in CEE Member States have commonly expressed a criticism of social dialogue at sectoral level in their countries. Poland is an extreme example, where no social dialogue has been conducted at sectoral level since 2017. Previously, a tripartite working party on working conditions in the transport sector had been established under the auspices of the Social Dialogue Council. In 2017, the employers and the government removed the workers' group from the tripartite working party, which resulted in the downgrading of the applicable terms of pay. Other trade unionists interviewed also highlighted weak social dialogue on labour standards in the transport sector in their countries.

A common stance among trade unions is that stronger social dialogue institutions are needed at national and European level, to contribute to the improvement of labour and social standards in the road transport sector. One way of achieving this

support could be for European and global social partners to explore the feasibility of transnational collective bargaining, in the form of a European framework agreement or transnational collective agreements, or both. European framework agreements are negotiated within the framework of European social dialogue and seek to establish general principles to be implemented at national level, either through national social dialogue or by a European directive.[24] A great number of these agreements have been negotiated at sectoral level, including, for instance, the agreements on working time arrangements reached in different sectors of the transport industry.[25] To date, relatively few initiatives seem to have been taken in the road transport sector.

Global Framework Agreements (GFAs) are instruments negotiated between the competent Global Union Federation and a multinational enterprise in order to ensure that the company respects the same standards in all the countries where it operates.[26] An increasing number of GFAs are being negotiated with retailers in the context of human rights due diligence. In the road transport sector, where many direct employers are micro enterprises or SMEs, such GFAs could offer an opportunity to extend the application of negotiated standards to all parties in a

supply chain. GFA clauses could, for instance, include the criteria for selecting business partners, including a proven employment record and a ban on the cheapest cost option.

Both European framework agreements and GFAs can help to establish a level playing field concerning the terms and conditions of employment of mobile workers, including third-country drivers. These agreements could include, besides other things, a commitment to securing fair competition in the transport sector, while laying down basic principles, such as equal pay for equal work. In order to ensure that these framework agreements become actionable tools, close attention should be paid to implementation clauses. Such clauses may, for instance, include joint monitoring mechanisms, with active union involvement, and transparent grievance processes.

4.2. Strengthening enforcement

All our interviewees advocated stronger enforcement of rules regulating employment in the sector. The general feeling was that better application of existing rules is a more pressing matter than introducing new legal rules.

[24] Art 155 TFEU

[25] Directive 2009/13 on the organisation of working time of seafarers concluded by the European Community Shipowners' Association and the Federation of Transport Workers' Unions; Directive 2005/47 on the agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector; Directive 2000/79 concerning the European agreement on the organisation of working time of mobile workers in civil aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA)

[26] [wcms_759477.pdf \(ilo.org\)](#)

The following recommendations suggest a “carrot and stick” approach, whereby unions would seek to enhance synergies with transport authorities, but would resort to strategic litigation in the event of chronic deficiencies.

Enhanced synergies with road transport authorities

Our research suggests that the Rome I Regulation and the enforcement of the directive on posting are insufficiently enforced in the road transport sector. Yet, these legislations are central in the fight against social dumping. Trade unions could thus explore the possibility of strengthening communication with national road transport authorities, in particular, through awareness-raising activities. If appropriate, the European Labour Authority could be associated to this work.

The objective of this union-led awareness raising would be to stress the importance of more systematic use of the laws applying to employment contracts, while having regard to drivers’ habitual places of work. To this end, a continuity of control should be ensured between all competent authorities, including roadside officers and labour authorities in charge of controlling posting and related rules.

Along with violations of Rome I and related rules, infringements have been observed of the rules on working and driving times, as well as rest periods, including the provisions allowing drivers to return home. Clearly, a common challenge concerns the way CEE Member States enforce the regulation and impose penalties for non-com-

pliance on drivers, rather than on operators, with fines for infringements of the driving time or resting period rules, detected during road inspections.

It follows that trade unions should continue to press for adequate funding of inspection services, given their role in the early detection of potential abuse or circumvention of the relevant legal standards. Our exchanges with ETF members have highlighted a general dissatisfaction with the number of inspections, which remains very low by comparison with the actual number of cross-border operations.

National trade unions should also develop precise demands on sanctions. The level of penalties imposed on companies should be such that operations would be significantly affected. Furthermore, as highlighted below, joint and several liability mechanisms can be a great support in securing the proper enforcement of penalties

Strategic litigation

In parallel with increasing synergies with enforcement authorities, ETF and its members could reflect on a targeted litigation strategy. The objective would be to coordinate and pilot cases before the courts at European and national level.

First, a more substantial case law on the application of Rome I in the road transport sector would constitute an important asset in the fight against social dumping. Article 6 of Regulation 1071/2009 (as modified by the Mobility Package) requests Member States to consider the proper

application of Rome I and posting rules before awarding a certificate of good repute. We anticipate that several CEE Member States have not put in place the required process to ensure that such checks are made on a regular basis. In the words of one of our interviewees: “in the end, there is always the political will of a country to introduce an enforcement, or to refuse to do so.”

