



**European Platform Undeclared Work**

# **Tackling Undeclared Work in the Road Transport Industry**

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A learning resource from the Road Transport Seminar  
of the European Platform Undeclared Work

Brussels, 1<sup>st</sup> June 2018

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This publication has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014-2020). For further information please consult:

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## SUMMARY

The Platform seminar "*Tools and Approaches to Tackle Undeclared Work in the Road Transport Sector*" provided participants with an opportunity to present, exchange and discuss national and cross-border initiatives, challenges and good practices in relation to tackling undeclared work in the road transport sector.

It brought together 34 Platform members and observers. Participants represented labour inspectorates, social security, tax and customs authorities, along with national and European social partners from the road haulage sector.

Discussions centred on challenges to safeguard fair competition and working conditions in road haulage against the backdrop of high cost pressures, driver shortages, and complex regulations.

This learning resource describes the seminar outcomes.

### Key findings:

- **Undeclared work in road haulage** follows patterns similar to other sectors. This often involves subcontracting chains, bogus firms, and false registration of employees. All these infringements entail consequences for tax and social security evasion and labour law violations.
- Road haulage is a **highly regulated sector**. Sector-specific regulations exist at European level which include, among others: driving and rest time; access to the European road haulage market; and the establishment of transport companies. At national level, sector-specific regulations such as those targeting company formation or employers' liability, impact the tackling of undeclared work in road haulage.
- **Key challenges** to detect forms of undeclared work arise from ineffective implementation of European regulation at national level, and complicated inter-institutional and cross-border cooperation of competent authorities. There is also need for a more efficient use of digital control devices and data sharing, in a sector with highly mobile and dispersed workers.
- **Policy approaches** focus on the improvement of **direct controls** that seek to alter the costs of undeclared work and/or benefits of operating on a declared basis. Examples of inter-institutional cooperation of competent authorities include data sharing and training, as well as joint inspections.
- **Indirect policy approaches** launched by social partners and labour inspectorates, seek to encourage voluntary compliance by using awareness campaigns and addressing the structural conditions that cause undeclared work. Another indirect policy approach initiated by the trade unions aims at supporting drivers' claims of wages and rights in a cross-national setting.
- Less emphasis is currently put on **direct deterrence** measures that tackle the liability of the contractor for working conditions in the supply chain. The **cross-border cooperation of authorities** is also still poorly developed. **More targeted, strategic and risk-assessment based inspections** as well as **additional training and education of inspectors** on both deterrence and preventative approaches is needed and should include opportunities for exchanges among different countries and authorities.
- The seminar presented some exemplary **preventive measures** that could be replicated.

# 1. EXTENT AND NATURE OF UNDECLARED WORK IN THE ROAD TRANSPORT SECTOR

## 1.1. What is the prevalence and character of undeclared work in road transport?

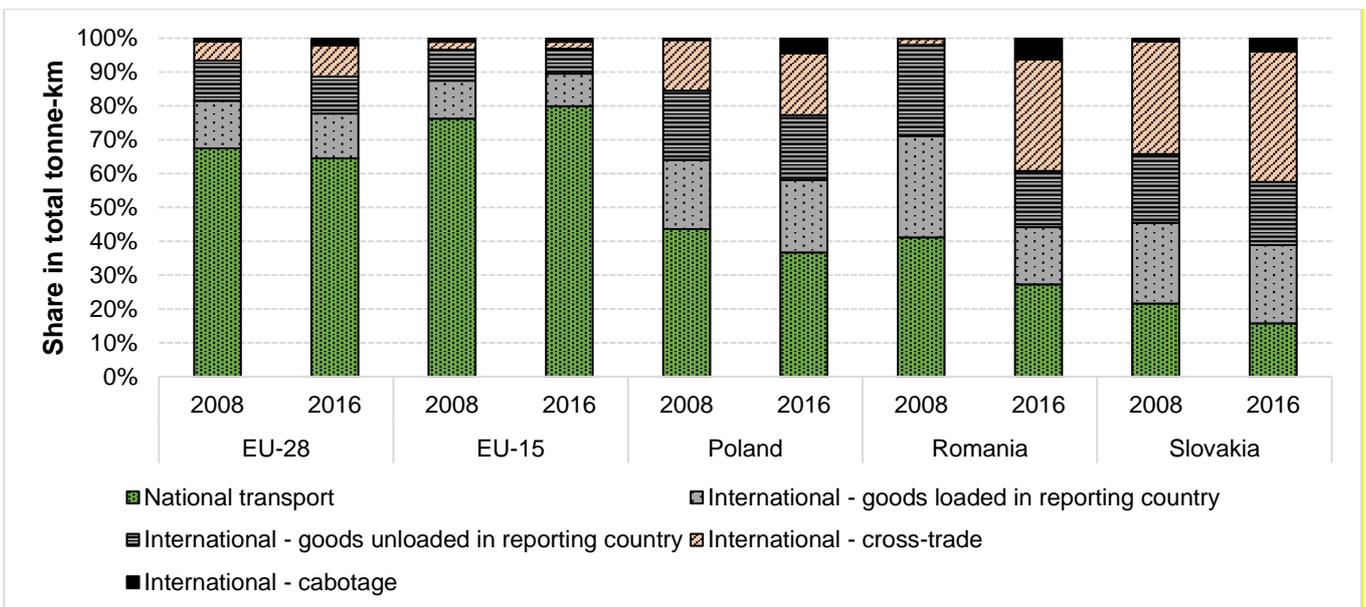
The issue of undeclared work in the road freight transport has gained increasing attention. Cases of tax and social security fraud as well as underpayment of workers in international road haulage have revealed systematic failures of companies to comply with sector-specific and general regulations.

