



European Economic and Social Committee

TEN/575
Internal market of
international road freight

Brussels, 17 September 2015

OPINION

of the
European Economic and Social Committee
on the

Internal market of international road freight: social dumping and cabotage
(exploratory opinion requested by the Luxembourg Presidency)

Rapporteurs: **Stefan Back** and **Raymond Hencks**

On 6 July 2015, the future Luxembourg EU Council Presidency decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on

The internal market of international road freight: social dumping and cabotage
(exploratory opinion).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 31 August 2015.

At its 510th plenary session, held on 16 and 17 September 2015 (meeting of 17 September), the European Economic and Social Committee adopted the following opinion by 170 votes to 3 with 5 abstentions.

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1. Conclusions and recommendations

- 1.1 The EESC reiterates its support for the Juncker Commission's objective to fight social dumping as expressed in its 2015 opinion on the Roadmap to a single European transport area, as well as its call for the Commission to propose preventive measures¹.
- 1.2 The EESC notes with satisfaction the support of the Luxemburg Presidency of the Council for the Commission's initiatives to fight all forms of social dumping, such as those related to undeclared work².
- 1.3 The EESC regrets that the notion of social dumping while extensively used is not defined. For the purpose of this Opinion the EESC considers as social dumping practices that endeavour to circumvent or are in breach of social or market access regulations (letterbox companies) in order to gain competitive advantages. This opinion will focus on ways to deal with this kind of action.
- 1.4 The EESC welcomes the Commission's plans:
 - to simplify and clarify EU regulations on access to the occupation of road transport operator and on access to the international road haulage market, particularly regarding cabotage in order to facilitate implementation;

¹ [OJ C 291, 4.9.2015, pp. 14–20.](#)

² Programme of the Luxemburg Presidency, p. 12.

- to strengthen the establishment criteria to prevent abusive use of "letterbox" companies;
 - for a labour mobility package to facilitate the free movement of workers and to improve the Member States' capacity to fight social dumping, fraud and abuse regarding the posting of workers and access to welfare benefits.
- 1.5 The EESC reiterates its support for the Commission proposal for a European platform to enhance cooperation in the prevention and deterrence of undeclared work and asks the Council and the European Parliament to adopt this proposal rapidly³.
- 1.6 The EESC believes that there is an urgent need for EU-level action to avoid the risk of fragmentation of the internal market in road transport through unilateral national measures to combat social dumping. Successful EU action may create favourable conditions for further market opening⁴.
- 1.7 The EESC asks the Commission and Member States, who are mainly responsible for the enforcement of both road transport and social legislation to prioritise the following:
- ensuring full cooperation between labour and road transport surveillance authorities in the EU Member States;
 - consolidating the data of the national electronic registers for road transport undertakings (see Regulation (EC) No 1071/2009, Article 16) with social and labour records of professional drivers to improve cross-border enforcement and counteract abuse or fraud;
 - urgently implement the interconnection of the national registers through the European Register of Road Transport Undertakings (ERRU), which should have been in place in December 2012, to improve cross-border enforcement and cooperation between Member States; using the Internal Market Information System (IMI) could be considered in this context⁵;
 - fully enforcing in the road transport sector the mandatory minima imposed through Regulation (EC) No 593/2008 (Rome I Regulation), and Directive 96/71/EC on the posting of workers and Directive 2014/67/EU on the enforcement of that Directive. The EESC points to the Commission's intention to consider Directive 96/71/EC and 2014/67/EU to find out if guidance or other measures are needed to facilitate efficient and legally certain implementation in the road transport sector.
- 1.8 The EESC underlines that reinforced compliance control must not mean disproportionate requirements that hamper normal competition between European transport companies and completion of the internal market in the road transport sector.

³ [OJ C 458, 19.12.2014, pp. 43–51.](#)

⁴ The EESC, in this context, refers to the assessment made in the Commission's 2014 report on "The State of the Union Road Transport Market" (COM(2014) 222 final).

⁵ Regulation (EU) No 1024/2012.

- 1.9 The EESC also points out that when proposing simplification of market access provisions, including cabotage, the Commission might consider the option of aligning the rules on road freight transport with those applicable to temporary provision of services in general, bearing in mind the specific character of the transport sector. Simplification of market access rules would provide a basis for more coherent enforcement and an enhanced culture of compliance which would limit the possibilities for social dumping. Simplification should be closely linked to vigorous enforcement of decided measures to avoid social dumping.
- 1.10 The EESC asks the Commission and Member States to foster the exchange of information and best practice on effective enforcement to combat abuse and social dumping. To this end, a high-level EU conference will be organised to present and share best practice.
- 1.11 The EESC asks the Commission to invite Member States to engage in projects to encourage and stimulate compliant undertakings via effective and operational risk rating systems.

