

# Cooperation obligations and practices in the enforcement of EU rules on International Road Transport in the EU

## *Final Report*

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## EXECUTIVE SUMMARY

The overall aim of this analytical report is to contribute to ELA's tasks in the area of road transport by identifying, analysing and reporting on specific cooperation challenges and providing recommendations to overcome these challenges. In line with ELA's mandate, the purpose of this report is to assist ELA and the Member States in their cooperation and exchange of information and thus facilitate fair, simple and effective application and enforcement of the EU legislation on road transport.

**Chapter 2** presents an overview of the key EU legislation governing international road haulage and passenger transport services and includes the recent provisions adopted under the 2020 Mobility Package I. Honing in on the *labour and social dimension of the international road transport sector*, it is possible to discern four different clusters of EU legislation which fall within the mandate of the European Labour Authority<sup>12</sup>: (1) rules on the access to the occupation of transport operators established in the EU; (2) rules on the driving and rest times of drivers engaged in cross-border road transport services operated within the EU; (3) rules on the posting of drivers posted within the EU in the international transport sector; and (4) rules on social security coordination applicable to international drivers who work in different Member States or who are posted in the EU.

Regulations (EU) 2020/1054<sup>3</sup> and (EU) 2020/1055<sup>4</sup>, and Directive (EU) 2020/1057<sup>5</sup> are part of the Mobility Package I and are of particular relevance for the present report as they replaced and/or amended the fundamental market access, social and posting rules on road haulage and passenger transport services provided within the EU. They amended the first three categories of EU rules considerably. The social security coordination rules are set by Regulation (EU) 2004/883<sup>6</sup>.

First, Regulations (EU) 2020/1054 and (EU) 2020/1055 introduced *new substantive provisions*, directly affecting the operations of international transport companies. Examples are the requirement to return the vehicles to the country of establishment at least once every eight weeks, or those which concern the labour/social rights of drivers engaged in international transport of goods and passengers, such as their right to return home every four weeks. Furthermore, Regulation (EU) 2020/1055 tightens the conditions of establishment with a view to addressing the problem of letterbox companies in the international road transport sector. Additionally, the scope of application to meet certain technical requirements has been extended to a larger number of international transport operators. This will bring an additional number of transport operators and their managers within the remit of the EU road transport acquis as of 1 July 2026.

Directive (EU) 2020/1057 institutes new posting rules specifically addressing international road transport drivers and the companies that employ them. These derogate considerably from the standard EU posting rules. First, it

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<sup>1</sup> Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344.

<sup>2</sup> General labour mobility legislation that applies to the road transport sector and that falls within ELA's remit, yet do not contain important (new) cooperation obligations and measures relevant for this study are the following: Regulation (EU) 492/2011, Directive 2014/54/EU and Regulation (EU) 2016/589.

<sup>3</sup> Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs, OJ 31.7.2020, L 249/1.

<sup>4</sup> Regulation (EU) 2020/1055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector, OJ 31.7.2020, L 249/17.

<sup>5</sup> Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012, OJ 31.7.2020, L 249/49.

<sup>6</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.



adopts new scoping rules in the light of Directive 96/71/EC<sup>7</sup>, which are tailored specifically to the road transport sector. Second, a derogation from Directive 2014/67/EU<sup>8</sup> is established, introducing a closed list of administrative requirements for transport operators when they post their drivers abroad in other Member States. This includes a specific control mechanism in the form of posting declarations.

Finally, the new legislation under the Mobility Package I envisages harmonising enforcement in Member States. This is to be achieved through increased cooperation and information exchanges between the various national public authorities and enforcement agencies. New modules for information exchange between public authorities and enforcement agencies have been created in the established EU Internal Market Information System (IMI)<sup>9</sup>:

- 'Road Transport - Conditions of Establishment',
- 'Road Transport - Social Rules',
- 'Road Transport - Posting Declaration'.

These three modules have been operational since Spring 2022 and allow Member States to check the good repute of transport managers and the existence of a Community licence in the country of establishment, to notify infringements or penalties imposed, to request clarifications on interpretation of EU social rules and on the validity of posting declarations.

**Chapter 3** outlines the various cooperation measures and obligations for Member States with regard to the implementation and enforcement of each of these four sets of EU legislation. When trying to classify the different types of cooperation measures and obligations, it is possible to discern a range of categories. Member States are required to set up an operational framework and to designate one or more liaison bodies or contact points for the exchange of information with other Member States or in relation to the European Commission. Different contact points or liaison bodies have been established by Member States based on the specific category of legislation in question.

Member States are also required to make information available generally or specifically to the European Commission, to other Member States and/or to the transport operators and (posted) drivers. This requirement primarily concerns (new) national legislation or rules, such as national rules on the penalties and fines for infringements (mandatory notification to the European Commission), the relevant terms of employment and working conditions for transport undertakings and drivers that need to be complied with in posting situations (which need to be publicly available on single national websites and in an accessible way) or new national social security rules. Member States are obliged to inform the European Commission when bilateral requests for information or notifications are systematically not attended to by the Member State of which the request is made or in cases of persistent problems.

Member States must also report to the European Commission in various ways and on different enforcement obligations. Member States need to report on the mandatory checks and inspections conducted (both roadside checks and checks at premises), on the number of authorisations (Community licences, certified true copies, authorisations to operate regular passenger services and driver attestations) and certificates of professional competence issued, suspended or withdrawn, and on the number of information exchanges between Member States, including the number of infringements established. Member States must also adopt national enforcement strategies and report to the European Commission on their implementation every second year.

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<sup>7</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

<sup>8</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC.

<sup>9</sup> [https://ec.europa.eu/internal\\_market/imi-net/index\\_en.htm](https://ec.europa.eu/internal_market/imi-net/index_en.htm)

Another essential part of the cooperation obligations applies to information and data exchanges between Member States' enforcement agencies, which are run through electronic request and reply systems, including notification alerts that are run through IMI or communicated via the European Register of Road Transport Undertakings (ERRU). The legislation establishes timelines for responses once a request has been sent by another Member State, but the reply times are different depending on the type of request and the relevant piece(s) of legislation. Additionally, exchanges of information may imply the mandatory execution of a check, inspection or investigation by the Member State from which information is being sought.

Finally, Member States are obliged to conduct a minimum number of roadside checks, concerted checks and checks at the premises of the undertakings on an annual basis. For instance, Regulation (EU) 2020/1055, amending Regulation (EC) 1072/2009, established the obligation to conduct roadside checks on cabotage operations in each Member State at least twice a year.

Finally, the EU rules on driving and rest times as well as Directive 2020/1057 (also known as the *lex specialis*) on the posting of drivers in the international road transport sector require Member States to exchange best practices, to organise staff exchanges and training for the staff of the enforcement agencies.

**Chapters 4, 5 and 6** present the findings from the national replies to a structured questionnaire (see Annex 1) which were completed by independent experts from the Member States on the basis of (1) national desk research and (2) information obtained through three interviews conducted with relevant stakeholders in the fourth quarter of 2022. The main objective of the questionnaire and interviews was to detect current practices and challenges in Member States with regard to the enforcement of the relevant EU legislation.

**Chapter 4** looks at inter-institutional cooperation practices and challenges within Member States. It follows from the national replies that a multitude of authorities and enforcement agencies in Member States are involved in the implementation and daily enforcement of EU and national legislation dealing with international road transport. The spread and overlap of competencies in the field of road transport indicate the need to develop cooperation arrangements and smooth information exchange procedures between these authorities to enforce the rules laid out in the European legislation effectively and efficiently.

It is apparent from many country reports that competent authorities within the Member States have already established (quasi-)permanent coordinating meetings/working groups/panels. Additionally, many Member States have put information exchange agreements or protocols in place, thereby standardising to some extent the flow of information between different competent authorities. Furthermore, in many Member States, competent authorities have also adopted strategies and operational plans in the area of road transport. Other Member States emphasised the importance of the use of (electronic) databases in the enforcement of road transport rules. In some country reports, (joint) training was noted as a necessary component to enforce road transport rules effectively. Lastly, shared inspections between different enforcement authorities were mentioned frequently by the national replies as an important pillar of inter-institutional cooperation and enforcement in the field of road transport.

With regard to the challenges cited in the national replies, it is clear that, there are still several issues around the coordination of work between the different competent authorities. Amongst others, several country reports mentioned that this had led to delays in the processing time of possible violations in the area of road transport. Some Member States pointed to particular difficulties in the coordination of shared inspections. Some Member States explicitly mentioned the lack of standardisation of the information exchange between the different competent authorities. Another recurring challenge raised in the country reports related to the lack of a uniform interpretation of the legal framework within Member States, which inevitably leads to coordinating issues as well. Additionally, it was highlighted repeatedly that there are persistent issues with the use and interconnection of the different databases within the Member States. Added to that, (potential) limitations on the exchange of information involving personal data were stressed repeatedly by several Member States. Finally, several Member States

highlighted a lack of staff, and in particular qualified staff with the necessary competence and expertise to enforce the sector-specific legislation in their national systems.

**Chapter 5** deals with cross-border cooperation between national implementing bodies and enforcement agencies. In general, the national replies to the questionnaire indicated that there are six dimensions which seem to play a role in determining the level of cross-border cooperation between enforcement agencies from Member States: i) geographical proximity; ii) number of drivers coming from a given Member State; iii) uniform interpretation of EU law; iv) similar working practices, v) personal contacts with the competent authorities of other Member States; and vi) the existence of bilateral agreements or protocols.

Additionally, it can be deduced from the replies that the cooperation and exchange of information is most advanced in the social security coordination field (where the relevant entities can use the Electronic Exchange of Social Security Information (EESSI)), while there is thus far little experience with the use of the three new IMI road transport modules. In general, enforcement agencies seem mainly to exchange information on the good repute requirement (through ERRU and the IMI 'Road Transport' modules), whereas currently no or little information is exchanged on companies' compliance with the stable establishment requirement, their financial standing or professional competence. Cross-border cooperation and exchange of information relating to driving and rest times is reportedly less prevalent in daily practice. The reason often given for this is the fragmentation of responsibilities and the multitude of agencies involved in the inspections. Determining the social security affiliation of international transport drivers is mentioned in the country replies as one of the key challenges for inspectors. Finally, it is clear from the country replies that the implementation of the new posting rules for international transport drivers is one of the biggest challenges for Member States, with the characterisation of the type of transport operation (cross-border, cabotage, bilateral and transit) and the employment status of the drivers key focal issues.

Further issues and challenges reported by the national enforcement agencies when implementing EU road transport legislation and inspecting international road transport services in the EU were the following:

- Detection of letterbox companies
- Identifying the correct competent authority in other Member States
- Cross-border enforcement of penalties and fines
- Identification of the transport operator and managers
- The posting of drivers declaration
- Social security affiliation
- Resource-related obstacles to cooperation.

**Chapter 6** is devoted to the use of ERRU and the three (new) IMI modules on international road transport. In terms of ERRU, the research demonstrates that each Member State has its own implementing approach, yet simultaneously needs to comply with the EU catalogue of serious infringements and EU methodology for risk rating. Both of these were updated through the adoption of Implementing Regulations (EU) 2022/694 and (EU) 2022/695. The connection requirements and procedures for the technical exchanges between the national registers and ERRU are, however, currently under review. As a consequence, the national replies to the questionnaire used for this research in late 2022 provided limited and very fragmented information on the use of ERRU and related national registers. They often referred to the fact that the new provisions have not yet been implemented in national systems and practices. Some country replies did point to some room for improvement to ERRU.

Similarly, the information obtained through the national questionnaires and interviews at the end of 2022 on the use of the Road Transport IMI modules related to only a few months' experience. Consequently, the national replies stated that at this stage the tool had been in place for too short a period of time, which made it difficult to provide any meaningful feedback. However, the tool was perceived positively in the country replies as it has considerably simplified communication exchanges and safe transmission of documents and other information. The

challenges identified by the country replies in relation to the use of IMI included the need to ensure rapid response times, to improve communication in cases where there is no posting declaration but there is a suspicion of posting, and to make some features of the portal more user-friendly..

**Chapter 7** includes three specific case studies. They were defined after the national research based on the questionnaire had been completed at the end of 2022 and focus primarily on some specific areas or issues that deserved further attention or research. They are as such stand-alone summaries of additional interviews that were conducted by the central study team with some key stakeholders in a selected number of Member States.

The three case studies are:

- Cooperation strategies with a view to combating the establishment of letterbox companies in international road transport: the cases of Denmark and Lithuania;
- Information exchange through ERRU during and after roadside inspections: the case of France;
- Enhanced levels of cooperation: Benelux and the Confederation of Organisations in Road Transport Enforcement (CORTE).

Finally, **Chapter 8** presents the main operational conclusions with a view to improving the cooperation between national enforcement authorities from Member States and hence to contribute to more effective enforcement of the relevant EU legislation. The operational conclusions presented are based on the cooperation challenges identified during the research conducted for the present study. The operational conclusions are grouped in the following two clusters:

- Actions to support national authorities and enforcement agencies in Member States;
- Actions to support cross-border cooperation between Member States.

The table below provides a summary of the operational conclusions formulated in the final chapter of this report.