The classical form of undeclared work (e.g. underreported working time, overtime or cash in hand) is prevalent in 'last mile' road freight transport<sup>1</sup>. This is a result of an increase in e-commerce and home delivery. **Bogus self-employment** is also expanding, leading to underpayment, tax and social security fraud and infringements against working time regulations.

Undeclared work in transport services is predominantly seen in business-to-business contracts. There is a lack of accurate and harmonised numbers to estimate undeclared work in road freight transport. However, researches that studied market developments, company structures and employment conditions in road transport reveal particular and recurrent patterns of undeclared work in this sector. Undeclared work takes multifarious forms in the sector in the EU. It can have both a cross-border and national dimension. In both, undeclared work can be in the form of underreported work (working hours, driving and rest time) and the false registration of employees. This seems to be favoured when contractors refer to **multi-level subcontracting**. Such strategies exploit regulatory loopholes and wage differentials and make the verification of compliance complicated.

Following the EU-enlargement of 2004 and 2008 and liberalisation of the European road freight transport market, cross-border transport activities have shifted from Western European to Eastern European companies and workers (see Figure 1).

**Figure 1: Road freight transport by type of transport, share in total tonne-km, 2008 and 2016**



Source: Pacolet, elaboration on data from Eurostat [road\_go\_ta\_tott)

<sup>1</sup> 'Last mile' is a term used to describe the movement of goods from a transportation hub to a final destination in the home.

In this context, the practice of registering lorries or trailers abroad (known as outflagging) and establishing subsidiaries abroad has increased. This is being used as a strategy for finding the most cost-efficient way to run an international road haulage business (Kummer et al., 2014). However, corporate arrangements aimed at reducing operational costs by subcontracting business to countries with lower labour costs, open opportunities for illegitimate practices (McGauran, K., 2016, Ricardo Energy & Environment, 2017a).

Another example of non-compliance with employment rules is the **non-declaration of posted workers** when they perform cross-border transport services, including cabotage<sup>2</sup>. The posting of Workers Directive<sup>3</sup> also applies in international road transport. Posted workers are entitled to host countries' minimum rates of pay and core employment conditions, while employers may pay workers' social security contributions to the country of origin. However, often these regulations are not respected. Workers are being paid according to the much lower minimum wages of their countries of origin, and this results in a low assessment base for social security contributions. Workers lose remuneration, social security institutions lose contributions. Changes in the regulatory framework are expected to take place in the context of the revision of the Posting of Workers Directive<sup>4</sup> and the adoption of a specific regulation for transport workers contained in the mobility package<sup>5</sup>.

At the national and local level, undeclared work often takes the form of **bogus self-employment and wholly or partly undeclared work**. For example, in Poland the most frequent irregularities in road transport concern the employers missed duty to register workers with the social insurance system, the absence of a written contract or a civil law contract. French authorities received increased complaints from competitors about unfair competition among operators of light duty vehicles, including the violations of labour rights.

Bogus self-employment is a form of **disguised employment**. This is a key issue among heavy goods vehicle (HGV) drivers in the UK. Drivers in disguised employment receive payments from a client, mostly a transport company, via an intermediary. However, the relationship with their client is such that - had drivers been paid directly - they would be employees of the client. In doing so, clients and drivers disguise an employment relationship to save on national insurance and taxes.

**Outsourcing** is also an issue in national road freight transport, especially in parcel delivery. Third-party logistic providers, as principal contractors, subcontract delivery services to self-employed couriers or couriers employed by small subcontracting firms via chain links (up to three). As a rule, the further away from the principal contractor the more precarious, unstable, and unprotected are the workers' employment rights.

## 1.2. What are key challenges for compliance and enforcement?

The seminar revealed a number of key challenges to tackle undeclared work in road transport. They refer to encouraging employers and workers to fully comply with the

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<sup>2</sup> Following the EU regulation 1072/2009 providing common rules for access to the international road haulage market (cabotage operations), foreign haulers are entitled to perform up to three cabotage operations with the same vehicle within a seven-day period starting the day after delivery of the main cargo.