We suggest building on Regulation 1071/2009 to pilot cases of infringements of EU law before the Court of Justice of the EU. The European Commission is the only institution entitled to take direct legal action against a Member State that fails to implement EU law. It can do so on its own accord or following complaints from citizens and stakeholders. Several criteria need to be met in order to file a receivable complaint, including a substantial violation of EU provisions and lack of redress under national law. Above all, the Commission applies a strategic approach to its enforcement actions, giving priority to the selection of cases that it considers to affect broader EU interests.[27]

To maximise the chances of success, selected cases should present a significant political interest, for instance, in countries where a large number of serious violations are going undetected to the point that the integrity of the internal market is being threatened.

Second, a litigation strategy can also target clear-cut cases of violations of drivers’ rights, and bring these before national courts. Such violations would include, in particular:

- Reliance on temporary work agencies in the employment of third-country drivers. This seems to be an illegal practice in the light of the rules on drivers’ attestations.
- Recruitment under the seasonal work directive. According to our exchanges with ETF members, road transport operators increasingly rely on the provisions of the seasonal work directive in order to fill high vacancy rates. Yet, freight does not fit the definition of seasonal work, as the positions are in theory available all year round. Passenger transport may be considered as a seasonal work as far as tourist transport is concerned. However, our interviewees report that drivers are also frequently required to fill gaps in local transport, which itself cannot be considered as seasonal work.
- Fake self-employment.

Increasing the number of cross-border inspections

According to Regulation 2019/1149, the European Labour Authority (‘ELA’) is competent to carry out joint cross-border inspections (that is, an inspection in one Member State carried out jointly by national authorities of several Member States) or concerted cross-border inspections (carried simultaneously in two or more Member States). It is important to note that ELA is not a labour inspectorate and thus cannot be considered

[27] EUR-Lex - 52017XC0119(01) - EN - EUR-Lex (europa.eu)

as an adequate solution in remedying the insufficiency of labour inspections at national level. That said, ELA may be a useful tool in assisting the efforts of domestic labour authorities, who are often handicapped by issues of territorial competence.

Trade unions in the transport sector can propose concrete cases for cross-border inspections. The application has to come from a national social partner, and they must first discuss the case with national authorities before escalating to ELA. According to our informal exchange with an ELA representative, all requests from trade unions have so far been accepted.[28]

However, the ETF reports that the obligation to first exhaust national remedies has had a hindering effect, as some national authorities have been undercutting union efforts to escalate to the ELA. The ETF is as a result developing demands to strengthen the mandate and the capacity of the ELA to carry out cross-border and joint inspections.

In 2022, ELA supported 33 cross-border inspections. In 2023, the number rose to 45.

Domestic joint and several liability

Subcontracting is a widespread practice in road transport. Large companies subcontract road transport to smaller operators, mainly established in Eastern and Central Europe. Subcon-

tracting allows the main contractor to externalise its costs and to reduce its potential liability as an employer. It is not unusual to see a large company largely dependent upon subcontractors, itself operating with only a small, or even non-existent, fleet of its own vehicles.

The European labour movement has long been demanding that EU law introduce a strong joint and several liability mechanism, according to which the main contractor is held liable for wrongdoings throughout the subcontracting chain. It is a difficult battle. While such liability has been introduced in a number of instruments, this has never been done in an unconditional or comprehensive way,[29]

National trade unions should therefore run campaigns for strong domestic legislation. As an illustration of good practice, in its transposition of Regulations 1071/2009 and 1072/2009, Belgium has introduced a law making the main contractor, the transport operator and intermediaries co-responsible for a number of legal obligations, including the obtaining of a valid licence, respecting the rules on driving times and rest periods, and not practising unlawful cabotage.[30] The contractor, the transport operator and intermediaries are also jointly liable in cases of abnormally low pricing, as this may be an indicator of violations of social rights. The objective of this law is to discourage companies from using subcontractors who are not compliant with their legal obligations. It also seeks to reduce the downward pressure on cost

[28] As of September 2023

[29] Liability in Subcontracting Chains: National Rules and the Need for a European Framework (europa.eu)

[30] Article 43 of the law of 15 July 2013 concerning road freight transport

exerted by large contractors on smaller actors in a subcontracting chain.

4.3. Addressing the weaknesses of the current legal framework

The legal framework in the road transport sector is dense and, at least in theory, quite strong by comparison with other sectors. While stronger enforcement is the core recommendation of this report, it may also be that additional legal changes can help the better application of existing legal rights. This would be the case for the regulation of subcontracting practices and the increased protection of migrant workers.