Summary of the operational conclusions	
<b>1</b>	<b>Actions to support national authorities and enforcement agencies in Member States</b>
<b>1.1</b>	<b>Ensuring increased and more effective coordination and cooperation between different competent authorities in Member States</b>
	<p><i><b>Conclusion No 1:</b> Horizontal and vertical inter-institutional coordination between the different competent national authorities and enforcement agencies across the different policy domains could be further developed, for example through an integrated national enforcement strategy and operational plans.</i></p> <p><i><b>Conclusion No 2:</b> Formal cooperation arrangements (protocols, data exchange agreements, inter-institutional working groups, etc.) between all national authorities concerned and enforcement agencies within Member States could be further developed (which could also include the road transport/traffic police and/or the tax authorities), while extending them to local operational levels.</i></p> <p><i><b>Conclusion No 3:</b> ‘Shared’ inspections between the various enforcement agencies in Member States could be intensified. An ex-post evaluation of each shared inspection could help detect any shortcomings in the procedure, which could be rectified or improved in future investigations. Furthermore, consideration could be given to sharing the experiences of national ‘shared’ inspections between Member States or developing good practices.</i></p>

Summary of the operational conclusions	
	<p><b>Conclusion No 4:</b> <i>The interconnection of the different national databases used by the respective national enforcement agencies should be improved, in line with the legal framework and taking into account the limitations imposed by the GDPR.</i></p>
<b>1.2</b>	<p><b>Continuing to build the capacities of national competent authorities and enforcement agencies in Member States</b></p>
	<p><b>Conclusion No 5:</b> <i>There should be a continuous and sustained effort to offer training and mutual learning on (the application of) EU legislation in the international road transport sector to all national enforcement authorities, notably including the labour and social inspection agencies, road transport/traffic police and tax inspectors while also addressing the needs of the more local operational inspectors. Additional targeted information and existing guidance on the application of the relevant EU legislation in all EU languages should be promoted.</i></p> <p><b>Conclusion No 6:</b> <i>Additional guidelines for enforcement agencies on specific thematic areas such as the social security affiliation of international transport drivers, checks on cabotage operations or the checking of wage calculations on the basis of tachograph records could be considered.</i></p> <p><b>Conclusion No 7:</b> <i>Guidelines and checklists for inspections and ensure sufficient and adequate equipment, control devices and software for the different enforcement agencies during the roadside checks and checks at the premises could be developed in order to ensure the resource-effectiveness of inspections.</i></p>
<b>2</b>	<p><b>Actions to support cross-border cooperation between Member States</b></p>
<b>2.1</b>	<p><b>Promoting awareness and understanding of other Member States' practices</b></p>
	<p><b>Conclusion No 8:</b> <i>An integrated overview of all different liaison bodies and contact points for the respective subdomains of EU road transport rules could be promoted, e.g by further developing a directory/inventory of all national competent authorities and enforcement agencies (and their responsibilities) in the area of EU international road transport and sharing an overview of the users (and their administration rights) of the three IMI Road Transport Modules among all national enforcement agencies.</i></p> <p><b>Conclusion No 9:</b> <i>There should be continuous efforts to promote the building, maintenance and enhancement of a community of practitioners composed of national authorities and enforcement officers from different Member States.</i></p> <p><b>Conclusion No 10:</b> <i>A mutual learning strategy should be strengthened with the identification of appropriate tools (e.g. joint trainings, exchange of practices and staff exchanges) and relevant thematic fields. The latter could include (1) mandatory terms and conditions of employment at national level and the determination of the social security affiliation of international transport drivers, (2) third country transport operators, (3) national penalties and sanctioning regimes and cross-border enforcement of sanctions, (4) national enforcement strategies and operational plans.</i></p>
<b>2.2</b>	<p><b>Improve and expand the use of electronic systems for the exchange of information</b></p>
	<p><b>Conclusion No 11:</b> <i>Activities at EU level to improve the understanding and usage of the IMI Road Transport modules and ERRU within Member States among all enforcement agencies should be continued, including through considering the opportunity for reporting about the exchanges taking place through IMI.</i></p>

**Summary of the operational conclusions****2.3 Enhanced cross-border cooperation actions in the field of international road transport**

**Conclusion No 12:** *The potential of bilateral agreements between Member States, and possible EU-level support to enhanced cross-border cooperation, should be further explored, including sustained cooperation with existing transport network groups.*

**Conclusion No 13:** *The use of the ELA mediation mechanism could be further fostered with a view to resolving disagreements and disputes in individual cases of application of the EU road transport rules.*

**Conclusion No 14:** *Further analysis could be considered in some adjacent or complementary thematic areas such as (1) bilateral agreements on double taxation and social security and (2) the GDPR and the enforcement of EU international road transport legislation.*

# 1.0 Introduction

This analytical report on the *cooperation measures, obligations, practices and challenges* for Member States in the enforcement of EU rules governing international road transport services operated within the EU was commissioned by the European Labour Authority in September 2022.

The main objectives of the report are:

- to map the *relevant EU legislation* dealing with international road transport operations, with a focus on that part of EU legislation which comes within ELA's mandate;
- to identify the *cooperation measures and obligations* of Member States with a view to the enforcement and implementation of the relevant EU legislation on cross-border road transport operations;
- to identify national enforcement agencies' *implementation and enforcement practices* in both a national and cross-border context;
- to identify *challenges* that confront national enforcement agencies when implementing and enforcing the relevant EU legislation in both a national and cross-border context;
- to develop and formulate *operational conclusions and suggestions for improvement* in the cooperation between enforcement agencies with a view to more effective enforcement of the relevant EU legislation.

The research was conducted in several phases between October 2022 and April 2023. It consisted of desk research and a literature review of the available sources – including of relevant legislative texts, targeted interviews with a selection of stakeholders in Member States on the basis of a structured questionnaire, the development of three thematic case studies, and additional exchanges with individual enforcement experts in the field of international road transport. The results are reflected in the structure of the present report.

Chapter 2 presents first of all an *overview of the key EU legislation* governing international road haulage and passenger transport services and includes the recent provisions adopted under the 2020 Mobility Package I<sup>10</sup>. Four main sets of legislation are described: (1) rules concerning the access to the occupation of transport operators established in the EU; (2) rules concerning the driving and rest times of drivers engaged in cross-border road transport services operated within the EU; (3) rules on the posting of drivers who are posted within the EU in the international transport sector; and (4) social security coordination rules applicable to international drivers who work in different Member States or who are posted in the EU. The Chapter concludes with some observations relating to the implementation in Member States of the most recent changes introduced in these domains by the 2020 Mobility Package I. These observations are based on the feedback received from the national replies to the questionnaire at the end of 2022.

Chapter 3 outlines for each of the four sets of EU legislation, the *cooperation measures and obligations* for Member States with regard to the implementation and enforcement of this EU legislation. The cooperation obligations were identified on the basis of the relevant legal texts of the EU instruments.

Chapters 4, 5 and 6 present the findings from the national replies to a structured questionnaire (see Annex 1) which were completed by independent experts from the Member States on the basis of (1) national desk research and (2) information obtained through three interviews that were conducted in the fourth quarter of 2022 with relevant stakeholders, such as staff members from relevant ministries, enforcement agencies and social partners. The main objective of the questionnaire and interviews was to detect current practices and challenges in Member

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<sup>10</sup> The Mobility Package I ensures good implementation and enforcement of the road transport legislation, providing a balance between the social protection of drivers and the freedom of operators to provide cross-border transport services. The Mobility Package I introduces two new Regulations (EU) 2020/1054, (EU) 2020/1055, and a Directive (EU) 2020/1057.

States with regard to the enforcement of the EU legislation. Whereas Chapter 4 looks at the inter-institutional cooperation practices and challenges *within* Member States between the different agencies involved in enforcement, Chapter 5 deals with cross-border cooperation between national implementing bodies and enforcement agencies. Chapter 6 is devoted to the use of the European Registers of Road Transport Undertaking (ERRU) and the three (new) Internal Market Information (IMI) modules on international road transport.

Chapter 7 includes three specific case studies. They were defined after the national research based on the questionnaire had been completed at the end of 2022 and focused primarily on some specific areas or issues that deserved further attention or research. They are as such stand-alone summaries of additional interviews that were conducted by the central study team with some key stakeholders in a selected number of Member States.

The three case studies are:

1. Cooperation strategies with a view to combatting the establishment of letterbox companies<sup>11</sup> in international road transport: the cases of Denmark and Lithuania;
2. Information exchange through ERRU during and after roadside inspections: the case of France;
3. Enhanced levels of cooperation: Benelux and the Confederation of organisations in road transport enforcement (CORTE).

Finally, Chapter 8 presents the main operational conclusions drawn from the research, including suggestions for actions and improvement.

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<sup>11</sup> Letterbox companies are companies which have been set up administratively in Member States but which do not effectively operate transport operations from that Member State but use their formal establishment as a means to circumvent EU rules on the road transport sector such as the affiliation to a particular social security system, avoidance of labour or wage conditions or other social legislation.



## 2.0 The EU legislative framework applicable to the international road transport sector in the EU

The EU legal framework applicable to *international commercial road transport services operated in the EU and to the labour mobility of international transport drivers in the EU cross-border road transport sector* consists of a broad set of legal instruments with varying objectives: EU legislation regulating the EU transport services market with a view to ensuring fair competition and road safety applies in parallel with general EU legislation on the free movement of workers and social security coordination in cross-border situations. In addition, some EU legislation is specifically tailored to the specificities of cross-border road haulage and passenger transport services and the working conditions of the drivers who are engaged in international transport of goods and passengers within the EU.

Leaving aside the more general EU *acquis* concerning the free movement of workers, which is applicable across all economic sectors, and placing the focus on the *labour and social dimension of the international road transport sector*, it is possible to discern four different clusters of EU legislation, which fall within the mandate of the European Labour Authority:<sup>12 13</sup>

- (1) Legislation on access to the profession of road transport operator for undertakings established in the EU;
- (2) Legislation on driving times, rest periods and working conditions for drivers engaged in international road transport operations conducted within the EU (i.e. the specific ‘social legislation’ applicable to international road transport services operated within the EU);
- (3) Legislation on the posting of workers, including on the posting of drivers in the international road transport sector in the EU; and
- (4) Legislation on the coordination of social security systems for persons moving within the EU, including for drivers engaged in international road transport.

Regulations (EU) 2020/1054<sup>14</sup> and (EU) 2020/1055<sup>15</sup>, and Directive (EU) 2020/1057<sup>16</sup> are part of the 2020 Mobility Package I and are of particular relevance for the present report as they replaced and/or amended the fundamental market access, social and posting rules concerning the road haulage and passenger transport services provided within the EU. They amended the first three categories of EU rules considerably but did not bring about any changes in the social security coordination policy field. This report will pay due attention to the innovations introduced by the market access, social and posting pillars of Mobility Package I but will also touch on the social security coordination dimension applicable to drivers in EU cross-border transport operations.

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<sup>12</sup> Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344

<sup>13</sup> General labour mobility legislation that applies to the road transport sector and that falls within ELA’s remit, yet do not contain important (new) cooperation obligations and measures relevant for this study are: Regulation (EU) 492/2011, Directive 2014/54/EU and Regulation (EU) 2016/589.

<sup>14</sup> Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs, OJ 31/7/2020, L 249/1.

<sup>15</sup> Regulation (EU) 2020/1055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector, OJ 31.7.2020, L 249/17.

<sup>16</sup> Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012, OJ 31.7.2020, L 249/49.

The three legislative initiatives mentioned above are primarily intended to improve the working conditions of drivers, to reduce the risk of unfair competition in the international road transport sector, to tackle the challenge of letterbox companies and to improve the enforcement cooperation between the Member States.

First, Regulations (EU) 2020/1054 and (EU) 2020/1055 *extend the scope of application to a larger number of international transport vehicles* required to meet certain technical requirements and, in doing so, they bring an additional number of transport operators and their managers within the remit of the EU road transport acquis as of 1 July 2026. The new set of rules also introduce some *new substantive provisions*, which directly affect the operations of international transport companies, such as the requirement to return the vehicles to the country of establishment at least once every eight weeks, or which concern the labour/social rights of drivers engaged in international transport of goods and passengers, such as their right to return home every four weeks. Regulation (EU) 2020/1055 furthermore *tightens the conditions of establishment* with a view to addressing the problem of letterbox companies in the international road transport sector.

Directive (EU) 2020/1057 institutes new *posting rules specifically addressing international road transport drivers* and their employing companies. These derogate considerably from the standard EU posting rules. The directive aims to introduce a closed list of administrative requirements for transport operators, thereby lowering the administrative burden when they post their drivers abroad in other Member States.

Finally, the new legislation under the 2020 Mobility Package I envisages harmonising enforcement in Member States, which is to be achieved through *increased cooperation and information exchanges* between the various national public authorities and enforcement agencies. To that end, new modules for information exchange between public authorities and enforcement agencies have been created in the established EU Internal Market Information System (IMI)<sup>17</sup>. These modules specifically address information and data exchanges on international road transport operators and operations. Three new Road Transport modules have been operational in the IMI since February 2022: the 'Road Transport - Conditions of Establishment', the 'Road Transport - Social Rules' and the 'Road Transport – Posting Declaration' modules. For the last of these, an online public interface has been set up allowing transport operators to make their posting declarations electronically and facilitating the exchange of information between the host Member State and the transport companies concerned.

This Chapter discusses the new rules adopted under the Mobility Package I legislation in more detail as they have an impact on the transposition of the new EU provisions in the Member States and on their implementation and effective enforcement in practice.

Table 1 presents an overview of the most relevant EU legislative instruments dealing with the social and labour dimension of international road transport in the EU. Not all the legislation mentioned is included in the list of instruments that are part of ELA's mandate as defined in its founding Regulation. The EU legislation on the (use of) tachographs<sup>18</sup> and on safe and secure parking areas<sup>19</sup> are examples of EU legislation which technically speaking are not part of ELA's mandate but remain nevertheless of key importance for ELA's operations.

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<sup>17</sup> [https://ec.europa.eu/internal\\_market/imi-net/index\\_en.htm](https://ec.europa.eu/internal_market/imi-net/index_en.htm)

<sup>18</sup> Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport, *OJ L 60, 28.2.2014, p. 1-33*; Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs, *OJ L 249, 31.7.2020, p. 1-16*; Commission Implementing Regulation (EU) 2021/1228 of 16 July 2021 amending Implementing Regulation (EU) 2016/799 as regards the requirements for the construction, testing, installation, operation and repair of smart tachographs and their components, *OJ L 273, 30.7.2021, p. 1-140*.

<sup>19</sup> Commission Delegated Regulation (EU) 2022/1012 of 7 April 2022 supplementing Regulation (EC) No 561/2006 of the European Parliament and of the Council with regard to the establishment of standards detailing the level of service and security of safe and secure parking areas and to the procedures for their certification, *OJ L 170, 28.6.2022, p. 27-37*.

Table 1: Overview of relevant EU legislation affecting the labour and social dimension of international road transport in the EU

EU legislation concerned with the labour and social dimension of international road transport		
EU legislation on access to the road transport market for transport operators established within the EU (EEA)		Date of adoption
Regulation (EC) 1071/2009	Conditions to be complied with to pursue the occupation of road transport operator	21.10.2009
Regulation (EC) 1072/2009	Common rules for access to the international road haulage market	21.10.2009
Regulation (EC) 1073/2009	Common rules for access to the international market for coach and bus services	21.10.2009
Regulation (EU) 2020/1055	Amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector	15.07.2020
Regulation (EU) 2016/480	Common rules concerning the interconnection of national electronic registers on road transport undertakings and repealing Regulation (EU) No 1213/2010	01.04.2016
Regulation (EU) 2017/1440	Amending Implementing Regulation (EU) 2016/480 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings	08.08.2017
Regulation (EU) 2022/694	New serious infringements of the Union rules which may lead to the loss of good repute by the road transport operator	02.05.2022
Regulation (EU) 2022/695	Rules for the application of Directive 2006/22/EC as regards the common formula for calculating the risk rating of transport undertakings	02.05.2022
EU specific social legislation applicable the international road transport operations conducted within the EU		Date of adoption
Directive 92/106/EEC	Establishment of common rules for certain types of combined transport of goods between Member States	07.02.1992
Directive 92/6/EEC	Installation and use of speed limitation devices for certain categories of motor vehicles in the Community	10.02.1992
Directive 2002/15/EC	Organisation of the working time of persons performing mobile road transport activities	11.03.2002
Regulation (EC) 561/2006	Harmonisation of social legislation relating to road transport (driving times, breaks and rest periods)	15.03.2006
Regulation (EU) 165/2014	Rules on tachographs in road transport and amending Regulation (EC) No 561/2006	04.02.2014
Directive 2006/22/EC	Minimum conditions for the enforcement of social legislation relating to road transport activities	15.03.2006
Regulation (EU) 2020/1054	Amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs	15.07.2020
Regulation (EU) 2022/1012	Supplementing Regulation (EC) No 561/2006 of the European Parliament and of the Council with regard to the establishment of standards detailing the level of service and security of safe and secure parking areas and to the procedures for their certification	07.04.2022
Directive (EU) 2020/1057	Specific rules for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012	15.07.2020
Regulation (EU) 2021/1228	Requirements for the construction, testing, installation, operation and repair of smart tachographs and their components	16.07.2021
Regulation (EU) 2022/694	New serious infringements of the Union rules which may lead to the loss of good repute by the road transport operator	02.05.2022
Regulation (EU) 2022/695	Rules for the application of Directive 2006/22/EC as regards the common formula for calculating the risk rating of transport undertakings	02.05.2022
EU legislation on the posting of workers, including on the posting of drivers in the road transport sector in the EU		Date of adoption
Directive 96/71/EC	Posting of workers in the framework of the provision of services	16.02.1996
Directive 2014/67/EU	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	15.05.2014
Directive (EU) 2018/957	Amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services	28.06.2018
Directive (EU) 2020/1057	Specific rules for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012	15.07.2020
Regulation (EU) 2021/2179	Functionalities of the public interface connected to the Internal Market Information (IMI) System for posting drivers in the road transport sector	09.12.2021
Regulation (EU) 2022/694	New serious infringements of the Union rules which may lead to the loss of good repute by the road transport operator	02.05.2022
EU legislation on the coordination of social security systems for persons who are moving within the EU		Date of adoption
Regulation (EC) 883/2004	Coordination of social security systems	29.04.2004
Regulation (EC) 987/2009	Procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems	16.09.2009

Source: Authors' own elaboration

## 2.1 EU legislation on access to the international road transport sector

Title VI ‘Transport’ of the Treaty on the functioning of the EU (TFEU) enables the EU legislator, together with the Member States,<sup>20</sup> to pursue a common transport policy<sup>21</sup> and it provides the legal basis for the adoption of legislative acts concerning access to the EU road transport (services) market.