<sup>3</sup> Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0071:en:HTML>

Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'), OJ L 159, 28.5.2014, p. 11.

<sup>4</sup> European Parliament legislative resolution of 29 May 2018 on the proposal for a directive of the European Parliament and of the Council amending Directive 96/71/EC <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP8-TA-2018-0213%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

<sup>5</sup> Fact Sheet "Social Rules: Truck Drivers' Posting", <https://ec.europa.eu/transport/sites/transport/files/mobility-factsheet-road-initiatives-posting.pdf>

existing encompassing regulation and to authorities' difficulties to enforce compliance effectively.

In European-wide road haulage, **current EU legislation offers a number of regulations and enforcement possibilities to tackle business practices that foster undeclared work** in this sector. They aim at protecting drivers' working conditions<sup>6</sup> and at preventing the establishment of letterbox companies and, consequently, cross-border social insurance fraud<sup>7</sup>. In addition, the so-called 'Rome I' Regulation (593/2008/EC)<sup>8</sup> devising the law applicable to contractual obligations, and the Posting of Workers' Directive shall ensure that workers in international transport are granted adequate protection of workers.

The main challenges lie on the one hand in **clarifying, implementing and enforcing existing regulations at national level, and closing regulatory loopholes, as well as in encouraging compliance, on the other hand.**

### 1.2.1. Closing regulatory loopholes

Regulations are vast but some loopholes still prevail. For instance, the criteria for access to the profession and to the market as well as driving and rest time regulations, only cover operators with Heavy Goods Vehicles (HGVs). These regulations ensure fair competition among hauliers and help to prevent undeclared work. The International Road Transport Union (IRU) suggests to extend the same regulations to Light Goods Vehicles (LGVs).

Another pressing issue is the **monitoring of subcontracting chains and liability claims** in road transport. According to the EU regulation 561/2006, Article 10, clients, the forwarders, can be made responsible to respect drivers' driving and rest times. However, only those social regulations that explicitly cover road haulage are captured by liability provisions, while liability claims for wages and social insurance contributions are not. Hence, the **liability in subcontracting chains** to bring the responsibilities of the principal contractors more to the forefront should be extended and refined. Other options in this vein include limiting subcontracting chains, or introducing minimum requirements for contractors.

In domestic road haulage, **detecting bogus self-employment is complicated** (Haidinger, 2017). Depending on the country, different authorities are competent to verify if a person is considered as employed or self-employed. In cases of alleged bogus self-employment, in most Member States, a court decides the nature of the employment relationship ex-post. The classification of a person's employment status depends on the specific circumstances in which he/she is performing deliveries and on the nature of the services.

### 1.2.2. Enforcing EU regulations by better data management

Social partners mentioned two particularly **important mechanisms at European level** to improve the exchange of information between Member States and to better monitor transport undertakings and suspicions of letterbox companies:

a) A European-wide register on transport undertakings, the "European Register of Road Transport Undertakings" (ERRU). By now, national databases feeding ERRU should be interconnected to ensure access and monitoring of performance of national undertakings. However, some Member States have not yet or insufficiently implemented the register

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<sup>6</sup> These include EC Regulation 561/2006 on driving hours and rest times, Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities, and Directive 2006/22/EC which sets forth minimum conditions for the implementation of checks and extensive legal and technical rules for standard checking equipment.

<sup>7</sup> These include Regulations (EC) 1072/2009 and 1071/2009 providing rules for the access to the transport market (cabotage rules) and for the establishment as a transport operator.

<sup>8</sup> Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I), <http://eur-lex.europa.eu/legal-content/de/ALL/?uri=CELEX%3A32008R0593>

(Ricardo Energy & Environment, 2017b, p. 49). Hence, the register is hardly used for inspection purposes at the road side.

b) A risk assessment system. An effective risk assessment system (interconnected European wide) would allow authorities to better monitor transport undertakings and inspect more strategically, on the basis of calculated risks and companies' probability for infringement.

Detection would also improve if the use of **electronic documents** for transport undertakings or the instalment of the **smart tachograph** were obligatory. This would allow inspectors to have available information on board of the vehicle, including the status of the worker, driving and rest times.

Improved data management presupposes specific training of inspectors and a mutual and declared willingness of inspectorates to share and use data from different sources.

### **1.2.3. Enforcing regulations by improving cooperation of authorities**

A variety of authorities are in charge for enforcing regulations applicable in road haulage. Authorities' competence depends on the type of infringement (i.e. fake establishment of a subsidiary, undeclared work, non-declared posted work, irregular cabotage etc.).