2. **State of play of the sector and market**

- 2.1 Road freight transport is the engine of the European economy. It accounts for 73% of inland freight transport. Freight represents almost 2% of European GDP. The share of international transport increased moderately between 2004 and 2012 from 30% to 33%. The number of cabotage operations increased by 50%, but their market share is still low (only 5%). From 2005 to 2012 national haulage operations decreased by 9.1% while cross-trade was the fastest-growing segment of road haulage market: more than 80% between 2004 and 2012⁶.
- 2.2 In 2013 alone, cabotage operations went up by 20%. Western Europe hosts the largest percentage of cabotage operations. Thus, 86% of total cabotage takes place in Germany, France, Italy, the United Kingdom, Belgium and Sweden⁷. According to a study⁸ for the European Commission, most national transport is undertaken by domestic hauliers based within that Member State.
- 2.3 A European Commission report on the state of the market published in 2014 asserts that, all in all, wages, absolute levels of labour costs and other remuneration elements are converging across the EU⁹. Persisting divergences are said to correspond to the general difference in wage levels between EU-12 (EU-13) and EU-15 (EU-15 means Member States that joined EU before 2004 and EU-12 or EU-13 are the states that joined the EU in 2004 and later).

⁶ *Employment Conditions in the International Road Haulage Sector*, Study for the European Parliament EMPL Committee, 2015.

⁷ Idem.

⁸ *Collection and Analysis of Data on the Structure of the Road Haulage Sector in the European Union*, AECOM, 2014.

⁹ European Commission report on "The State of the Union Road Transport Market" (COM(2014) 222 final).

- 2.4 These differences must be regarded in the specific context of the road haulage sector, characterised by a high mobility of the workforce and by strong cross-border activity. While these wage differentials are inevitable across the internal market as a whole, if exploited in a way that circumvents or is contrary to the law, they may have an impact on competition conditions in the sector, and on the drivers' situation, as shown in the following sub-section¹⁰.
- 2.5 It is acknowledged that the road freight transport sector faces a number of other challenges. As well as suffering from a shortage of skilled drivers, the sector remains unattractive for youth and women, mainly due to poor working conditions, poor remuneration, lack of career prospects and the poor work-life balance record¹¹. While this opinion focuses on the need to address social dumping in the sector, it is recognised that progress in meeting the above challenges can also contribute positively to mitigating social dumping.
3. **EU rules applicable to the road haulage sector**
- 3.1 The following EU legislation and jurisprudence is particularly relevant for this opinion.
- a. Access to the profession and market access:
- Regulation EC (No) 1071/2009 establishing common rules on access to the occupation of road transport operator;
 - Regulation EC (No) 1072/2009 on common rules for access to the international road haulage market ;
- b. Social legislation specific for road transport:
- Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities;
 - Regulation (EC) No 561/2006 on driving time, breaks and rest periods in the road transport sector;
- c. Other pertinent EU legislation (social, etc.) applicable to all industrial sectors:
- Regulation (EC) No 593/2008 (Rome I Regulation) on the law applicable to contractual obligations;
 - European Court of Justice (ECJ) rulings on the *Koelzsch* case (15 March 2011) and the *Voogsgeerd* case (15 December 2011), clarifying the application the Rome I Regulation to the specific circumstances of the road transport sector;
 - Regulation (EC) No 883/2004 and the accompanying implementation Regulation (EC) 987/2009 on the coordination of social security systems;
 - Directive 96/71/EC on the posting of workers in the framework of the provision of services;

¹⁰ European Commission report on "The State of the Union Road Transport Market" COM(2014) 222 final, Section 3.2.

¹¹ *Collection and Analysis of Data on the Structure of the Road Haulage Sector in the European Union*, AECOM, 2014.

- Directive 2014/67/EU on the enforcement of the Posting of Workers Directive in the framework of the provision of services.