The EU road transport market is subject to a *licensing system* and transport operators have to obtain a Community licence in order to operate cross-border road haulage and passenger transport services in the EU.<sup>22</sup> Several Regulations set the ground rules and conditions for providing services in the road transport market with a view to ensuring fair competition and to improving the quality of services as well as road safety: Regulations (EC) 1071/2009<sup>23</sup>, (EC) 1072/2009<sup>24</sup> and (EC) 1073/2009<sup>25</sup> as well as the more recent Regulation (EU) 2020/1055 constitute the core legislative instruments that are relevant for the present study.

However, the ELA mandate only covers the general *Regulation (EC) 1071/2009 on the admission to the occupation of road transport operators* and does not include the more specific Regulations, (EC) 1072/2009 on road haulage and (EC) 1073/2009, on coach and bus services, in spite of their relevance to ELA’s objectives.<sup>26</sup> These two instruments complement the general Regulation and establish common rules for access to the markets of goods and passenger transport respectively. They determine the conditions and procedures related to the granting of *Community licences* (including *certified true copies thereof*), *driver attestations*<sup>27</sup> and, in the case of passenger transport, *authorisations to operate regular services*.<sup>28</sup> The basic Regulation (EC) 1071/2009 and Regulation (EC) 1072/2009 on road haulage transport services were significantly amended by Regulation (EU) 2020/1055 as part of the 2020 Mobility Package I.

Regulation (EC) 1071/2009 governs *the admission to and the pursuit of the occupation of road transport operator*.<sup>29</sup> It seeks to ensure a uniform application of common rules that apply to the admission to the occupation of road haulage operators or road passenger transport operators. The Regulation applies to all undertakings established in the EU which are engaged (or intend to engage) in the occupation of road transport operator. Transport operators established outside the EU are hence not subject to the Regulation.

The Regulation establishes *four principal requirements* with which *undertakings* have to comply in order to become (and remain) authorised to provide cross-border haulage or passenger transport services in the EU and determines

<sup>20</sup> Transport is subject to a shared competence between the EU and the Member States: Article 4 section 2 subsection 9 TFEU.

<sup>21</sup> Title VI does not provide much information on what a common transport policy should entail and to what matters it should extend specifically. It merely describes the legislative procedure that needs to be used and the areas for which sector-specific rules can be created (see Article 91 TFEU). See also: C. Abbati, *Transport and European integration*, Luxembourg, Office for Official Publications of the European Communities, 1987, p. 15: “(...) the provisions of the Treaty of Rome which relate to transport are rather like a jigsaw puzzle consisting of pieces whose shape can be changed to fit the circumstances. Some pieces definitely fit while others are missing or doubtful (...)”.

<sup>22</sup> Transport operators carrying passengers have to have a Community license but in addition also an authorisation to operate regular transport services in the EU. Both are issued by the Member State of establishment.

<sup>23</sup> Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC, OJ 31.7.2020, L 249/17 (consolidated version).

<sup>24</sup> Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (recast).

<sup>25</sup> Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (recast).

<sup>26</sup> Regulation 1072/2009 and Regulation 1073/2009 are not part of ELA’s mandate. They do however contain several provisions concerning cabotage and on mutual assistance regarding penalties and are as such relevant when cooperation obligations and measures are examined in the area of the posting of workers.

<sup>27</sup> Driver attestations are issued in the country of establishment of the transport operator and confirm that a third-country national is employed as a driver by the transport operator.

<sup>28</sup> Regular services refer to the carriage of passengers at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points. For these services authorisations in the name of the carrier are required. This is not the case for occasional services.

<sup>29</sup> Article 1

the conditions to which companies have to adhere in order to be compliant with each of these four requirements: transport undertakings have to (1) *have a stable and effective establishment in a Member State*, (2) *be of good repute*, (3) *have an appropriate financial standing* and (4) *have the requisite professional qualifications*.<sup>30</sup> Member States are obliged to ensure that applicant companies satisfy the criteria when submitting an application to become authorised while they also have to ascertain that authorised transport operators continue to meet the requirements once they have been authorised<sup>31</sup>. Examinations and checks by public authorities and enforcement agencies may lead to *rejection of an application* for a Community licence or to *suspension* or *withdrawal* in certain instances as defined by the Regulation<sup>32</sup>.

The Regulation furthermore requires that a road transport operator be obliged to nominate at least *one transport manager* who is professionally competent, of good reputation and resident in a Member State. The natural persons who are appointed as transport managers are subject to specific examinations and checks by public authorities and enforcement agencies, which may lead to a *declaration of unfitness* of a transport manager and the adoption of *accompanying rehabilitation measures* in certain instances as defined by the Regulation.

The Regulation also introduces the obligation for Member States to have *national electronic registers* of road transport operators which have been granted a Community licence.<sup>33</sup> The national registers must contain data related to the identification of the transport operators and their managers but also on the licences and on the decisions on suspension or withdrawal, as well as declarations of unfitness of the transport managers and the accompanying rehabilitation measures. Member States are furthermore obliged to make all the *relevant data* contained in their national registers *directly accessible to all competent authorities from other Member States*. National electronic registers must be interconnected and the European Commission is mandated to determine the common rules on the interconnection.<sup>34</sup> To that end the Commission first adopted Regulation (EU) 1213/2010<sup>35</sup>, which was later repealed by Implementing Regulation (EU) 2016/480<sup>36</sup> which lays down the requirements for the interconnection of the national registers with the ERRU messaging system.<sup>37</sup>

Member States are required to designate a *national contact point* responsible for the exchange of information with other Member States. The Regulation establishes the principles of the administrative cooperation between the Member States, which is primarily focused on the *exchange of information in relation to the infringements* which operators or transport managers have committed, and which have led or may lead to penalties or convictions. To that end, the Regulation (as amended by Regulation (EU) 2020/1055) contains a *list of the most serious infringements* in its Annex IV, all of which are related to the requirement to be compliant with the criterion of being of good repute and are all listed as the most serious infringements which may lead to a loss of good repute: (1) exceeding weekly or fortnightly maximum driving times by 25% or more; (2) exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50% or more; (3) not having a tachograph and/or speed limiter, or having in the vehicle and/or using a fraudulent device; (4) not holding a valid roadworthiness certificate;

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<sup>30</sup> Article 3

<sup>31</sup> Member States are currently no longer allowed to impose additional national requirements in addition to the four main requirements established by the Regulation. An undertaking which complies with the four requirements laid down in Article 3 of the Regulation shall, upon application, be authorised to engage in the occupation of road transport operator and obtain a Community licence, which provides access to the EU road haulage transport market or the EU road passenger transport market.

<sup>32</sup> Regulations (EC) 1072/2009 and (EC) 1073/2009 specify that withdrawals can be temporary or permanent and can concern the Community licence itself (transport operator is the holder) or some or all certified true copies (which are issued per vehicle in circulation).

<sup>33</sup> Article 16(1)

<sup>34</sup> Article 16(5) and (6)

<sup>35</sup> Commission Regulation (EU) 1213/2010 of 16 December 2010 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings..

<sup>36</sup> Commission Implementing Regulation (EU) 2016/480 of 1 April 2016 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings and repealing Regulation (EU) 1213/2010.

<sup>37</sup> A new updated Implementing Regulation on the interconnection is currently under preparation and is expected to become adopted mid-2023.

(5) not holding a valid driving licence; (6) holding a falsified driver card; (7) carriage of prohibited dangerous goods; (8) or carrying goods exceeding the maximum permissible laden mass by 25%. The list of the most serious infringements thus contains infringements of a varying nature. Fraudulent practices are included together with infringements of a more technical nature and infringements relating to maximum driving times. The list with the most serious infringements in Regulation (EC) 1071/2009 (as amended by Regulation (EU) 2020/1055) has meanwhile been fully incorporated into *the updated integrated list of serious infringements* that was adopted by means of Commission Implementing Regulation 2022/694 (see also below).<sup>38</sup>

Regulation (EU) 2020/1055 amends Regulation (EC) 1071/2009 significantly. It first *extends the personal scope* of application by lowering the minimum tonnage applicable to the vehicles that fall within its remit. All vehicles with a permissible laden mass above 2.5 tonnes (instead of the previous 3.5 tonnes) and which are engaged in international transport operations (as opposed to national transport operations) are now covered within its remit. The new provisions confirm furthermore that vehicles with a permissible laden mass below 3.5 tonnes, which are exclusively used for national transport operations as well as undertakings which are exclusively engaged in passenger transport operations for non-commercial purposes are excluded from its scope. As will be described below, Regulation (EU) 2020/1055 also introduced a set of new substantive rules while strengthening the administrative cooperation between Member States with a view to a more effective enforcement.

### 2.1.1 Stable and effective establishment

Article 5 of Regulation (EC) 1071/2009 stipulates the conditions relating to the requirement of a *stable and effective establishment of an undertaking*. Transport companies are required to have *premises* in the Member State of establishment where the core business documents are kept, have one or more registered *vehicles* at their disposal and *effectively conduct transport operations*. Regulation (EU) 2020/1055 has considerably amended Article 5 in order to clarify and strengthen the conditions of establishment. The list of core business documents that are required to be kept at the premises of the transport companies has been expanded<sup>39</sup>. Additionally, some new conditions have been added, such as the mandatory registration of the transport company in the national register of commercial companies and the requirement to have a valid VAT registration number. Finally, Member States may, but are not obliged to, require that the undertakings have duly qualified administrative personnel at the premises in the country of establishment or, alternatively, that the transport manager should be reachable during regular business hours, or require that the transport companies have operational infrastructure on top of the necessary technical equipment. The new provisions introduced by Regulation (EU) 2020/1055 are primarily introduced with a view to addressing the problem of letterbox companies.

An important novelty introduced by Article 1 (3) of Regulation (EU) 2020/1055 is the obligation for the transport undertakings to ensure that *their vehicles return to the premises in the Member State of establishment every eight weeks*. In doing so, the EU legislator aimed to strengthen the link between the presence of the vehicles in the country where the operator is established while ensuring that the vehicles can be correctly maintained with the technical equipment located in the country of establishment and thereby facilitating controls by enforcement agencies.<sup>40</sup>

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<sup>38</sup> Commission Implementing Regulation (EU) 2022/694 of 2 May 2022 amending Regulation (EU) 2016/403 as regards new serious infringements of the Union rules which may lead to the loss of good repute by the road transport operator, OJ 3.5.2022, L 129/22.

<sup>39</sup> Transport operators must have in the Member States of establishment premises at which the original core business documents are kept in electronic or any other form and in particular the transport contracts, documents relating to the vehicles at the disposal of the company, accounting documents, personnel management documents, labour contracts, social security documents, documents containing data on the dispatching and posting of drivers, documents containing data relating to cabotage, driving time and rest periods, and any other document to which the competent authority must have access to verify the company's compliance with the conditions of establishment

<sup>40</sup> Recital 8

## 2.1.2 Good repute

Article 6 of Regulation (EC) 1071/2009 regulates the conditions relating to the *requirement of good repute* which applies both to the undertakings and to their transport managers (or ‘any relevant person as may be determined by the Member States’ as mentioned in the Regulation). The new Regulation (EU) 2020/1055 also explicitly added ‘executive directors’ in addition to transport managers and the ‘other relevant persons as determined by national law’.

Compliance with the criterion of good repute for both the undertaking and its managers has been defined as being compliant with both (1) *national legislation* and (2) *the prevailing EU legislation on international road transport*. A conviction or a penalty for a serious criminal offence or most serious infringement is used as the main indicator for determining non-compliance.

Compliance with national legislation has been defined in the Regulation as being compliant with a broad array of national legislation in different policy fields: (1) national commercial and insolvency legislation, (2) legislation concerning pay and employment conditions, (3) legislation on road traffic, (4) requirements on professional liability and (5) legislation on trafficking of human beings or drugs. Regulation (EU) 2020/1055 also added (6) national tax law to the list of national legislation transport companies and their managers have to adhere to in order to meet the requirement of being of good repute.

Compliance with EU legislation on road transport means the rules concerned with (1) driving times and rest periods, (2) use of recording equipment (tachographs), (3) the maximum weight and dimension of vehicles, (4) initial qualification and continuous training of drivers, (5) roadworthiness of vehicles, (6) access to the international road haulage or passenger transport market, (7) safety in the carriage of dangerous goods by road, (8) use of speed-limiting devices, (9) driving licences, (10) animal transport and (11) admission to the occupation. Regulation (EU) 2020/1055 added the EU rules concerning (12) the *posting of drivers in international transport operations*, (13) the *law applicable to the contractual obligations* and (14) the *rules on cabotage* to the list of measures to which transport operators have to adhere.

The new Regulation clarifies which persons’ conduct is to be examined when verifying whether the operator is compliant with the conditions of good repute while it also establishes the procedures that need to be followed when an operator or its manager has been subject to a conviction or penalty for a serious infringement.