The **scattered nature of nationally based inspection bodies** makes the detection and prosecution of infringements difficult. An increased, strategic, and – where necessary cross-border - cooperation between road side inspectors, police, labour inspectorates and/or tax authorities is needed.

### **1.2.4. Information and awareness**

Companies and workers in road transport sometimes **lack information and awareness about obligations and rights** in transnational contractual relations. This makes it difficult for them to claim their entitlements and wages.

## **2. POLICY APPROACHES TO TACKLE UNDECLARED WORK IN ROAD TRANSPORT**

A wide range of tools exist to tackle undeclared work<sup>9</sup>.

- Direct tools aim to tackle undeclared work by ensuring that the benefits of declared work outweigh the benefits of undeclared work. This is achieved either by using:
  - Deterrence measures to increase the penalties or negative consequences of undeclared work;
  - Incentive measures to help make declared work more beneficial and easier;
- Indirect tools seek either to change the norms, values and beliefs regarding the acceptability of undeclared work, so that these are in symmetry with the regulations and/or to change the formal institutional limitations that lead to undeclared work.

The approaches which were discussed at the seminar are explained in further detail in the following sections.

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<sup>9</sup> They are set out in the Platform learning resource paper on "Developing a Holistic Approach for Tackling Undeclared Work" (Williams, 2017, pp. 3-5)

### 3. DIRECT POLICY APPROACH: DETERRENCE MEASURES

Discussion at the seminar showed predominant attention to enforcement agencies on deterrence measures. Measures included better inter-institutional cooperation of the competent authorities, the use of new digital tools and databases to make enforcement more effective, and the monitoring of subcontracting chains.

#### 3.1. Improved cooperation among authorities

**Inter-institutional cooperation** is crucial for tackling undeclared work in the sector. In the road haulage, the transport companies' premises are almost always different to the driver's workplace. He or she is on the road. Competences for inspections at the premises and on the road, are split and vary from country to country. In most European countries, labour inspectorates are responsible for inspecting labour regulations at the premises of the undertaking and for inspecting compliance with posting regulations; police or road inspectors are in charge of inspecting the technical conditions of the vehicle, rest and driving time and compliance with cabotage regulations at road side inspections.

At the seminar Italy, France, Sweden, Greece and Poland presented examples of training and joint inspections to improve inter-institutional cooperation and detection of infringements. Two of these are detailed in the boxes below: one fostering cooperation between police and labour inspectorate in Italy; the other aimed at enhancing controls and sanctions against non-compliant operators of light-duty vehicles in France.

#### **"Operational synergies for all-round checks"** (Italy, National Labour Inspectorate)

In Italy, the national labour inspectorate authority (INL), cooperates with the police authority. The project was launched at regional level, in Vicenza. Both authorities have different competences for controlling road transport. INL is responsible for inspecting employment, contracts, driving and rest time at the company's premises. The police authority is in charge of monitoring driving and rest times and reading tachograph data at road-side inspections.

The aim of the initiative is to improve the detection of irregular work, bid rigging, fictitious transnational posting and the infringement of working time regulations. Authorities exchange and share data, inform each other about and results of controls. This cooperation helps to identify companies with major irregularities. As a first step, the two authorities cross-check data from different databases to trace irregularities and to identify relevant cases for further inspection. As a second step, the two authorities conduct a joint inspection at the premises of the company, gathering relevant data and proof.

Joint inspections result in improved detections and better assessment of fraudulent business practices, false posting, undeclared work, and infringements against other road regulations. At the same time, a joint inspection process makes operating inspectors more aware what indicators – on the road and at the premises – are key to detect irregularities. In addition, both authorities involved in this project engage in preparing court proceedings in case of prosecution. The initiative is planned to be extended to other Italian regions.

#### **"French Bourgogne Franche Comté agreement to boost controls and sanctions"** (France, Ministry of Labour and Ministry of Transport)

In the region of Bourgogne-Franche-Comté, the Ministry of Labour and the Ministry of Transportation, work jointly to tackle undeclared work in road transport, notably involving light duty vehicles. The ministries undertake joint and coordinated inspection of French and foreign light-duty vehicles, together with the police, and labour inspectorate agents at key crossing points. The inspectors check the correct registration of the company, the lawfulness of transportation, control vehicle weight, driving and rest times, or posting declaration. The joint inspection aims to spread information to workers about their rights (wages, working hours, rest periods), at assessing the dimensions of undeclared work, and in case of infringement, at notifying the firm and (where applicable) imposing fines.

When violations recur, authorities launch an in-depth investigation against the firm.

Such joint inspections increase the visibility and efficiency of road side controls. Workers receive direct information about their rights and inspectors check and record working time. If inspectors detect irregularities, they impose a back-pay of missing wages. Hence, this measure helps to improve workers' health and overall working conditions as well as road safety. The specific impact of the inspections on firms and the road transport is fairer competition; better information serves as a preventive measure.