An EU directive on subcontracting

As described in in this report, employment patterns largely consist in hiring third-country drivers through subsidiaries established in CEE Member States and putting them at the disposal of the parent companies, themselves headquartered in Member States with higher labour costs. An EU directive on subcontracting should therefore limit the recourse to outsourcing or subcontracting where road transport is the core activity of the main contractor. Transport activities should be run in-house, not through reliance on subsidiaries and other intermediaries established in

countries with lower labour costs.

An EU directive on subcontracting would also represent another opportunity to introduce a comprehensive joint and several liability mechanism in the subcontracting chain.

Trade unions in other labour-intensive industries, such as the meat industry^[31] or the construction sector,^[32] are developing similar demands for the stronger regulation of subcontracting practices. The upcoming 2024 European Parliament elections are likely to constitute a key milestone for these union campaigns.

Stronger rights for migrant workers

Additional EU safeguards should be introduced in the various migration directives, including the single permit directive, in order to prevent abusive recruitment practices. In particular:

- the payment of recruitment fees by the worker should be banned. Although this practice takes place in a third-country, it should be clarified that an EU employer must guarantee full wages and that there can be sanctions for having recourse to a labour intermediary imposing recruitment fees onto the worker.
- Payment of wages by bank transfer as opposed to cash in hand should become mandatory. This is essential to limit undeclared work,

[31] Subcontracting Chains and Labour Intermediaries: EFFAT calls for EU binding initiative | EFFAT - European Federation of Food, Agriculture and Tourism Trade Unions

[32] <https://www.limitsubcontracting.eu/>

to counter fraud in social security contributions and to facilitate inspections.

Finally, this report has highlighted how third-country drivers are kept in vulnerable positions through the use of precarious contracts. In this regard, the current EU rules on the issuance of driver attestations make the driver strongly dependent on their employer. A targeted revision of Regulation 1072/2009 might therefore be necessary in order to improve the position of workers in negotiating their terms and conditions of employment.

Two options can be envisaged:

- One option is that the attestation is delivered directly to the driver. It then becomes the property of the worker, thus enabling a free choice of employer. This option offers the clear advantage of empowering the worker. The risk, however, is to have companies evading their responsibilities as employers, particularly with regard to verifying the lawfulness of the employment and the holding of

appropriate qualifications.

- Another option is to retain the idea that the attestation belongs to a single employer. However, this would come with stricter regulation outlawing such practices as reliance on a succession of short-term contracts for the same or similar tasks. Importantly, an attestation should have a minimum validity of six months. As described in Chapter two, many Member States have introduced a 6-month qualifying period before the worker can start enjoying social security rights. An attestation of minimum 6 months would greatly reduce the incentive for employers to impose excessively precarious contracts for the purpose of saving costs on social security contributions.

This option offers the advantage of securing some accountability for the employment of third-country drivers. The downside, however, is that practical enforcement of these conditions may prove difficult, as it is for other legal rights in the sector.



Conclusions

The present study has thoroughly explored the problem of violations of the labour and social rights of third-country drivers, who are predominantly recruited by road transport operators registered in CEE Member States. This issue has to be analysed within the broader context of social dumping practices that have been common in the European road transport sector during the past decade, with the replacement of drivers from WE Member States by drivers employed under CEE Member States' standards. The continued use of smaller road transport subcontractors based in CEE Member States by large transnational road hauliers headquartered in Western European countries has been conducive to the deterioration of working conditions and remuneration levels in the sector, across Europe. As a result, the sector has been burdened by an increasing vacancy rate, particularly in the aftermath of the COVID-19 pandemic, as low-pay sectors, including transport and storage, have experienced negative employment growth.

However, there is a continuous need among major players in the European road transport sector to maintain a reserve army of precarious labour, and to sustain the existing business model based on the externalisation of labour costs. Accordingly, vulnerable workers have been increasingly supplied from outside of the EU by operators located in CEE Member States. As shown in the study, these companies have been resorting to numerous violations of labour and social rights

to create a docile workforce and to restrict the bargaining power of third-country drivers.

Certainly, the problem of poor working conditions in the European transport sector has been acknowledged. The detailed rules included in the Mobility Package have been aimed at protecting the labour rights of drivers, including their posted work, and the rules on driving times and rest periods. Also, there is a vast body of European legislation regulating the employment of third-country workers. Nevertheless, the implementation of these laws, and crucially, the enforcement of the Mobility Package, particularly by CEE Member States, have been very weak. Moreover, the present study has identified important loopholes in the prohibition of social dumping within subcontracting chains, and in the protection of the labour and social rights of drivers who are non-EU nationals.

These issues can only be tackled by empowering trade union action, combatting the exploitation of third-country drivers and the social dumping practices in the European road transport sector. As has been made clear in this report, this can only be achieved through a systemic change, supported by public authorities at European, cross-border and national level. Trade unions must become recognised as vital actors in this process, through strengthened, joint capacity-building efforts and, crucially, enhanced participation in the sectoral social dialogue at all levels.

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