The Regulation assigns to the European Commission (Article 6) the task of adopting a list of categories, types and degrees of seriousness of *serious infringements of the EU rules* which, in addition to those set out in Annex IV of the Regulation, may lead to the loss of good repute. To that end, the Commission adopted Regulation (EU) 2016/403<sup>41</sup> introducing a categorisation of the serious infringements. That Regulation has meanwhile been updated by means of Implementing Regulation (EU) 2022/694<sup>42</sup>, which entered into force on 22 May 2022.<sup>43</sup> That Regulation presents various tables containing categories and types of serious infringements of EU rules on commercial road transport.<sup>44</sup> The Regulation identifies 96 serious infringements of the prevailing EU rules concerned with the road transport sector: 41 serious infringements in relation to the rules on *driving and rest times*, 28 in relation to the rules on the use of the tachographs, 4 concerning the rules on *speed limiting devices*, 7

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<sup>41</sup> Commission Regulation (EU) 2016/403 of 18 March 2016 supplementing Regulation (EC) No 1071/2009 of the European Parliament and of the Council with regard to the classification of serious infringements of the Union rules, which may lead to the loss of good repute by the road transport operator, and amending Annex III to Directive 2006/22/EC of the European Parliament and of the Council.

<sup>42</sup> Commission Implementing Regulation (EU) 2022/694 of 2 May 2022 amending Regulation (EU) 2016/403 as regards new serious infringements of the Union rules which may lead to the loss of good repute by the road transport operator.

<sup>43</sup> Commission Implementing Regulation (EU) 2022/694 of 2 May 2022 amending Regulation (EU) 2016/403 as regards new serious infringements of the Union rules which may lead to the loss of good repute by the road transport operator, OJ 3.5.2022, L 129/22.

<sup>44</sup> These rules are: Regulation (EC) 561/2006 on driving times and resting periods, Regulation (EU) 165/2014 on the use of the tachograph; Directive 92/6/EEC on speed limitation devices; Regulation (EC) 1072/2009 on access to the international road haulage transport market; Regulation (EC) 1073/2009 on bus and coach services; Regulation (EC) 593/2008 on the applicable contract law; Regulation (EU) 2020/1057 on posting of drivers.

concerning *access to the international road haulage market*, 8 regarding the rules on access to the *market for coach and bus services*, 1 on compliance with EU law on *contractual obligations* and another 7 with respect to the legislation concerning the *posting of drivers* in international transport. **Table 2** presents an overview of the 21 new serious infringements which were added to the list by means of Regulation (EU) 2022/694 following the legislative changes that were introduced under Mobility Package I.

The serious infringements listed are divided into three categories of gravity according to their potential to create a risk of fatalities or serious injuries and/or of distorting competition in the road transport market. A distinction is made between serious infringements (SI), very serious infringements (VSI) and most serious infringements (MSI). The Regulation also clarifies when exactly a loss of good repute could occur. The serious (SI) and very serious (VSI) infringements listed in the tables, when committed repeatedly, are to be regarded as more serious by the competent authority of a Member State of establishment. When calculating the frequency of occurrence of repeated infringements Member States are to take the following factors into account:

- seriousness of infringement (SI or VSI);
- time (at least one rolling year from the date of a verification);
- number of vehicles used for the transport activities managed by the transport manager (average per year).

In addition, taking the potential of creating a risk to road safety into account, the maximum frequency of serious infringements beyond which they should be considered as more serious is established as:

- 3 SI/per vehicle/per year = 1 VSI
- 3 VSI/per vehicle/per year = launch of a national procedure on good repute.

Finally, the Regulation asserts that the number of infringements per vehicle per year is an average figure calculated by dividing the total number of all infringements of the same level of seriousness (SI or VSI) by the average number of vehicles used during the year. The frequency formula provides for a maximum threshold for occurrence of serious infringements beyond which they are to be considered as more serious. Member States may establish stricter thresholds if envisaged in their national administrative procedure for assessing good repute.



**Table 2: Overview of the new serious infringements of EU rules on road transport which may lead to the loss of good repute by transport operators introduced by Implementing Regulation (EU) 2022/694**

Commission Implementing Regulation (EU) 2022/694: new serious infringements - loss of good repute					
			SI	VSI	MSI
<b>Regulation (EC) 561/2006 (Driving and rest times)</b>					
<b>REST PERIODS</b>					
1	Article 8 (6b)	No compensation rest for two consecutive reduced weekly rest periods		X	
2	Article 8 (8)	Regular weekly rest period or any weekly rest period of more than 45 hours taken in a vehicle		X	
3		The employer not covering costs for accommodation outside the vehicle	X		
<b>WORK ORGANISATION</b>					
4	Article 8 (8a)	Transport undertaking not organising the work of drivers in such a way that the drivers are able to return to the employer's operational centre, or to return to the drivers' place of residence		X	
<b>Regulation (EU) 165/2014 (Tachograph)</b>					
<b>PRODUCING INFORMATION</b>					
5	Article 34(5), point (b)(v)	Incorrect use or non-use of the ferry/train sign	X		
6	Article 34(6)	Required information not entered on the record sheet		X	
7	Article 34(7)	Records not showing the symbols of the countries whose borders were crossed by the driver during the daily working period	X		
8		Records not showing the symbols of the countries where the driver's daily working period started and finished	X		
<b>Directive 92/6/EEC (Speed limitation devices)</b>					
N/A	<i>no new infringements</i>				
<b>Regulation (EC) 1072/2009 (Access to the international road haulage market)</b>					
<b>CABOTAGE</b>					
9	Article 8(2)	Carrying out a cabotage operation not in compliance with the laws, regulations and administrative provisions in force in the host Member State		X	
10	Article 8(2a)	Carrying out cabotage operations in the same Member State within 4 days following the end of the last legitimate cabotage operation in that Member State		X	
11	Article 8(3) and (4)	The haulier being unable to produce clear evidence of the preceding international carriage and/or of each consecutive cabotage operation carried out, and/or of all operations carried out in cases where the vehicle is present in the host Member State within the period of 4 days preceding the international carriage, and to present these evidences within the duration of the roadside check.		X	
<b>Regulation (EC) 1073/2009 (Access to the market for coach and bus services)</b>					
<b>RULES APPLICABLE TO CABOTAGE OPERATIONS</b>					
12	Article 16	Carrying out a cabotage operation not in compliance with the laws, regulations and administrative provisions in force in the host Member State		X	
13	Article 17	Not having on board of the vehicle or not being able to present at the request of any authorised inspecting officer the control documents for cabotage operations (journey form for occasional services, or the contract concluded between the carrier and the transport organiser or a certified true copy thereof in the case of special regular services)		X	
<b>Regulation (EC) No 593/2008 (Rome I) (law applicable to contractual obligations)</b>					
<b>COMMUNITY LICENCE</b>					
14	Rome I	Violation of the law applicable to contractual obligations		X	
<b>Directive (EU) 2020/1057 (posting of workers in road transport)</b>					
15	Article 1 (11), point a	Incomplete information on the posting declaration	X		
16		Failure to submit a posting declaration to the Member State to which the driver is posted no later than at the commencement of the posting		X	
17	Article 1 (11), point b	Falsified posting declaration for drivers		X	
18		Impossibility of the driver to present a valid posting declaration		X	
19		Failure to put at the disposal of the driver a valid posting declaration		X	
20	Article 1 (11), point c	Failure to submit the requested documents to the host Member State within eight weeks from the date of the request		X	
21	Article 1 (12)	Failure of the operator to keep the posting declarations up to date in the public interface connected to IMI	X		

Source: Authors' own elaboration on basis of the text of Regulation (EU) 2022/694

### 2.1.3 Appropriate financial standing

Article 7 of Regulation (EC) 1071/2009 regulates the conditions relating to the *requirement of financial standing* and determines that an undertaking is obliged at all times in the course of an annual accounting year to be able to

meet its financial obligations as certified by an auditor or certified professional. Proof of financial standing can be provided by means of *certified annual accounts* or, when Member States so decide, by means of bank guarantees or insurance. Article 7 was amended by Regulation (EU) 2020/1055. One of the important amendments includes the possibility for Member States to require that the undertaking, the transport manager or any other relevant person as may be determined by Member States *not have outstanding non-personal debts* owed to bodies governed by public law, and *not be bankrupt or subject to insolvency or winding-up proceedings*.

### 2.1.4 Professional competence

Article 8 of Regulation (EC) 1071/2009 regulates the conditions relating to the *requirement of professional competence* of transport managers, who have to possess sufficient knowledge in a wide range of areas, which are listed in its Annex I: civil law, commercial law, social law, fiscal law, business and financial management of undertakings, access to the international transport market, technical standards applicable in the road transport sector and road safety. The knowledge is to be demonstrated by means of a *certificate* issued by the competent authorities of the Member State and is to be based on *compulsory written examinations*, which may be supplemented by oral examinations if Member States so decide.

Article 8 has been slightly amended by Regulation (EU) 2020/1055. A novelty includes the provision that Member States may promote *periodic training at three-year intervals* to ensure that certified transport managers are sufficiently aware of developments in the sector.

The Regulation also specifies that the certificate of professional competence of a transport manager who has been declared unfit is no longer valid in any Member State and that transport managers cannot be rehabilitated earlier than one year from the date of the loss of good repute and not before the transport manager has followed appropriate training for at least three months or has passed an examination.

Finally, the Regulation empowers the European Commission to adopt delegated acts to amend the different Annexes of Regulation 1071/2009 in order to adapt them to market developments and technical progress: Annex I on the subjects and the organisation of the written examination for transport managers, Annex II on the format and security requirements of the certificate of professional competence and Annex III introducing a model for the certificate of professional competence.

### 2.1.5 The ERRU and the IMI on the conditions of establishment of transport operators

The exchange of information between Member States on *transport operators established in the EU* and on the *convictions and penalties for serious infringements* takes place through the ERRU digital message exchange system and by means of the Internal Market Information system (IMI) <sup>45</sup>. Member States are obliged to exchange information through the IMI, which since the beginning of 2022 has contained a new specific module on the conditions of establishment for international road transport operators established in the EU. Member States can request information on the conditions of establishment of a transport company established in another Member State by addressing their request to a competent authority that has been granted access as a user to the IMI. The request should indicate the data on the transport company, the infringement concerned and any relevant documents or evidence. The message exchange system allows for answers, requests for clarifications and for responses to these clarifications.

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<sup>45</sup> Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation').

The IMI module is linked technically to the European Register of Road Transport Undertakings (ERRU)<sup>46</sup>, which assures the interconnection between the national electronic registers on transport operators within the EEA.<sup>47</sup> Member States have to ensure that the relevant data in their national registers are directly accessible by enforcement agencies from other Member States and to do so by implementation of the technical connection requirements contained in current Implementing Regulation (EU) 2016/480 (as amended by Implementing Regulation (EU) 2017/1440)).<sup>48</sup> Whereas the operation of ERRU is based on interconnected national registers maintained by the Member States, the exchange of information between Member States through ERRU occurs through a central hub system managed by the European Commission. This system centralises the data traffic by collecting the messages sent by the Member States and then forwarding them to the receiving Member States.<sup>49</sup>

Different exchanges can currently be processed through ERRU (Version 2.5), such as infringement notification messages (including penalties imposed and penalties requested) and infringement response messages, as well as search requests and response messages with a view both to verifying the good repute compliance of the transport undertakings and their managers and the existence of a Community licence.<sup>50</sup> At the time of writing<sup>51</sup>, ERRU (Version 2.5) had three main functionalities: (1) the Check Good Repute functionality (CGR), which allows Member States to initiate a query to other Member States on the fitness of a transport manager and hence on the authorisation to operate a transport undertaking; (2) the Infringement Notification Functionality (INF) which allows Member States to notify the Member State of establishment that a transport operator has committed a serious infringement or to ask the Member State of establishment to apply a penalty on the transport undertaking, and (3) the Check Community Licence functionality (CCL) allowing Member States to initiate a query to other Member States in order to verify whether a transport undertaking is operating with a valid Community licence.

ERRU functions on the basis of a points-based system for assigning a **reliability score** to individual road transport undertakings. Upon registration in a national register, transport operators obtain an initial reference score, which takes into account the size of the undertaking (based on the number of authorisations the transport undertaking has for their vehicle fleet). **When a serious infringement has been established, a certain number of points proportionate to the seriousness of the infringement are recorded in the register.** Records on infringements are kept in the system for two years after which they are removed. In the event of serious and repeated violations, companies that do not comply with the regulations on road safety may ultimately be sanctioned by having their Community licence suspended or revoked or be served with a declaration of unfitness of the transport manager.

A new updated version of ERRU (Version 3.0) is currently under preparation and it is expected that a new Implementing Regulation on the interconnection requirement for the national electronic registers will be adopted in the course of 2023. The new ERRU will take into account the latest detailed list of serious infringements established in Regulation EU 2022/694<sup>52</sup> and the risk rating methodology that was adopted under Regulation (EU) 2022/695.

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<sup>46</sup> [https://transport.ec.europa.eu/transport-modes/road/rules-governing-access-profession/european-register-road-transport-undertakings-erru\\_en](https://transport.ec.europa.eu/transport-modes/road/rules-governing-access-profession/european-register-road-transport-undertakings-erru_en)

<sup>47</sup> The first Commission Regulation (EU) No 1213/2010 of 16 December 2010 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings was repealed by Implementing Regulation (EU) 2016/480. The latter Regulation has been further amended by Implementing Regulation (EU) 2017/1440 and is currently under review.

<sup>48</sup> Implementing Regulation (EU) 2016/480 repealed the previous Regulation (EU) 1213/2010 and its connection requirements became applicable by 30 January 2019 in Member States. It is currently under review and is expected to be replaced by a new Implementing Regulation in the course of 2023.

<sup>49</sup> Commission Implementing Regulation (EU) 2017/1440 amending Implementing Regulation (EU) 2016/480 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings.

<sup>50</sup> Article 18 (8)

<sup>51</sup> The Commission is preparing a new version of ERRU which will be released in 2023. This version will contain more functionalities and it should allow the exchange of a wider range of information.

<sup>52</sup> Commission Implementing Regulation (EU) 2022/694 of 2 May 2022 amending Regulation (EU) 2016/403 as regards new serious infringements of the Union rules which may lead to the loss of good repute by the road transport operator.

## 2.2 EU social legislation specific to road transport in the EU

Regulation (EC) 561/2006<sup>53</sup> and Directive 2002/15/EC<sup>54</sup> are the key legal instruments governing the working conditions of drivers in the international road transport sector within the EU.<sup>55,56</sup> These instruments provide a certain level of harmonisation on driving times, breaks, rest periods and working time for drivers. The rules do not make a distinction between whether the vehicle is driven by an employee or a self-employed person.<sup>57</sup>

Directive 2006/22/EC<sup>58</sup> ensures the proper application and harmonised interpretation of the social rules on international road transport through the establishment of minimum requirements for the uniform and effective checking by the Member States of compliance with the relevant provisions. Mobility Package I has impacted these instruments considerably with the adoption of Regulation (EU) 2020/1054 and Directive (EU) 2020/1057.

The ELA mandate only covers Regulation (EC) 561/2006 and Directive 2006/22/EC. These instruments can be analysed separately from Directive 2002/15/EC, hence that directive is not included in this report.