On the downside, road side checks take time, in particular when investigations are beyond the reach of the French authority. Language barriers, different legislation, letterbox companies make investigations difficult. Hence, administrations and transport and labour authorities should improve the exchange of information and data, and make reports from previous checks available. Another key point for sustainable enforcement is the establishment of competent networks dealing specifically with undeclared work and with transport issues in the respective ministries.

### 3.2. Use of new digital tools and databases

Another measure to improve the detection of infringements is the **use of new digital tools and databases to make enforcement more effective**. European legislation foresees several registration systems for road transport undertakings. The internal market information system (IMI) is another useful tool for data exchange. Some Member States are lagging behind with implementation and usage. Furthermore, only specific authorities have access to the registration systems due to data protection reasons. Hence, a close cooperation of competent inspection bodies, as the French and Italian examples show, is necessary to gain access to different tools. When authorities share and compare data and assess risk-prone and/or suspicious companies, inspections become better coordinated and targeted. Such cooperation already established between different inspection bodies should be extended to a transnational level.

The seminar provided another example how to get **standardised information about companies operating transnationally**. The ORBIS database allows to systematically search for indicators relevant for an assessment of a company's activity domestically and abroad (Wispelaere and Pacolet, 2018). This information can be crucial for assessing if a subsidiary of a transport company with its headquarters in Member State X is suspicious of being a letterbox company in Member State Y. The information gained via the ORBIS database can improve authorities' knowledge about the corporate ownership structure and financial accounts of hauliers with foreign subsidiaries or shareholders. Authorities otherwise could only obtain such data by rather time-consuming inquiries to foreign enforcement bodies. Since access to the database is quite costly, seminar participants suggested to use it primarily at European level. It is a useful information source for a Labour Authority that is operating European-wide.

Another data source for detecting undeclared working time are **analogue and digital tachographs on board** vehicles. Among other data, these devices record driving and drivers' rest time. The obligatory instalment of the smart tachograph (planned for 2034) into all heavy commercial vehicles could improve the detection of undeclared work. Another problem, raised by the Greek Labour Inspectorate in this context, is the access, interpretation and procession of tachograph data by different authorities. To tackle this, the Inspectorate created a specific **Road Traffic Control System** which first allows the user to more easily read the analogue and digital tachograph data. Second, authorities can connect and cross-check the extracted information with other sources, i.e. databases and data gathered during inspections at company premises. Such data matching is crucial for labour inspectorates to monitor compliance with working and rest time and to detect un- or underdeclared work.

### 3.3. Improved mutual learning

Participants agreed **that further education, training and insights into inspection practices of other national authorities as well as authorities in other Member**

**States**, including joint training, might be useful. In addition, as was emphasised by IRU, Euro Control Route (ECR), performs coordinated cross-border checks. It is a group of European Transport Inspection Services working together to improve road safety, sustainability, fair competition and labour conditions in road transport. ECR together with nationally based road inspectors carry out road side checks. However, they are solely concerned with European road transport legislation compliance (driving and rest time, freight load, etc.), they are NOT competent to inspect for undeclared work or non-compliance with labour regulations. In the seminar, participants proposed to strengthen exchange and joint training between ECR and an equivalent on the side of the labour inspectorates (e.g. the liaison office of labour inspectorates or a future European Labour Authority) and related national inspectors.

### 3.4. Monitoring compliance in supply chains

Another pressing issue for enforcement is **monitoring of subcontracting chains and liability claims** in road transport. There is a need to bring forward effective liability regulations at national level that reach beyond the scope of European legislation, as well as suggestions on effective enforcement. Subcontracting liability arrangements are very heterogeneous and vary from country to country.

In Finland transport company customers have to check whether the business they work with has a valid transport permit and observes all fiscal obligations and respective labour regulations. The Finnish Act on the Contractor's Obligations and Liability, stipulates the direct contractor's liability for temporary agency workers and subcontractors. In case of inspection, the OSH-Agency checks (among others) compliance of subcontractors with social insurance, collective agreement, or tax payment in the transport company's premises. In 2016, the OSH-Agency reported infringements in 80% of all checked companies in the transport sector. The high number of detections raised awareness about the law. The Finnish inspection body would appreciate additional access to documentation about foreign subcontractors to better track down (non) compliance of foreign firms.

In other countries for instance, Germany and Norway, the liability extends to the whole chain, thus offering better guarantees to workers to receive their remuneration when the direct employer is not complying. Two additional points for effective enforcement of liability regulations should be considered: 1) Companies and workers must know about regulations and their rights. 2) Effective enforcement of liability regulations should result in the collection of fines, taxes and social security contributions to the respective authorities as well as payment of back pay to workers. Social partners may have a pivotal role in this case to support drivers to be informed about their rights and claim wages. For instance, in Germany, the association Fair Mobility (Faire Mobilität) provides counselling and support services (among others) to truck drivers from Central and Eastern Europe (CEE) on international journeys to claim fair wages from employers or - where applicable - from contractors.