- 3.2 The Posting of Workers Directive and its Enforcement Directive apply wherever all the conditions set forth in the Posting of Workers Directive are met. Hence, the Directives apply only regarding temporary postings outside the country where the driver habitually works. Where applicable the Posting of Workers Directive grants the minimum pay and certain other social provisions of the Member State where the work is carried out. Otherwise the applicable law will be governed by contract and the Rome I Regulation on the law applicable to contracts (Regulation (EC) No 593/2008). The Rome I Regulation will give preference to mandatory employment rules applicable in the country where or from which work is habitually done, irrespective of the home base of the employee or the law selected in the employment contract. Reference is made to the ECJ decisions quoted above under 3.1.
- 3.3 In a number of situations it will be difficult to demonstrate that the Rome I Regulation or the Posting of Workers Directive will grant precedence to provisions other than the law of the home base or the law contractually agreed. When deciding on the applicable law, enforcement bodies will then consider all relevant elements, including the requirement for a real link with the home base for that law to apply.
- 3.4 The EESC points out that the Posting of Workers Directive 96/71/EC has been applied in different ways regarding the road transport sector. It is therefore important to scrutinise the implementation of that Directive and the enforcement Directive 2014/67/EU in the context of the planned worker mobility package to ensure coherent and efficient enforcement.
- 3.5 As already pointed out in particular rules on market access in the road transport sector, including cabotage are unclear and complex and are interpreted and implemented in different Member States. This creates legal uncertainty for all concerned and makes it difficult to check compliance.
- 3.6 The above implementation problems, together with a wish to urgently deal with the issue of social dumping has led to a situation where a number of Member States have adopted national legislation to deal with the problem of wages and social standards. Such measures are already causing problems for the proper functioning of the internal market, for instance regarding national minimum wages and driving and resting time regulations¹².

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Commission press release on 19 May 2015 and article in Financial Times on 19 May 2015 "Protests from Road haulage industry forces Brussels to act". See also DG Move Newsletter (Issue 183 on 12.9.2014) and answers by the Commission to the European Parliament's questions E-006597-14 and E-007161-14.

4. **The problem and whom it affects**

- 4.1 This exploratory opinion deals with social dumping and cabotage in road freight transport. For Western European hauliers, labour is by far the largest part of their operational costs. By contrast, for operators based in Central and Eastern Europe the highest average cost is fuel. A different cost structure may also enable more investment. Against this background, some EU-15 hauliers experience a competitive disadvantage and seek to use low-wage labour. This is sometimes done by EU-15 as well as EU-13 hauliers through schemes that circumvent or breach EU or national legislation (i.e. Regulation (EC) No 1071/2009, Directive 96/71/EC, letterbox systems, etc.). Loopholes in legislation and the mobile character of transport activities may make it difficult to detect illegal schemes. As pointed out in 4.6 below, labour costs may also be reduced in a perfectly legal way. It will however, in any case, often cause tensions.
- 4.2 The **parties negatively impacted by social dumping practices** are, in particular, road haulage undertakings that do not resort to such practices, and professional drivers, at least in EU-15. Also serious actors suffer damage to their image and are exposed to negative effects of such unilateral measures as evoked above in 3.6. This is why the European Commission plans proposals in 2016 to address the problem of social dumping in road transport. However, without a sound and thorough analysis of the road haulage market one can hardly expect a pertinent proposal. Data exists already at national level via the national electronic registers (NERs) for road transport undertakings. At EU level data should as a rule have been available via the European Register of Road Transport Undertakings (ERRU), which should have connected the NERs and facilitated exchange of data on the repute of undertakings by December 2012, as foreseen in Regulation (EC) No 1071/2009. The ERRU has still not been implemented. The EESC regrets this and considers that this shortcoming has negative effects on compliance control.
- 4.3 With regard to **professional drivers** unlawful practices mainly concern:
- Pay: while remuneration according to the driver's home-base country ("country of origin" principle) is perfectly normal and acceptable when the legal conditions are fulfilled, there are cases, especially in cabotage, where improper use is made of this principle, in contradiction with the mandatory provisions in the Posting of Workers Directive or the Rome I Regulation.
 - Working conditions: inappropriate planning of the driver's journeys, which leads to an excess in driving time; remuneration of driving time only, and not of working time activities such as loading and unloading.
 - Social security: non-payment of social security contributions by the employer, with a critical impact on the rights and benefits of drivers and their families.
 - Health benefits: company charging the driver for medical insurance, and/or medical care, etc.