### 2.2.1 Regulation (EC) 561/2006 and Regulation (EU) 2020/1054 on driving times and rest periods

Regulation (EC) 561/2006 lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road in order to harmonise the conditions of competition with regard to the road transport sector and to improve the working conditions of the drivers as well as road safety.<sup>59,60</sup>

The Regulation applies to *transport operations conducted within the EU* (including Switzerland and the countries of the European Economic Area) regardless of the country of establishment of the transport operator<sup>61</sup> when it concerns carriage by road of either goods or passengers by means of vehicles which have technical specifications above certain minimum ceilings: for the transport of goods, when the maximum permissible mass of the vehicles exceed 3.5 tonnes and for passenger transport when vehicles are construed to carry more than nine persons including the driver. Regulation (EU) 2020/1054 extends the scope of what are considered road haulage transport operators active in international transport and in cabotage operations: as of 1 July 2026 the Regulation will apply to vehicles with a maximum permissible mass exceeding 2.5 tonnes, thus adding an additional number of vehicles (exceeding the permissible mass of 2.5 tonnes but remaining below 3.5 tonnes) to its scope of application. Amongst several other exceptions, transport services provided exclusively for non-commercial purposes are excluded from the scope of application.

<sup>53</sup> Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85

<sup>54</sup> Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities.

<sup>55</sup> See also Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities, *OJ* 23.3.2002, L 80/35. This Directive covers other aspects of working time for drivers than driving times and rest periods. Directive 1057/2020 places Directive 2002/15 within the scope of Directive 2006/22, which implies an increased enforcement mechanism. Directive 2002/15 however does not fall within ELA's remit and is therefore not discussed in this study.

<sup>56</sup> See also Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, *OJ* 18.11.2003, L 299/9. Directive 2002/15 prevails over Directive 2003/88, but where the latter Directive is not applicable or the case concerns provisions that are not regulated by that Directive, Directive 2003/88 applies to the road transport sector.

<sup>57</sup> The Court confirmed this early on in case CJEU 25 January 1977, C-65/76, ECLI:EU:C:1977:7, 'Derycke'.

<sup>58</sup> Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014 and Directive 2002/15/EC as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC (new name of the Directive was introduced by Directive 2020/1057).

<sup>59</sup> Article 1 of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, *OJ* 31.7.2020, L 249/1 (consolidated version).

<sup>60</sup> Article 11: Regarding cabotage operations, a Member State may provide for longer minimum breaks and rest periods or shorter maximum driving times than the harmonised rules of the regulation.

<sup>61</sup> Articles 2 and 3

The fundamental rules on driving times, breaks and rest periods are enshrined in Articles 6-9 of Regulation (EC) 561/2006. Generally speaking, *driving times should not exceed a daily 9 hours and a 56 hours a week*<sup>62</sup>, whereas for *rest periods a minimum is set of 11 hours per day and 45 hours per week*.<sup>63</sup> *A minimum break of 45 minutes has to be taken for each four and a half hours' driving period, but this can be replaced by two breaks of 15 and 30 minutes*.<sup>64</sup> All working hours of drivers have to be registered, including working hours performed outside the driving times and rest periods (e.g. for loading or unloading). Transport undertakings are required to draw up *service timetables* and *duty rosters*, which have to indicate for each driver their name, the place where the driver is based and the schedule for the periods of driving, other work, breaks and availability. The duty roster has to contain the details of a minimum period of the previous 28 days and is kept by the transport operator at its business premises for one year. An extract from the duty roster and a copy of the service timetable are carried by the drivers during transport operations.

Regulation (EC) 561/2006 also contains provisions on imposing penalties. Member States are obliged to enable the competent authorities to impose a penalty on an undertaking and/or a driver if an infringement of this Regulation is detected on its territory and it is one for which a penalty has not already been imposed, even where that infringement was committed on the territory of another Member State or of a third country.<sup>65</sup>

Articles 6-9 of Regulation (EC) 561/2006 were amended considerably by Regulation (EU) 2020/1054. In general, this introduced *more flexible rules on the organisation of rest periods*. There were no changes in the organisation of the breaks, whereas (minor) changes on maximum driving times were introduced in order to increase the flexibility when drivers return home. However, Regulation (EU) 2020/1054 introduced *stricter rules on control and enforcement*.

The new rules on the frequency and length of rest periods<sup>66</sup> have introduced numerous exceptions. This flexibility was mainly introduced in order to allow drivers to spend less time on the road and more time at home, but this could also lead to divergent rules between Member States, depending on how Member States transpose these new provisions. In any two consecutive weeks drivers have the right to have at least two regular weekly rest periods or one regular weekly rest period and one reduced weekly rest period of at least 24 hours. Regular *weekly rest periods* or any weekly rest period of more than 45 hours when they are taken in compensation for previous reduced weekly rest periods *can no longer be taken in (the cabin of) the vehicle* but have to be taken in suitable gender-friendly accommodation with adequate sleeping and sanitary facilities. The cost of these has to be borne by the employer.<sup>67</sup> Also new are possible derogations on rest periods in cases when the vehicle is transported by ferry or train and accompanied by the driver.<sup>68</sup>

Operators are furthermore obliged to organise the schedule of their drivers in such a way that they are able to return to the Member State of the employer's establishment or to the driver's place of residence *every four weeks*. In exceptional circumstances, there is provision for some flexibility on the maximum driving times when drivers are en route to the employer's operational centre or the driver's place of residence to take a weekly rest period.<sup>69</sup>

Finally, the prohibition on paying wage supplements or bonuses related to distance travelled, the speed of delivery and/or the amount of goods carried if that payment is of such a kind as to endanger road safety and/or encourages any infringement of the Regulation has been tightened.

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<sup>62</sup> Article 6

<sup>63</sup> Article 8

<sup>64</sup> Article 7

<sup>65</sup> Article 19

<sup>66</sup> Article 7

<sup>67</sup> See in the same vein: CJEU 20 December 2017, C-102/16, ECLI:EU:C:2017:1012, 'Vaditrans'. The Court followed the stance of the European Commission in its proposal to amend Regulation 561/2006 regarding the prohibition to sleep in the cabin.

<sup>68</sup> Article 9

<sup>69</sup> Article 12

The European Commission is entrusted with the task of evaluating whether more appropriate rules can be adopted for drivers engaged in occasional services of carriage of passengers. The Regulation also assigns to the European Commission the responsibility for (1) adopting standards for safe and secure parking areas which have to be certified and (2) publishing the list of parking areas on a single official website.<sup>70</sup> To that end, the European Commission in April 2022 adopted Delegated Regulation (EU) 2022/1012 specifying (1) the minimum levels of service that parking areas have to comply with in order to be certified (gender-friendly sanitary facilities, food and beverage purchasing options, power supply, communication connection and emergency contact points and procedures) as well as four different levels of security parking areas can acquire and (2) the standards and procedures for certification of the safe and secure parking areas.<sup>71</sup>

## 2.2.2 Regulation (EC) 165/2014 (amended by Regulation (EU) 2020/1054) on tachographs and Directive 2006/22/EC (amended by Directive (EU) 2020/1057) on enforcement

Two main instruments are relevant for the enforcement of Regulation (EC) 561/2006 on driving times and rest periods: Regulation (EC) 165/2014 on tachographs and Directive (EC) 2006/22 on enforcement. Although Regulation (EC) 165/2014 on tachographs does not strictly speaking fall within ELA's remit, it is operationally relevant for ELA's tasks. It is dealt with briefly here inter alia because of its importance for the cooperation obligations and measures which fall within ELA's remit.

According to the definition in Article 2 of Regulation (EC) 165/2014, a 'tachograph' is the recording equipment intended for installation in road vehicles to display, record, print, store and output automatically or semi-automatically details of the movement, including the speed of such vehicles, and details of certain periods of activity of their drivers.<sup>72</sup> In other words, it is the equipment inside a vehicle such as a truck or lorry which records the speed, distance travelled and stopping periods, and it is used to control the driver's hours of work.

Regulation (EC) 165/2014 lays down the obligations and requirements in relation to the construction, installation, use, testing and control of tachographs used in road transport in order to verify compliance with the relevant EU legislation as listed below:

- Regulation (EC) 561/2006 (driving and rest times);
- Regulations (EC) 1071/2009, (EC) 1072/2009 and (EC) 1073/2009 (access to the road haulage market and market for coaches and buses);
- Directives 2002/15/EC<sup>73</sup> (working time of persons performing mobile road transport activities), 92/6/EEC<sup>74</sup> (speed limitation devices) and 92/106/EEC<sup>75</sup> (combined transport of goods);
- Directives 96/71/EC as amended by Directive (EU) 2018/957, 2014/67/EU and (EU) 2020/1057 (posting rules).

<sup>70</sup> See: <https://www.eu-parking.com/SSTPAs/SSTPAs-List>

<sup>71</sup> Commission Delegated Regulation (EU) 2022/1012 of 7 April 2022 supplementing Regulation (EC) No 561/2006 of the European Parliament and of the Council with regard to the establishment of standards detailing the level of service and security of safe and secure parking areas and to the procedures for their certification, *OJ L 170*, 28.6.2022, p. 27–37.

<sup>72</sup> Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport, *OJ 31.7.2020*, L 249/1 (consolidated version).

<sup>73</sup> Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities, *OJ L 80*, 23.3.2002, p. 35–39.

<sup>74</sup> Council Directive 92/6/EEC of 10 February 1992 on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community, *OJ L 57*, 2.3.1992, p. 27–28.

<sup>75</sup> Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States, *OJ L 368*, 17.12.1992, p. 38–42.

The Mobility package I under Regulation (EU) 2020/1054 introduces several new provisions, such as the *use of tachographs for all commercial vehicles* and the *advance introduction of smart tachographs with GPS functions*. Since 15 June 2019 a new generation of tachographs, so called smart tachographs, have been being installed in newly registered trucks and buses. Following the recent amendments in Regulation (EU) 2020/1054, a new version of the smart tachograph (smart tachograph version 2) will be deployed in 2023. Version 2 will incorporate new functionalities for the purpose of enforcement of the EU legislation on cabotage operations and the posting of drivers (e.g. recording border crossings or the detection of the position of the vehicle when a load/unload operation is being carried out).<sup>76</sup> Through the short-range communication channel, additional information related to the activity of the driver will be transmitted to enforcement authorities. In general, to verify compliance with the EU legislation, the position of the vehicle must be automatically recorded by the smart tachograph:

- At the starting place of the daily working period;
- Every time the vehicle crosses a border;
- When the vehicle performs loading or unloading activities;
- Every three hours of accumulated driving; and
- At the ending place of the daily working period.

The amendments also contain provisions on situations where no smart tachographs are used, requiring *drivers to manually insert the country codes when crossing borders into a new country*. This mandatory obligation of manually inserting the country codes has been in place since 2 February 2022.

Directive 2006/22/EC aims at ensuring the enforcement of Regulation (EC) 561/2006.<sup>77</sup> The Directive states that Member States must comply with a number of minimum requirements relating to compliance with Regulation (EC) 561/2006. The aim is to reduce and prevent infringements by setting out the checks that need to be executed at the roadside and at the premises of undertakings. Member States are obliged to carry out checks, particularly roadside checks<sup>78</sup>, concerted checks<sup>79</sup> and checks at the premises of the transport undertakings.

Member States are obliged to adopt and *implement enforcement strategies* which aim at *checking at least 3% of the number of days worked by drivers engaged in international road transport on an annual basis*. Article 2 (3) of Directive 2006/22/EC also indicated that not less than 15 % of the total number of the working days checked shall be checked at the roadside and not less than 30 % at the premises of undertakings. From 1 January 2008, not less than 30 % of the total number of the working days checked have had to be checked at the roadside and not less than 50 % at the premises of undertakings. In addition, these checks must aim to ascertain a number of specifically predefined items of information (number of drivers checked at the roadside, number of checks at the premises, number of working days checked, and the number and type of infringements reported), which must then be submitted to the European Commission. Member States are obliged to *keep statistics* on the roadside checks and checks at the premises of the undertakings, which have to be reported biennially to the Commission biennially.

Member States are obliged to carry out *concerted roadside checks on drivers and vehicles at least six times per year*. The concerted checks must be carried out by the enforcement authorities of two or more Member States, each operating on its own territory.<sup>80</sup>

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<sup>76</sup> See: [https://transport.ec.europa.eu/transport-modes/road/tachograph\\_en](https://transport.ec.europa.eu/transport-modes/road/tachograph_en)

<sup>77</sup> Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC, OJ 31.7.2020, L 249/40 (consolidated version).

<sup>78</sup> Article 4

<sup>79</sup> Article 5

<sup>80</sup> Regulation (EU) 2020/1055 amending Regulation (EC) 1072/2009 installed the obligation for Member States to conduct at least twice a year concerted roadside checks on cabotage operations.

Mobility Package I, via Directive (EU) 2020/1057, amends Directive 2006/22/EC and introduces the use and implementation of *risk rating systems* as a basis for determining targeted checks on the compliance with the working time provisions of Directive 2002/15/EC in cases where one or more of the drivers of an undertaking have been continuously or seriously infringing Regulation (EC) 561/2006 or (EU) 165/2014. The risk classification system is based on the relative number and gravity of any infringement of Regulation (EU) 561/2006 (driving and rest times), of Regulation (EC) 165/2014 (tachographs) or of national provisions transposing Directive 2002/15/EC (working time) that an individual undertaking has committed.<sup>81</sup>

Directive 2006/22/EC contains in its Annex III an initial list of infringements of Regulation (EC) No 561/2006 (driving and rest times) and Regulation (EU) 165/2014 (tachographs) and the weighting of the gravity. The European Commission is entrusted with the task of establishing and updating the weighting of the gravity of infringements and of adopting delegated acts to take account of regulatory developments and road safety considerations. Regulation 2016/403<sup>82</sup> which entered into force at the beginning of 2017 replaced Annex III of Directive 2006/22/EC and introduced a new list of infringements. That list has recently been replaced by Commission Implementing Regulation (EU) 2022/694, which contains an *integrated list of serious infringements* across the entire spectrum of applicable EU legislation (driving times and rest periods, use of tachographs, use of speed limiting devices, access to the international road haulage market, access to the market for bus and coach services, EU law on contractual obligations and the posting of drivers)<sup>83</sup>.

Directive (EU) 2020/1057 assigns to the European Commission the task of establishing a *common formula for calculating the risk rating of transport undertakings* with a view to ensuring equal treatment of operators in compliance checks and comparing risk scores between transport operators. The formula is also to take into account the number, gravity and frequency of occurrence of infringements and the results of controls where no infringement has been detected, as well as whether a road transport undertaking has been using the smart tachograph on all its vehicles. Undertakings with a high risk rating are to be checked more closely and more often.

Commission Implementing Regulation (EU) 2022/695<sup>84</sup>, which entered into force on 22 May 2022, introduces a methodology for risk rating that is calculated on the basis of the number and severity of infringements against EU road transport rules committed by the road transport operators and their drivers. The risk ratings of transport undertakings are recorded in national risk rating systems established under enforcement Directive 2006/22/EC. The overall risk rating formula takes a number of factors into account, such as:

- number of infringements of a given type per individual check;
- weighted score according to type/seriousness of infringement (MI-1/SI-10/VSI-30/MSI-90);
- number of vehicles controlled during an individual check;
- total number of checks on the undertaking;
- weighting for the use of the smart tachograph.<sup>85</sup>

The data on infringements that operators have committed will be counted in the formula for a period of two years. Transport operators are classified in four categories or risk bands based on their scores:

- Operators on which no checks were performed (Grey Band);
- 0-100 points: low-risk operators (Green Band);

<sup>81</sup> Article 9

<sup>82</sup> Commission Regulation (EU) 2016/403 of 18 March 2016 supplementing Regulation (EC) 1071/2009 of the European Parliament and of the Council with regard to the classification of serious infringements of the Union rules, which may lead to the loss of good repute by the road transport operator, and amending Annex III to Directive 2006/22/EC of the European Parliament and of the Council

<sup>83</sup> For detailed reference see Table 2.