*The seminar presented a variety of approaches to improve detection of undeclared work in the transport sector. Many of them highlighted the need for better inter-institutional cooperation and a targeted inspection policy. Although such initiatives are important steps to secure compliance, authorities should put more emphasis on cross-border exchange of data and practices as well as on risk-assessment based inspection strategies.*

## 4. DIRECT POLICY APPROACH: INCENTIVE MEASURES

Rather than increase the costs of undeclared work using penalties and increasing the risk of detection, undeclared work has also been tackled by improving the benefits of, and making it easier, to operate on a declared basis. Until now, this has been less often considered as a solution for tackling undeclared work in the sector.

Participants agreed that **simplifying compliance** in a sector where regulations are becoming ever more complex is essential. Drivers on international journeys are, as a matter of fact, permanently subject to different remuneration systems, that, e.g., consider per-

diems as part of minimum remuneration or not. A **harmonised and common structure of wages** would make compliance easier for companies and entitlements clearer for workers and inspection bodies.

Another incentive to operate on a declared basis would be providing a **penalty-free limited-time opportunity** for road hauliers to put their affairs in order. In Austria, companies (irrespective of the sector) found non-compliant with the provisions stipulated in the Act to Combat Wage and Social Dumping, can go unpunished. This amnesty applies, when employers pay back wages to workers and related contributions and taxes, acknowledging that lapses happen and providing an opportunity to remedy a mistake.

Incentive measures to operate on a declared basis might also include **preventive information campaigns and tools to check the operator's compliance with the law**. Employer organisations, such as the Road Haulage Organisation (RHA) in the UK, offer information and advice for their members to prevent disguised employment.

**"Social partner cooperation with the HM Revenue and Custom to prevent abuse of bogus self-employment"** (UK, Road Haulage Association)

Bogus self-employment or disguised employment among LGV-drivers in the UK is a pressing issue. Principally, there are several gateways to illegitimately register as self-employed:

a) Employment agencies supply drivers and charge the contracting businesses a daily rate. The agencies advise the drivers to register as self-employed. In fact, they should be registered as agency workers or employed by the transport company directly.

b) "Micro" umbrella companies, providing payroll services, advise drivers to set up personal services companies, a form of a limited company. This is however only a legitimate way of providing transport services where the driver owns a truck.

To prevent drivers from false registration and classification as self-employed, the Road Haulage Association, a UK employer association, launched a campaign for its members. HM Revenue and Custom, responsible for Taxation and National Insurance contributions in the UK, supports it. The campaign explains how to correctly indicate the employment status and related obligations and rights. It provides information leaflets, a direct approach to members, advisory services and a self-employment test for drivers to check their employment status. This test includes questions that help drivers to think about work situations and to assess their relation with clients. ([https://www.gov.uk/guidance/check-employment-status-for-tax?user=quest](https://www.gov.uk/guidance/check-employment-status-for-tax?user=guest)).

In international transport, information and advisory services must reach beyond national boundaries. Social partner organisations, notably unions, launched initiatives informing drivers about their rights and entitlements when providing cross-border transport services. Such measures help to reduce undeclared work and protect workers from abusive employer practices. One example is an initiative run by the European Transport Workers Federation (ETF) and some of its affiliates. The unions developed strategies to jointly approach truck drivers in parking areas: They distribute leaflets about rules, rights and entitlements for drivers on international journeys with the aim to raise drivers' awareness about their rights. In addition, the ETF published guidelines for unions who represent those drivers in court.

Another example is the establishment of an advice centre for posted workers and migrant workers at the border between Lithuania and Poland. The centre was founded in 2016 by a partnership of Lithuania's Carriers' Trade Union (LVPS), the NGO Project Management and Training Centre and the Lithuanian State Labour Inspectorate. The centre informs and advises drivers about salaries, working conditions, working time, holidays, occupational safety and health issues. The initiative can already point to several successful cases of drivers who claimed compensation for un-paid work.

*Incentive measures are still nascent in road haulage. Participants widely agreed about the need to simplify the complex regulation in road haulage to encourage compliance. How this can be done without reducing regulation, however, remained an unsolved and controversial*

point. Preventative measures discussed during the seminar mainly included the provision of information and advice to employees and employers using helpdesks and websites for conveying basic information about the existing regulatory framework. These are important social partner initiatives that could be replicated in other countries.

## 5. INDIRECT POLICY APPROACHES

**Indirect approaches** aim at changing norms, values and beliefs, and therefore encourage compliance with existing formal regulations. They include - among others - awareness raising campaigns and educational initiatives.