- 4.4 A number of undertakings have developed complex and ambiguous employment schemes, taking advantage of the cross-border and high-mobility nature of the sector, resorting to agencies, manning companies or fictitious companies (the "letterbox" system) based in Member States with low protection and low labour and social standards. Depending on the circumstances such arrangements may be borderline or illegal, in particular where the links of the employment contract to a country with low wages and low social standards are fictitious.
- 4.5 The complex employment schemes in road transport make it harder to track down the undertaking and hold it liable, for instance, in case of claims related to unpaid wages or social security. Inversely, these shady employment practices make it much more difficult for non-resident – let alone third country – drivers to understand, manage and access their rights and benefits
- 4.6 Examples of practices that may be in breach of law are:
- Operating via a letterbox company – this has been prohibited since 2011 following the adoption and entry into force of Regulation (EC) No 1071/2009, which stipulates that the right to establish a business in a Member State is granted and maintained only if the company has "stable and effective establishment".
 - Applying the pay and conditions of the home-base country, and not mandatory rules of the country in which or from which the driver habitually carries out the activity – when in breach of the Posting of Workers Directive and Rome I Regulation (with the ECJ ruling on the *Koelzsch* case), as explained in Section 3, above.
 - Remuneration per kilometre-driven – this is in breach of Regulation (EC) No 561/2006, which forbids this type of payment insofar as it represents a road safety risk.
 - Living for months in and around the truck, with limited or no access to sanitary facilities, hot food, etc. – in breach of the Charter of Fundamental Rights of the European Union, Article 31 "Every worker has the right to working conditions which respect his or her health, safety and dignity".

Clearly there will also be situations where costs can be reduced in a perfectly legal way, for instance by establishing a daughter company or using an independent manning company.

- 4.7 Cabotage is defined as the national carriage of goods performed by non-resident hauliers, on a temporary basis, in a host Member State. "Temporary" is defined by Regulation (EC) No 1072/2009 as three cabotage operations within a period no longer than seven days following an international journey to the host state. Enforcement and control of cabotage are difficult because the market access regulation does not make enforcement easy. It prevents enforcers from asking for additional documents in order to check compliance with cabotage rules. Furthermore, the rules themselves are not clear on a number of points and understood differently in different Member States. This is for instance the case regarding the definition of a journey. This has led to a low rate of controls, both at the roadside and at the company's premises.

- 4.8 The EESC considers that a different cost structure in the EU-13 will attract companies. This as such is not a problem from an internal market point of view. It must however be noted that to the extent that activities said to be based in EU-13 states are in fact established in the form of letterbox companies with no real activity in the EU-13, a case of social dumping may be at hand. In 2013, faced with the European Commission's plans to liberalise cabotage rules, the European Social Partners from the road sector, the ETF and the IRU, signalled that the market was not ready for the full opening of domestic haulage to competition, precisely because of the social and fiscal disparities across the EU¹³. The IRU and the ETF called for the rules not to be changed but to be enforced more effectively instead.
- 4.9 The EESC also draws attention to the need to make sure that third-country drivers employed by EU companies are recruited with full respect for applicable immigration rules, work under conditions that respect mandatory legal provisions and are issued with a driver certificate as required by EU legislation.
- 4.10 It is against this background that one should view the Commission's current focus on social dumping, as stated in President Juncker's political priorities and the 2015 work programme and the Council expressed, inter alia, in the programme of the Luxemburg Council Presidency.

Apart from the pending proposal for a platform to combat undeclared labour and social dumping, the Commission has announced two significant initiatives:

- A review of road transport legislation to clarify rules on establishments, and cabotage and facilitate controls.
- A labour mobility package to prevent circumvention and abuse.

Success on these points is essential to avoid fragmentation of the internal market in transport through national implementation measures and to create conditions for further market opening in this sector.

- 4.11 The EESC would raise the option of simplifying the market access rules on cabotage by introducing a rule similar to that which applies regarding cross border service provision in general. This means clearly linking the right to provide cabotage services to their temporary character. This would avoid the endless and systematic piling up of seven day cabotage periods that currently seems possible, and make it clearer where a duty to create an establishment in the host country appears. It would also avoid the current divergences on interpretation of the fairly detailed but unclear provisions in the present rules.

¹³ *Social Sector Partners Proposal for a Policy Package for the Next Revision of the EU Regulations 1071/2009 on Access to Profession and 1072/2009 on Access to the Road Haulage Market, 2013.*

Brussels, 17 September 2015.

The President
of the
European Economic and Social Committee

Henri Malosse