<sup>84</sup> Commission Implementing Regulation (EU) 2022/695 of 2 May 2022 laying down rules for the application of Directive 2006/22/EC of the European Parliament and of the Council as regards the common formula for calculating the risk rating of transport undertakings

<sup>85</sup> Chapter II of Regulation (EU) 165/2014.



- 101-200 points: medium-risk operators (Amber Band);
- 201 points or more: high risk operators (Red Band).

### 2.2.3 The IMI module on the social rules in the international road transport sector

Directive (EU) 2020/1057 introduces the obligation for Member States to exchange the information on *compliance with the social legislation* in the international transport sector through the Internal Market Information system (IMI). A specific module for information exchange on the social rules in the international road transport services operated in the EU became operational in spring 2022.

If a Member State has changed a national interpretation of (some of) the provisions contained in Regulation (EC) 561/2006, it is obliged to inform all other Member States, and this has to be communicated through the 'Road transport – Social Rules' IMI module. Member States can also request information on the interpretation of the provisions of the Regulation in another Member State. The IMI module on 'Road Transport – Social Rules' allows for notifications or requests to be sent, and for the responses to be directly communicated between the authorities and enforcement agencies which have been granted user access.

## 2.3 EU legislation on posting

Three EU directives can apply to the posting of drivers in the international road transport sector for transport services operated in the EU. There is the basic Directive 96/71/EC on posting as amended by Directive (EU) 2018/957 that establishes the ground rules for cross-border posting in the EU regardless of the economic sector. Directive 2014/67/EU provides for the enforcement rules for this Directive. A third directive, Directive (EU) 2020/1057 is part of the 2020 Mobility Package I and sets out sector-specific posting rules for the international road transport sector in the EU. It determines to which transport operations the basic posting Directives 96/71/EC and (EU) 2018/957 are applicable and which transport operations are excluded from their scope, and to what extent. The main objectives of this *lex specialis* are to clarify<sup>86</sup> whether and to what extent the highly mobile drivers engaged in international transport operations are to be considered as posted workers and to introduce a closed list of administrative requirements for transport operators in order to reduce the administrative burden when they post their drivers in the EU.

These three directives may have to be applied cumulatively to a single international transport operation, e.g. in case Directive (EU) 2020/1057 determines that the basic posting Directive 96/71/EC as amended by Directive (EU) 2018/957 is applicable (e.g. for cross-trade and cabotage operations). Conversely, it is possible that Directive (EU) 2020/1057 applies and excludes a transport operation from the basic posting Directive 96/71/EC as amended by Directive (EU) 2018/957 (e.g. in the case of transit or bilateral operations). In yet another situation, for example, in the case of posting of drivers in the context of intra-group movements or posting of drivers by a temporary employment undertaking, it may be that only the basic Directive 96/71/EC as amended by Directive (EU) 2018/957 and its enforcement directive apply<sup>87</sup>, since Directive (EU) 2020/1057 does not extend to these types of postings.<sup>88</sup>

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<sup>86</sup> See judgments of the CJEU in the cases of *Dobersberger* (C-16/18) of 19 December 2019 and *FNV v Van den Bosch* (C-815/18) of 1 December 2020 and the related interpretation of the concept of 'sufficient connection with the territory of the receiving country' as a criterion to determine the concept of a posted worker. In the *Dobersberger* judgment the CJEU excluded workers performing on-board services on international trains from the Posting of Workers Directive's scope of application, whereas in the *FNV* case, the CJEU considered the transport sector as within its remit but considered the sufficient link criterion as a determining factor to define a posted worker.

<sup>87</sup> Member States can apply restrictions in their transposition measures.

<sup>88</sup> In the *Dobersberger* judgment (C-16/18) of 19 December 2019, the CJEU excluded workers performing on-board services on international trains from the PWD's scope of application.

### 2.3.1 Directives 96/71/EC and (EU) 2018/957 on the posting of workers

Directives 96/71/EC and (EU) 2018/957 are the key Directives on posting of workers in the EU.<sup>89</sup> Directive 96/71/EC determines when and which *hard core employment conditions* should be applied in cross-border labour flows within the EU when workers are posted and hence working abroad. The overall goal is to strike the right balance between the need to promote the freedom to provide services, ensure a level playing field and the need to protect the rights of posted workers. A *'posted worker'* is a worker who, for a limited period, is carrying out his work in the territory of a Member State other than the State in which he normally works. Three main types of posting are identified: (i) posting under a contract of services (posting in the context of a service contract concluded between the employer of the posted worker and another company for work to be carried out in another country than where he normally works) (ii) intra-group posting (iii) temporary employment undertaking posting.

Regardless of the law that applies to the employment relationship, receiving Member States have to ensure that undertakings guarantee their workers posted to their territory *the same terms and conditions of employment* as laid down in their national law and collective agreements that are universally applicable on the following:

- maximum work periods and minimum rest periods;
- minimum paid annual leave;
- remuneration, including overtime rates;
- the conditions for hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- health, safety and hygiene at work;
- protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
- equality of treatment between men and women and other provisions on non-discrimination;
- the conditions of workers' accommodation when provided by the employer to workers away from their regular place of work;
- allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons.

The Directive does not prevent priority being given to applicable labour conditions that are more favourable to the employee. Furthermore, it provides for additional applicable labour conditions in the host state if the posting exceeds 12 months (with the possibility of extending this period to 18 months). When counting time, it is important to note that when a posted worker is replaced by another posted worker performing the same task at the same place, the duration of the posting is the cumulative duration of the posting periods of the individual posted workers concerned.

### 2.3.2 Enforcement Directive 2014/67/EU

Directive 2014/67/EU<sup>90</sup> establishes a common framework of a set of appropriate provisions, measures and control mechanisms necessary for a better and more uniform implementation, application and enforcement of Directive 96/71/EC, including measures to prevent and sanction any abuse and circumvention of the applicable rules.

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<sup>89</sup> Directive (EU) 2018/957 is consolidated in Directive 96/71/EC. The reference to Directive 96/71/EC includes a reference to Directive (EU) 2018/957 and only the consolidated version is used for citing articles.

<sup>90</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 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, OJ 28.5.2014, L 159/11.

Directive 2014/67/EU also enshrines a mechanism for cross-border enforcement of financial administrative penalties and/or fines.

The Directive aims to guarantee respect for an appropriate level of protection of the rights of posted workers for the cross-border provision of services, in particular the enforcement of the terms and conditions of employment that apply in the Member State in which the service is to be provided while facilitating the exercise of the freedom to provide services for service providers and promoting fair competition between service providers, and thus supporting the functioning of the internal market.

In addition to the different cooperation obligations and measures of Directive 2014/67/EU, which will be discussed in the next Chapter of this Report, additional *guidance is provided on the identification of a genuine posting and prevention of abuse and circumvention*.<sup>91</sup> This can provide practical assistance on the interpretation of the scope and definitions of Directive 96/71/EC.

The *cross-border enforcement of financial administrative penalties and/or fines* imposed on a service provider established in a Member State for failure to comply with the applicable rules on posting of workers in another Member State are subject to a mechanism of mutual trust.<sup>92</sup> This implies that penalties and fines which have been issued by Member State A have to be automatically and without any further formality recognised and swiftly enforced (recovered/collected) in Member State B. At the request of the requesting authority, the requested authority is to recover an administrative penalty and/or fine that has been imposed in accordance with the laws and procedures of the requesting Member State or confirmed by an administrative or judicial body, or notify a decision imposing such a penalty and/or fine. In addition, the requested authority must notify any other relevant document related to the recovery of such a penalty and/or fine, including the judgment or final decision that constitutes the legal basis and title for the execution of the request for recovery. This may be in the form of a certified copy.

### 2.3.3 Directive (EU) 2020/1057 on posting of drivers in international road transport

Directive (EU) 2020/1057 aims to contribute to a safe, efficient and socially responsible international road transport sector by ensuring a balance between ensuring adequate working conditions and social protection for drivers and suitable conditions for business and for fair competition for road transport operators. This is reflected in both (1) the provision of scope rules, which are tailored to the transport sector, and which derogate from the basic posting Directive 96/71/EC and (2) the introduction of a separate control mechanism in the form of posting declarations, derogating from the provisions of enforcement Directive 2014/67/EU.

Directive (EU) 2020/1057 only applies to drivers employed by undertakings established in a Member State who are posted to another Member States in the framework of a contract for services that has been concluded by the undertaking. Under this type of *posting*, drivers remain under the direct authority of their original employer and provide their services to companies needing to have their goods transported. These operations can consist of bilateral transport, cross-trade transport or cabotage operations. Additionally, a driver can also drive through another Member State without loading or unloading his vehicle (transit operations). Directive (EU) 2020/1057 does *not apply to drivers who are posted by a temporary employment undertaking or to drivers who are posted within a group or concern of undertakings*.

A *transit operation* is the mere crossing of a country without loading or unloading goods locally. For example: a Polish transport company carrying out a bilateral transport operation between Poland and Belgium and crosses

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<sup>91</sup> Article 4

<sup>92</sup> Articles 13-19; see also recital 38-43

Germany without loading or unloading any goods in Germany. The transport operation within the German jurisdiction is characterised as transit transport. A *bilateral operation* is transport carried out by a vehicle that is registered in country A (Member State of establishment) and operating the route between country A and B or vice versa. For example: a Polish transport company carrying freight from Poland to Germany. A *cross-trade operation* is transport carried out by a vehicle registered in country A, which loads its goods in country B and unloads them in country C. For example: a Hungarian transport company carrying cargo between Germany and the Netherlands. A *cabotage operation* is transport carried out by a vehicle registered in country A and plying a route between several venues or locations within country B.<sup>93</sup> For example: a Romanian transport company carrying freight between Trier and Berlin in Germany.

In the EU road transport sector, these various types of transport operations are often combined. The consecutive combination of these operations can sometimes lead to a rather 'nomadic' transport model, in which lorry drivers are sent to provide cross-border and/or cabotage operations in various States, without returning to their 'home' base for significant periods of time. In that context, it is again worth cross-referencing to the rules relating to the obligation of drivers to return every four weeks to the Member State of the employer's establishment or to the driver's place of residence.

Another considerably different type of posting in the EU road transport sector can be found in situations in which transport companies post their drivers to other transport companies, including the transfer of authority, to work directly under the authority of the hirer and to the benefit of their subsequent transport operations. This type of posting falls outside the scope of Directive (EU) 2020/1057 but may be covered by the scope of Directive 96/71/EC if the conditions under those scope rules are met.

Directive (EU) 2020/1057 affirms two main legal provisions: the introduction of scope rules in the light of Directive 96/71/EC, which are tailored specifically to the road transport sector, and the introduction of a derogation from Directive 2014/67/EU, which means Member States may only impose a closed list of administrative requirements and control measures, including a specific control mechanism in the form of posting declarations.

### 2.3.3.1 Scoping rules

Directive (EU) 2020/1057 determines which posting operations fall within the remit of the basic Posting of Workers Directive 96/71/EC and which are excluded from its scope. The distinction is based on the *existence of a sufficient link between the driver and the service provided, and the territory of a host Member State* to which the driver is sent.

*Bilateral transport operations in road haulage transport are excluded* from the scope of Directive 96/71/EC, including when these bilateral operations are combined with additional activities (such as in cases of loading or unloading activities).<sup>94</sup> A driver engaged in bilateral transport operations carrying goods is consequently not to be considered to be a posted driver and the provisions of Directive 96/71/EC do not apply.

*Bilateral transport operations in passenger transport are also excluded* from the scope of Directive 96/71/EC. Exemptions for additional activities comparable to those for goods transport are also defined.<sup>95</sup> A driver is not to

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<sup>93</sup> This type of transport is limited to three cabotage operations after an international transport operation. See Art. 8 Regulation (EC) 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the internal road haulage market, OJ 2009, L 300/72 ('Regulation (EC) 1072/2009'). There is currently heated discussion about this in the legislative revision procedure of the road transport rules.

<sup>94</sup> In future, these exemptions for additional activities will only remain available to drivers using vehicles fitted with smart tachographs, as provided for in Articles 8, 9 and 10 Regulation 165/2014. See Article 1 section 3 last paragraph Directive (EU) 1057/2020.

<sup>95</sup> In future, these exemptions on additional activities will only remain available for drivers using vehicles fitted with smart tachographs, as provided for in Articles 8, 9 and 10 Regulation 165/2014. See Article 1 section 4 last paragraph Directive (EU) 1057/2020.

be considered to be a posted driver when engaged in a bilateral transport operation in international occasional or regular carriage of passengers, when a driver performs any of the following operations:

1. picks up passengers in the Member State of establishment and sets them down in another Member State or a third country;
2. picks up passengers in a Member State or a third country and sets them down in the Member State of establishment; or
3. picks up and sets down passengers in the Member State of establishment for the purpose of carrying out local excursions in another Member State or a third country.

*Transit operations are also excluded* from Directive 96/71/EC and drivers are not considered to be posted drivers when the driver transits the territory of a Member State without loading or unloading freight and without picking up or setting down passengers.

On the other hand, *cross-border transport operations*<sup>96</sup> and *cabotage operations* as defined in Regulation (EC) 1072/2009<sup>97</sup> and (EC) 1073/2009<sup>98</sup> fall under the scope of the *posting Directive 96/71/EC*. There are strict conditions and limitations to the permitted cabotage operations:

- Cabotage operations in the road haulage transport sector are allowed under the following conditions: once the freight of incoming international carriage has been delivered in a host Member State, hauliers are allowed to carry out up to three cabotage operations in the host Member State to which the goods were delivered providing this is within a time span of 7 days from the last unloading in the host Member State in the course of the incoming international carriage.<sup>99</sup>
- In passenger transport, the following cabotage operations are permitted: (1) special regular services provided that they are covered by a contract concluded between the organiser and the carrier, (2) occasional services and (3) regular services performed by a carrier not resident in the host Member State in the course of a regular international service, with the exception of transport services meeting the needs of an urban centre, or transport needs between urban centres and their surrounding areas.

Directive (EU) 2020/1057 contains some other relevant provisions, e.g. on the period of posting. It determines that a posting is to be considered end when the driver leaves the host Member State in the performance of the international carriage of goods or passengers. In addition, it is not permitted to aggregate that period of posting with previous periods of posting in the context of such international operations performed by the same driver or by another driver whom he or she replaces. The Directive also states that Member States are to ensure that information on the relevant working conditions are made available to transport undertakings from other Member States and to posted drivers in an accessible and transparent way. Finally, in relation to third countries, the Directive asserts that transport undertakings established in a non-Member State shall not be given more favourable treatment than undertakings established in a Member State, including when performing transport operations under bilateral or multilateral agreements granting access to the Union market or parts thereof.