### 5.1. Awareness raising campaigns

Some campaigns target policy makers to make them more aware of the issue of undeclared work in the sector. There are several examples of this. For instance, the Belgian Labour Inspectorate launched a sectorial specific initiative including transport as well, consisting of tripartite plan for fair competition involving policy makers, social partners and employers. It combines announced joint inspections and policy meetings, aiming at increasing compliance, raising employers' awareness but also helping policy makers in gaining better understating of issues at stakes and hence design tailored policy responses.

The Portuguese Labour Inspectorate followed a similar approach, involving social partners. Their health and safety awareness campaign proved an effective and innovative method to reach drivers. Details are given in the box below.

**"Health and Safety Campaign in Professional Driving"** (Portugal, National Labour Inspectorate)

In 2015-2016, the Portuguese Labour Inspectorate in close consultation with social partners implemented a country-wide health and safety campaign. The aim was to raise awareness among professional drivers about this issue, to reduce work-related accidents, occupational risks and health disorders, and consequently to improve drivers' overall working conditions. The campaign is part of the national road strategic plan with the general aim to halve the number of deaths and serious accidents on the road.

The campaign brought together a network of stakeholders active in risk prevention, involving sectoral experts, social partners, labour inspectorate bodies but also occupational safety and health (OSH) professionals and trainers. Stakeholders distributed brochures and flyers to drivers and provided advice on the internet. In addition, a thematic week was dedicated to driving-related health and safety issues. Experts held presentations and workshops throughout the country. At the same time, labour inspectors targeted transport companies, that were reported to infringe employment/ OSH standards, and carried out inspections focusing on health and safety related issues.

As result of this campaign, some regulatory loopholes were identified and closed. Social partners adopted amendments of respective collective agreements. The National Labour Inspectorate plans to launch a new campaign in 2019, focusing specifically on undeclared work in the transport sector.

Other types of campaigns **raise awareness** "on the road" among drivers and employers about their rights and obligations. One exemplary **innovative educational campaign** from Norway used alternative media and a very personal approach to reach drivers, and to inform them about their rights and duties when driving and providing transport services in Norway. Details are presented in the box below.

**"The Truck Driver's Mother"** (Norway, National Labour Inspectorate)

"The Truck Driver's Mother" aims to increase awareness among foreign HGV drivers and their employers about the particular rules and conditions for driving in Norway. A group of employers' organizations, unions and public authorities launched the initiative. A website presents the relevant information, a short video of about 5 minutes explains drivers' rights

and duties in Norway. This tool presents a number of regulations in a clear and straight forward way. In addition, the video presents a very personal approach: a Polish driver travelling with his mother. She advises what regulations he has to consider and what his rights are. The video explains minimum wage and food allowances; requirements for tyres and snow chains; driving time and rest periods; as well as toll tags. "The Truck Driver's Mother" has been shot with "real persons", i.e. a mother and her truck driving son. It has been translated into 14 languages. The video already won numerous awards and can be viewed via the website <http://www.motherpresents.org/en/> and via YouTube.

The Austrian Chamber of Commerce launched an interesting campaign in 2017. Aware of the negative image of light vehicle transport companies, the campaign showcased compliant businesses with the aim of encouraging others to follow. The Chamber awards a quality mark to entrepreneurs with transparent and lawful business practices who have attended a training course. These businesses can use the quality mark on their vans and marketing materials.

In terms of improving inspectors' training and cross-national cooperation, European social partners, together with Euro Control Route have launched and carried out several projects (e.g. CLOSER (2014) and AFT-IFTIM, *Apprendre et se Former en Transport et Logistique*). The projects aimed at a better cooperation and mutual understanding of authorities to enforce European road haulage legislation. The projects included joint training for cabotage enforcement, cargo securing, and company inspections.

## 5.2. Improving procedural justice

Another aspect of indirect approaches is to **improve procedural fairness and justice for transport workers affected by undeclared work**. Typically, workers suffer from situations of undeclared work, non-payment of minimum wages and lack of other basic social rights.

One major problem is for workers to claim and gain redress for withheld wages, in cases of underpayment due to false classification of his/her employment status. While social security funds and the financial police have no issue to claim withheld contributions or taxes from companies that have paid too little, workers are left alone to make a claim either in out-of-court proceedings or in court.

The enforcement of withheld wages and social rights, therefore, is of course an important step *per se*. At the same time, employers are financially punished for infringements and discouraged to pursue such practices. Furthermore, it enhances workers' belief and trust in the legitimacy of minimum labour standards. Collective support of workers by unions are crucial in this respect.

Class action law suits against wage theft and misclassification of employment might be more effective than individual claims. In addition, further cooperation among European unions to support mobile workers in claiming their rights in their workplace countries is a promising strategy.

At the seminar, the ETF presented a follow-up project of the campaign for Eastern European drivers. Details about this initiative are presented in the box below.