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<sup>96</sup> The cross-border operation is what the Directive (EU) 2020/1057 defines 'non-bilateral international transport' in recital 13 "[...] *non-bilateral international transport operation is characterised by the fact that the driver is engaged in international carriage outside of the Member State of establishment of the undertaking making the posting. The services performed are therefore linked with the host Member States concerned rather than with the Member State of establishment.* [...]"..

<sup>97</sup> Article 8 Regulation (EC) 1072/2009 governs cabotage in road haulage transport. A 'cabotage operation' means national carriage for hire or reward carried out on a temporary basis in a host Member State (Art. 2 section 6 Regulation (EC) 1072/2009).

<sup>98</sup> Regulation (EC) 1073/2009 was not amended or replaced by Mobility Package I and the rules have remained the same.

<sup>99</sup> Regulation 1055/2020 adds another condition to cabotage operations, the so-called 'cooling off-period': hauliers are not allowed to carry out cabotage operations with the same vehicle in the same Member State within four days following the end of its cabotage operation in that Member State. The reasoning behind the rule is to strike a balance between helping to increase the load factor of heavy duty vehicles and reduce empty runs on the one hand and the avoidance of a situation in which cabotage operations may become a permanent or continuous activity in the Member State.

### 2.3.3.2 Enforcement

Directive (EU) 2020/1057 introduces a specific enforcement mechanism for posting in the international road transport sector while derogating from the other administrative obligations that are applied to posting in general, and which are part of Enforcement Directive 2014/67/EU<sup>100</sup>.

Member States *may only impose the following administrative requirements and control measures regarding the posting of drivers:*

- (1) An obligation for the operator established in another Member State to submit a posting declaration to the national competent authorities of a Member State to which the driver is posted at the latest at the commencement of the posting. There is a multilingual standard form for the operator to use which is on the public interface connected to the Internal Market Information System ('IMI')<sup>101</sup>. The posting declaration must contain the following information:
  - The identity of the operator (e.g. at least in the form of the number of the Community licence where this number is available);
  - The contact details of a transport manager or other contact person in the Member State of establishment to liaise with the competent authorities of the host Member State in which the services are provided and to send out and receive documents or notices;
  - The identity, the address of the residence and the number of the driving licence of the driver;
  - The start date of the driver's contract of employment, and the law applicable to it;
  - The envisaged start and end date of the posting;
  - The number plates of the motor vehicles;
  - Whether the transport services performed are carriage of goods, carriage of passengers, international carriage or cabotage operations;
- (2) An obligation for the operator to ensure that the driver has at his or her disposal in paper or electronic form and an obligation for the driver to keep and make available when requested at the roadside:
  - A copy of the posting declaration (submitted via the public interface connected to the IMI);
  - Evidence of the transport operations taking place in the host Member State, such as an electronic consignment note (the e-CMR) or other evidence;<sup>102</sup>
  - The tachograph records and in particular the country symbols of the Member States in which the driver was present when carrying out international road transport operations or cabotage operations.<sup>103</sup>
- (3) An obligation after the period of posting for the operator to send via the public interface connected to the IMI, at the direct request of the competent authorities of the Member States where the posting took place, *copies of the tachograph records* and the *consignment note* as well as *documentation relating to the remuneration* of the driver in respect of the period of posting, *the employment contract* or an equivalent document, *time-sheets* relating to the driver's work, and *proof of payments*. The operator must send the documentation via the public interface connected to the IMI no later than eight weeks from the date of the request.

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<sup>100</sup> Article 9

<sup>101</sup> Established by Regulation (EU) 1024/2012

<sup>102</sup> Such as evidence referred to in Article 8(3) of Regulation (EC) 1072/2009.

<sup>103</sup> In accordance with registration and record-keeping requirements under Regulations (EC) 561/2006 and (EU) 165/2014.

The administrative requirements transport operators have to adhere to differ from those applying to posting in other economic sectors.<sup>104</sup> This is because the inherent high degree of mobility of road transport services means that particular attention needs to be paid to ensuring that drivers benefit from the rights to which they are entitled and that operators are not faced with disproportionate administrative barriers or discriminatory controls which unduly restrict their freedom to provide cross-border services.<sup>105</sup> The provision of an employment contract and of time sheets is only required once a posting is completed and at the specific request of the competent authority. It is not necessary to have these documents readily available during the transport operations or execution of the work as would otherwise be the case under the Enforcement Directive 2014/67/EU, which stipulates that these documents should be in an accessible and clearly identified place in its territory. Under the Enforcement Directive the documents need to be provided in a language of the host Member State or in a language that is accepted by the Member State concerned. Under the Enforcement Directive Member States are also allowed to impose additional administrative requirements and control measures when they are justified and proportionate. This is prohibited under Directive (EU) 2020/1057.

### 2.3.4 The IMI and posting declarations for drivers in the transport sector – public interface and back office

Directive (EU) 2020/1057 establishes the obligation for transport operators to submit posting declarations to the national authorities of the Member States to which the driver is posted by means of the public interface connected to the IMI, and to do so at the latest at the start of the posting.<sup>106</sup> Upon request from the competent authorities and within a period of eight weeks, transport operators are also obliged to send any requested information and documentation. The posting declarations are held in the IMI repository for a period of 24 months.

The ‘Road Transport – Posting Declarations’ IMI module allows competent authorities to check on the posting declarations that have been submitted by a transport operator from another Member State. The module supports the submission of documents by transport operators, requests for clarifications and for additional or missing documents and requests for assistance from the home country. The ‘Road Transport – Posting Declarations’ module has been operational since February 2022 and is different from the existing IMI modules on ‘Services’ and on ‘the posting of workers’ through which competent authorities can exchange information, such as requests for information on a particular service provider established in another Member State, notifications of the employment conditions applicable to workers posted to the host Member State, or requests to another Member State to notify decisions imposing an administrative penalty or fine on a service provider established in another country or to recover such a penalty or fine.

## 2.4 EU legislation on social security coordination

EU legislation on the coordination of social security systems in the EU consists primarily of Regulation (EC) 883/2004 (the ‘basic regulation’) and Implementing Regulation (EC) 987/2009.<sup>107</sup> The basic coordination

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<sup>104</sup> However, it should be noted that in other economic sectors there is no obligation on the Member States to have (all) the administrative requirements listed in Regulation (EU) 2014/67 in place. Some sectors are even excluded entirely from one or more obligations.

<sup>105</sup> See Recital 2 of Directive (EU) 2020/1057.

<sup>106</sup> See: Commission Implementing Regulation (EU) 2021/2179 of 9 December 2021 on the functionalities of the public interface connected to the Internal Market Information System for posting drivers in the road transport sector. For the link to the website: <https://www.postingdeclaration.eu/landing>.

<sup>107</sup> Regulation (EC) 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ 11.7.2019, L 186/21 (consolidated version); Regulation (EC) 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) 883/2004 on the coordination of social security systems, OJ 22.3.2017 L 76/13 (consolidated version).

Regulation has been amended several times by Regulation (EC) 988/2009<sup>108</sup>, Commission Regulation (EU) 1244/2010<sup>109</sup>, Regulation (EU) 465/2012<sup>110</sup> and Commission Regulation (EU) 1224/2012<sup>111</sup>.

Regulation (EC) 883/2004 provides coordination rules on social security systems with the principal aim of avoiding (positive or negative) conflicts of law in terms of the social security legislation applicable in cross-border situations. It establishes rules to determine that only one single national social security legislation applies. The Regulation's geographic scope is all EU Member States and the countries that are Member of EFTA.<sup>112</sup> The Regulation applies to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families (regardless of their nationality) and to their survivors. The Regulation covers both employees and the self-employed and extends to all statutory social security branches, including those that are regulated by means of collective agreements that are universally applicable. Regulation (EU) 1231/2010<sup>113</sup> extends the provisions of both Regulations to third country nationals but only when they move within the EU.

The general principle governing the EU social security coordination rules is the determination of one single applicable legislation, which is enshrined in the *lex loci laboris* principle: a person pursuing an activity as an employed or self-employed person in a Member State is to be subject to the social security legislation of that Member State. The social security contributions and social security benefit entitlements will hence be determined by the legislation of the Member State where the person is professionally active and not of the Member State of residence. There are two important exceptions to this principle, which are particularly relevant in the context of this report on labour mobility in the road transport sector: (1) postings and (2) simultaneous professional activities in two or more Member States.

- (1) When a person is posted to another Member State, it is the social security system of the sending state that applies when the posting does not exceed 24 months. After this period, the social security system of the host state becomes applicable (Article 12 of Regulation (EC) 883/2004).
- (2) When a person is working simultaneously in two or more Member States, allied factors, such as the residence of the worker and establishment of the employer, are used to contribute to a fair result. In principle, if 25% of the work is done in the country of residence, the social security system of the country of residence applies; if not, the place of establishment of the employer or the place of residence of the employee is generally used to determine the applicable social security law (Article 13 of Regulation (EC) 883/2004).

An important difference between Articles 12 and 13 is that Article 12 is seen as an 'exception' to the general rules enshrining the *lex loci laboris* and that Article 13 is rather seen as an 'alternative'. This could mean easier application of Article 13 than Article 12.

Given the highly mobile nature of road transport activities, Article 13 of Regulation (EC) 883/2004 generally applies to this sector. The Practical Guide issued by the Administrative Commission on the Coordination of Social Security

<sup>108</sup> Regulation (EC) 988/2009 of the European Parliament and of the Council of 16 September 2009 amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of its Annexes.

<sup>109</sup> Commission Regulation (EU) 1244/2010 of 9 December 2010 amending Regulation (EC) 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) 883/2004.

<sup>110</sup> Regulation (EU) 465/2012 of the European Parliament and of the Council of 22 May 2012 amending Regulation (EC) 883/2004 on the coordination of social security systems and Regulation (EC) 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004.

<sup>111</sup> Commission Regulation (EU) 1224/2012 of 18 December 2012 amending Regulation (EC) 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) 883/2004.

<sup>112</sup> Iceland, Liechtenstein, Norway and Switzerland. Special rules apply to cross-border mobility with the U.K.

<sup>113</sup> Regulation (EU) 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) 883/2004 and Regulation (EC) 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.



Systems elaborates thoroughly on the application of Article 13 to road transport and thus forms a valuable source.<sup>114</sup> It can be assumed that even where there is a situation of posting in road transport, where the driver works simultaneously in different Member States, the situation falls under Article 13 of Regulation (EC) 883/2004 and not under Article 12 of Regulation (EC) 883/2004. An example of a road transport situation that does fall under Article 12 Regulation (EC) 883/2004 is where a driver who normally carries out only domestic transport in Member State A is posted to Member State B to carry out domestic transport there.

Regulation (EC) 987/2009 provides further guidance on the interpretation of Article 13 of Regulation (EC) 883/2004, specifying, with regard to the important criterion of 'substantial activities', that if less than 25% is worked in the State of residence this is an indication that there is no substantial activity.<sup>115</sup> The Administrative Commission's Practical Guide indicates that this concept was introduced in Regulation (EC) 883/2004 to determine the Member State with which a person has the closest links in terms of social security coverage.

In summary, in determining the social security legislation applicable in situations of simultaneous professional activities in two or more Member States, the following formula applies to establish the closest link: 1) country of residence + 2) 25% substantial work in that country = the closest link. The elements that can be taken into account to determine work are working hours and/or wages. In addition, the situation expected in the next 12 calendar months must be taken into account in the assessment. With regard to the establishment concept, Regulation (EC) 987/2009 notes that it refers to the establishment where the main decisions concerning the undertaking are taken and where the central management functions are exercised.<sup>116</sup>

It is important for the cooperation obligations and measures between Member States, in the cases of Articles 12 and 13, that the Member State whose social security system is applicable issues an attestation so that the worker can prove their inclusion in that social security system to the host Member State.<sup>117</sup>

EU social security coordination requires intensive administrative cooperation and information exchange between the public authorities and the social security institutions of the Member States. Whereas cooperation in social security matters is more institutionalised (through the Administrative Commission) than is the case for the other domains affecting the labour and social dimension of international road transport described above, the specific information and data which are subject to administrative cooperation and information exchange are also different from those applying in the other areas of labour mobility on which this report focuses. The information relates to *direct entitlements to social security rights and mandatory contribution payments* with regard to individual citizens. Social security coordination is about determining the affiliation of an individual person to a particular national social security system where contributions or taxes need to be paid in return for pecuniary and in-kind benefits. When the affiliation established in cross-border situations is wrong, contributions will not be paid to the right competent authority while benefits may be unduly granted to the individual by an institution of a Member State where the person should not be insured. As a consequence, social security institutions from Member States may need to pay back to their counterparts in other Member States moneys that the latter have been advancing or recover moneys from their counterparts in the reverse situation. This creates bilateral financial flows between the various competent social security institutions in the EU, whose accounts are monitored and settled in accordance with established procedures set up under the auspices of the Administrative Commission.

Social security coordination establishes the rights and obligations of mobile individuals vis-à-vis national social security systems and implies direct information exchange between the individual person and the social security

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<sup>114</sup> Administrative Commission's Practical Guide, p. 32-37.

<sup>115</sup> Article 14 Regulation (EC) 987/2009.

<sup>116</sup> Article 14(5a) Regulation (EC) 987/2009.

<sup>117</sup> Art. 15 and 16 Regulation (EC) 987/2009.

institutions in order to establish their rights or provide evidence of their particular situation. National social security entities apply a variety of administrative documents which insured persons have to provide or comply with. The information exchanges on individual cases between the social security institutions from the different Member States take place through the Electronic Exchange of Social Security Information (EESSI) IT system. Social security institutions exchange information and data by means of structured electronic documents (SEDs) and follow established procedures for this information exchange. As the information exchange concerns the social security rights of individuals who find themselves in cross-border situations, several standard (portable) documents are used with a view to supporting the information exchange and coordination practices. These portable documents are issued by the competent institutions of the Member State in which the individual is insured. They are designed to confirm that the competent institutions have granted the individual certain rights in that individual's dealings with a social security institution in another Member State. There are 10 portable documents which are used for different types of social security. The most important for this Report is the PD A1 certificate, which confirms that the individual is affiliated to the social security system of the country that issued the certificate. This is of particular relevance in situations of posting, when workers are working temporarily in a different Member State from the competent Member State.

The other portable documents used in the social security coordination system are:

- European Health insurance Card: used to prove that the person is covered by health insurance in a Member State when staying temporarily in another Member State;
- S1 form: used when registering for health care cover in a country other than the one in which the person is insured;
- S2 form: used to prove health insurance cover in cases of planned health care treatment in another Member State;
- S3 form: used by frontier workers who want to have access to the health care in the country where they previously worked;
- DA1 form: used to confirm entitlement to medical treatment in another Member State in cases of work accidents or professional diseases;
- U1 form: used to prove periods of insurance in a Member State other than the one in which the individual is applying for an unemployment benefit;
- U2 form: used to confirm that a person can export an unemployment benefit and look for a job in another Member State;
- U3 form: used as a warning and issued by the home institution of the country where the individual is looking for a job while being on an unemployment benefit from another Member State;
- P1 form: used as a means to confirm a pension entitlement in different Member States.