### **"Instalment of a union cooperation office in Romania" (ETF)**

In September 2017, two cooperation offices in Romania (Bucharest & Targu Mures) opened as a result of cross-border union engagement in the transport sector. The Romanian truckers' union SLT is running the office. For doing so, they receive support from the Danish union (3F), two Belgian unions (BB-UBT, ACV-Transcom), the Swedish blue-collar union and the Dutch FNV. Each union financially supports the office in Romania. They also contribute to Romanian trade union's capacity building.

The cooperation office works on a mutual assistance pact. A driver who is a member of the Romanian union SLT gets assistance from the respective project partners in those (mostly Western European) countries where he/she experienced work-related problems. The support includes legal assistance but also assistance in case of road side checks, seizure of

the vehicle or imposition of fines the driver feels are not correctly applied. The SLT has 14 court cases against abusive employers; 50 cases have been solved in international cooperation, with the help of partner unions from Western Europe, and in close cooperation with the Romanian Labour Inspectorate.

*Indirect policy approaches tend to fall into two key types. First, policy makers use awareness raising campaigns and educational initiatives to change the norms, values and beliefs regarding the acceptability of participating in undeclared work. In this way, compliance becomes the aspired norm and the good practice. The second type aims at changing the internal processes of formal institutions to improve the perception amongst citizens and businesses that there is procedural and distributive fairness and justice. Here, it is crucial to demonstrate to employers that failure to comply with legal requirements will entail consequences. In addition, workers need to be empowered to claim rights and entitlements.*

## **6. KEY LEARNING OUTCOMES**

Undeclared work in the road haulage sector takes on various forms. A comprehensive regulatory framework at EU and national level is in place to prevent abuses, however enforcement of legislation is cumbersome, inefficient and still provides conditions which allow undeclared work to emerge. As such, policy makers in this sector need to be aware of, and navigate the complexity of this legislation when designing policies. On the one hand, an improved inter-institutional coordination of inspection policies and more personnel resources are needed to foster enforcement of a sophisticated regulation. On the other hand, a preventive approach clarifies regulation beforehand and reduces the need for intricate controls.

- Policy measures largely focus on deterrence and detection approaches. To improve outcomes, an enhanced focus should be put on prevention and incentives measures. Social partners and labour inspectorates are active in this field and seek to encourage voluntary compliance using awareness campaigns and addressing the structural conditions that cause undeclared work. Innovative tools and media, including videos and online consultation, should be considered to widen the scope of such approaches.
- Direct policy approaches presented at the seminar focus on a better detection of infringements by enhancing inter-institutional cooperation of authorities. This is a key good practice tackling the necessity of communication and coordination among different authorities in charge of enforcement.
- Indirect approaches in road transport seek to inform companies and drivers beforehand about their rights and duties, to encourage compliance, and to enhance trust in existing institutions. As such, they prevent non-compliance and should be developed further.
- The seminar showed that despite the vast array of regulation and legislation in the road haulage sector, there is less in the way of clear sector-specific approaches and methods to address undeclared work. Policy makers could explore strategies, developed by social partners and enforcement bodies alike, tackling the specifics of the sector, as is demonstrated in the construction sector.
- Nevertheless, the seminar indicated that there are some approaches that emerged out of the sector's requirements: tackling undeclared work in road haulage needs inter-institutional cooperation because inspection competences are dispersed among authorities. Examples of effective cooperation between social partners and national authorities, presented during the seminar, may be transferrable to other national contexts. The sector also calls for outreaching approaches of inspectorates and social partners to reach drivers "on the road", and inform them about rights, entitlements and duties. The seminar provided interesting examples of such approaches that should be replicated in other Member States.

- The strong international dimension of road haulage requires intense cross-border cooperation of inspectorates and social partners. Stakeholders are aware of this requirement; however good practices of international cooperation are rare. Enhanced cooperation, including efficient data-sharing via existing tools such as the Internal Market Information System (IMI), would be necessary to verify the employment and social security status of workers on international journeys, to impose and collect penalties.
- To deploy inspectorates' resources more efficiently, a strategic approach to target deterrence measures, such as the use of risk assessment systems which complement controls or inspections on the road, should be introduced. In this vein, the full potential of digitalised resources should be exploited. For instance, the effective use of the smart tachograph or the European Register for Road Undertakings could lead to more effective and efficient controls.
- Additional training and education of inspectors on both deterrence and preventative approaches is needed, and should include opportunities for exchanges among different countries and authorities.
- National enforcement bodies raised the issue of additional resources being dedicated to cross-border cooperation and joint trainings. Unions have already begun cooperating transnationally to support drivers from other countries in claiming entitlements and wages in a cross-border setting. Such initiatives need further conceptual development and personnel as well as financial resources.

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