## 2.5 Enforcement and implementation of the new provisions of Mobility Package I

The EU road transport sector is a highly competitive market and requires a level playing field for transport operators established in a Member State while operating services in other Member States in line with the principle of the freedom to provide services. At the same time, truck and bus drivers in international transport are highly mobile workers whose labour and social security rights need adequate protection. Balancing these objectives while also promoting road safety in international road transport has led to the adoption of a complex set of EU legislative measures in different policy areas, such as rules on the access to the transport service market for transport companies established in the EU, rules on driving times and rest breaks for drivers of international transport operations that are conducted in the EU regardless of the country of establishment and rules on the posting of

drivers in the EU transport sector. Finally, EU social security coordination rules ensure the application of one single national social security legislation when a driver in international transport is posted to another Member State or when they are working simultaneously or consecutively in different Member States.

The EU legal provisions applicable to cross-border road transport are part of a series of legal instruments in the respective policy fields which have been adopted over time and which have been subject to several adjustments and updates. Additional EU legislation was put into place, for example, with a view to improving the enforcement and implementation of the main legal instruments. The most recent 2020 Mobility Package I introduced changes to the rules on access to the transport service market, the rules on driving and rest times and those on the posting of drivers within the borders of the EU.

Three EU legislative instruments introduced under 2020 Mobility Package I are of particular relevance for this study on the cooperation measures and obligations for Member States with a view to effective implementation and enforcement of the rules concerning international transport services that are operated within the EU. The three main legal instruments have *amended* previously adopted EU legislation and introduced some new provisions while strengthening the enforcement obligations for Member States. However, many of the basic provisions including those concerning the cooperation obligations and measures remain in place.

Regulations (EU) 2020/1054 and (EU) 2020/1055 introduced changes or adjustments to the working conditions of international transport drivers and the conditions for the access to the occupation of road transport operator established in the EU respectively. Directive (EU) 2020/1057 introduced specific rules on the posting of drivers in the international road transport sector, which deviate substantially from the general rules on the posting of workers in the EU. The new rules also strengthened the enforcement obligations while facilitating the exchange of information between national enforcement agencies by setting up three new road transport modules in the IMI and reinforcing the use of ERRU.

Several implementing acts were adopted in the course of 2022, such as the new Implementing Regulations on the classification of serious infringements and on the new formula to be applied in the risk rating systems of transport undertakings, while the (technical) connection requirements for national electronic registers to be linked to ERRU are at present under review. The new legislation adopted under 2020 Mobility Package I did however not alter the prevailing EU rules on social security rights or rules on the contract law applicable to international road transport drivers who conduct cross-border transport services and work in different Member States.

The two new Regulations mentioned above (EU) 2020/1054 and 2020/1055 were adopted in the middle of July and were, in principle directly applicable in the Member States. However, Regulation (EU) 2020/1055 determining the conditions of establishment stipulates that its provisions applied only as of 21 February 2022, while Regulation (EU) 2020/1054, amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs, stipulates that point (15) of Article 1 and point (12) of Article 2 applied only from 31 December 2024. Directive (EU) 2020/1057 concerning the posting of drivers required that its provisions be transposed into the national legislative and administrative frameworks of the Member States by 2 February 2022. As of that date, three new IMI road transport modules were operational and accessible for the Member States' enforcement agencies. In short, the new provisions from the three new EU legislative initiatives requiring Member States to adjust their national legislative frameworks and operational enforcement practices have only been in force and/or have only been required to be applied by Member States since very recently.

This report was commissioned in autumn 2022, very shortly after the entry into force of the new provisions introduced by the 2020 Mobility Package I. As a consequence, the question arose as to whether and how the new provisions were transposed and implemented in practice in the national legal and administrative frameworks and operational practices. To that end national research and interviews were conducted late 2022 on the basis of a structured questionnaire. The replies received constitute the basis for the findings included in this present report.

Although two of the new EU legal instruments under focus are Regulations which are directly applicable in the Member States, it appears from the country replies that *not all the (new) provisions had been entirely incorporated into national legislative frameworks and executive administrative arrangements* at the national level at the time of drafting this report. Moreover, while Directive (EU) 2020/1057 concerning the posting of road transport drivers required Member States to adopt national transposition measures by 2 February 2022, the country replies revealed that not all Member States had yet (fully) transposed all the provisions of the Directive.

The country replies showed a high degree of divergence between the Member States when it comes to the effective transposition and/or application of the new provisions of Mobility Package I. At the end of 2022, country reports from some Member States (AT, BE, CZ, DK, EE, EL, ES, FI, FR, HU, LT, SE, SK) indicated that they had transposed/applied all the new measures and obligations in their national legislation. Country reports from other Member States (BG, CY, DE, HR, IE, IT, LU, LV, MT, NL, PL, PT, RO, SI) indicated that they were still in the process of adopting new national rules transposing and/or implementing the various new provisions or that they had only partially transposed/implemented the new EU legislation.

The new provisions on the posting of international road transport drivers introduced by Directive (EU) 2020/1057 are often mentioned in the country reports as those that had not yet been fully incorporated into the national legislative and administrative frameworks (e.g. HR, IT, LU, MT, NL, PL, PT, SI). For instance, the Italian reply mentioned that the National Labour Inspectorate had worked jointly with the competent authorities (i.e. the Ministry of Internal Affairs, including the Traffic Police, and the Ministry of Infrastructure and Transport) on the drafting of the legislative decree transposing Directive 2020/1057. According to the stakeholders consulted, the preparatory work started at the level of the operational bodies and was then passed to the legislative offices. In spite of the two-year timeframe foreseen for transposition of the Directive, the involvement of several authorities meant that the transposition had not been easy. Given the technical nature of the subject, there had not been enough time for implementation.

Apart from mentioning the new provisions concerning the posting of international transport drivers, several country reports also mentioned a series of other new (including material) provisions which had not been entirely transposed into the national legislative framework or enforcement practices. Examples were: (1) establishing the legal basis for the imposition of fines including when infringements are committed on the territory of other Member States<sup>118</sup>, (2) introducing the new extended catalogue of serious infringements and related national sanctions regimes, (3) the right of road transport drivers to return home every four weeks, (4) the obligation to return the vehicle to the country of establishment every eight weeks, (5) the application of the harmonised methodology for the risk rating systems, and (6) the rules regarding penalties for consignors, forwarders, contractors and subcontractors in cases when they were aware that the provisions of Regulation (EC) 1072/2009 were being violated in the provision of transport services assigned by them.<sup>119</sup>

Country replies, including from some Member States in which transposition had reportedly been achieved in full, regularly underlined that sufficient time is needed to ensure effective implementation and operation of the new rules as the structures, staff, working methods and procedures of the various institutions and agencies involved in the implementation and enforcement of the EU rules need to be properly prepared and/or adapted.

Several country replies stated that at the time when the national research was undertaken, it was premature to make an in-depth assessment of the new cooperation rules and measures as there was at that point very little

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<sup>118</sup> Article 19 Regulation (EC) 561/2006

<sup>119</sup> Article 5(1) of Directive (EU) 2020/1057 provides that "Member States shall lay down rules on sanctions against consignors, freight forwarders, contractors and sub-contractors for non-compliance with national provisions adopted pursuant to Article 1, where they knew, or, in the light of all relevant circumstances, ought to have known, that the transport services that they commissioned involved infringements of those provisions." Article 5(1) of Directive (EU) 2020/1057 thus requires Member States to provide for a system of specific sanctions regarding consignors, freight forwarders, contractors and sub-contractors which commission the performance of cross-border transport services to transport undertakings, when those transport services involve infringements of the national provisions adopted pursuant to Article 1.

enforcement practice. The *complex and technical nature of the new provisions* and the *multitude of enforcement agencies involved* in effective implementation of the road transport rules are the main factors which seem to affect rapid and effective implementation into the enforcement practices. Some country reports (e.g. CZ ) indicated in this regard that the enforcement bodies were in the process of preparing their structures and staff for the application of the new rules and envisaged training initiatives such as that organised by ELA at the end of 2022 on the use of the three new IMI road transport modules.

## 3.0 Overview of the cooperation measures and obligations

### 3.1 Introduction

The previous chapter presents EU legislation on labour mobility in international road transport falling within ELA's mandate. The relevant legislation can be grouped in four main policy domains: (1) admission to the occupation of road transport operator, (2) social legislation specific to road transport operations conducted in the EU (driving times, rest breaks, working time), (3) posting of international transport drivers, and (4) social security coordination.

These four domains can serve as a useful structure for further analysis of the institutional framework and the cooperation measures and obligations that are specific to each of the domains. It is noteworthy that some EU legislation has not been included in ELA's mandate as determined in its founding Regulation but is nevertheless directly or indirectly relevant with a view to effective enforcement of the EU provisions in the operational practices of international road transport.

Table 3 lists the main provisions on cooperation obligations in each of the key legal instruments. For each of the legal instruments, reference is made to the relevant Articles and an indication is provided of the provisions contained in the relevant Article.

**Table 3: Relevant provisions on cooperation measures and obligations in EU legislation on international road transport**

Cooperation measures and obligations in EU legislation on international road transport			
EU legislation on access to the road transport market for transport operators established within the EU (EEA)		Reference articles and provisions	
Regulation (EC) 1071/2009 as amended by Regulation (EU) 2020/1055	Conditions to be complied with to pursue the occupation of road transport operator	Articles 6 section 2 (b)	Obligation to launch an administrative procedure and carry out an onsite inspection by the Member State of establishment when transport manager or undertaking has been convicted of a serious criminal offence or has incurred a penalty for one of the most serious infringements; Priority setting of checks has to take into account the information on infringements received from other Member States
		Article 10	Designation of one or more competent authorities in charge of (1) examinations and granting of authorisations, (2) the suspension/withdrawal of authorisations, (3) declarations of unfitness and (4) carrying out checks; National enforcement strategies;
		Articles 11 and 12	Mandatory checks upon registration of a transport operator and checks after authorisation; principle that checks need to take into account the risk rating system
		Article 16	Setting-up and maintaining updated and connected national registers
		Article 18	Obligation to set up National contact points and to notify the European Commission of names and addresses; (new) administrative cooperation: obligation to exchange information on serious infringements, obligation to record notifications of serious infringements which have resulted in a conviction or penalty in national registers; Obligation to reply to requests for information (within 30 days) and to carry out checks; Mandatory use of ERRU and IMI
		Article 22	Rules on penalties and obligation to notify the rules on the penalties and their amendments to the European Commission (including on suspension/withdrawal of authorisations and declarations of unfitness of transport manager
		Article 26	Reporting to European Commission every 2 years: (1) overview of the sector, (2) granted authorisations, suspended and withdrawn authorisations, declarations of unfitness and their reasons with breakdown by road haulage and passenger transport operators, (3) certificates of professional competence, (4) statistics and (5) overview of the information exchanges with other Member States (including annual number of established infringements, replies and annual number of requests and replies)
Article 27	List of competent authorities responsible for the authorisation of transport operators and for the examinations + certificates of professional competence and obligation to notify European Commission; publication of the consolidated list of competent authorities and bodies		
Regulation (EC) 1072/2009 as amended by Regulation (EU) 2020/1055	Common rules for access to the international road haulage market	Articles 11-14	Penalties
Regulation (EC) 1073/2009	Common rules for access to the international market for coach and bus services	Articles 18-24	Penalties
Regulation (EU) 2016/480 and Regulation (EU) 2017/1440	Common rules concerning the interconnection of national electronic registers on road transport undertakings and repealing Regulation (EU) No 1213/2010 (ERRU)		

Cooperation measures and obligations in EU legislation on international road transport			
EU legislation on specific social and labour legislation concerning the international road transport operations conducted within the EU		Reference articles and provisions	
<b>Regulation (EC) 561/2006</b>	Harmonisation of social legislation relating to road transport (driving times, breaks and rest periods)	<b>Article 19 section 2</b>	Obligation to lay down rules on penalties and notify the European Commission
<b>Regulation (EU) 2020/1054</b> (amending Regulation (EC) 561/2006)	Amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs	<b>Article 22</b>	(New) administrative cooperation mechanism and obligation to regularly exchange information on infringements committed by non-residents and any penalties imposed and on penalties imposed by other Member States on its residents; obligation to send relevant information concerning the national interpretation and application of the Regulation to the European Commission
<b>Directive 2006/22/EC</b>	Minimum conditions for the enforcement of social legislation relating to road transport activities	<b>Articles 4 and 6</b>	Rules relating to roadside checks, obligation to have 'checklists' for inspectors and standard checking equipment
<b>Directive (EU) 2020/1057</b> (amending Directive 2006/22/EC)	Specific rules for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012	<b>Article 2</b>	Obligation to conduct checks of at least 3% of the days worked by drivers in international transport; obligation to report to the European Commission the number of drivers checked, the number of checks at the premises, the number of working days checked and the number of infringements detected with indication whether it concerns transport of goods or of passengers
		<b>Article 5</b>	Obligation to conduct at least 6 times a year concerted roadside checks
		<b>Article 6</b>	Rules relating to checks at the premises of an undertaking, obligation to have 'checklists' for inspectors and standard checking equipment
		<b>Article 7</b>	Obligation to designate national bodies for intracommunity liaison responsible for the coordination with equivalent bodies from other Member States and for the production of biennial statistics; the obligation to inform other Member States on the national provisions transposing the Directive
		<b>Article 8</b>	Exchange of information at least every six months on the national provisions and upon reasoned requests by Member States in individual cases; time line for responses: 3 working days for ERRU related information and 25 working days in general; obligation to use IMI
		<b>Article 9</b>	Risk rating systems and obligation to make the data of the risk rating systems accessible at the time of control and through interoperable national electronic registers
		<b>Article 11</b>	Obligation of the Commission to establish guidelines on best enforcement practices; obligation of Member States to establish joint training programmes at least once a year and to facilitate staff exchanges at least once a year; General obligation of Member States to ensure that their enforcement officers are well trained.
		<b>Article 13</b>	Obligation of the Commission to adopt implementing acts concerning the promotion of a common approach for the implementation of the Directive, the encouragement of coherent approaches and uniform interpretation of the Directive by enforcement agencies and the facilitation of dialogue between the transport sector and enforcement agencies



Cooperation measures and obligations in EU legislation on international road transport			
EU legislation on the posting of workers, including on the posting of drivers in the EU road transport sector		Reference articles and provisions	
Directive 96/71/EC as amended by Directive (EU) 2018/957	Posting of workers in the framework of the provision of services	Article 3	Obligation to publish on a single national website accurate and updated information on the terms and conditions of employment applicable to posted workers; obligation of European Commission to publish on its website the addresses of the single national websites
		Article 4	Obligation to designate one or more liaison offices and obligation to notify other Member States and the European Commission; administrative cooperation and exchange of information; obligation to reply to reasoned requests for information on transnational hiring-out of workers and in tackling manifest abuses or possible cases of unlawful activities; obligation to inform the European Commission in the event of persistent delays concerning the replies
Directive 2014/67/EU	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	Article 3	Obligation to designate one or more competent authorities which may include the liaison office(s) established under Directive 96/71/EC and obligation to communicate the contact details to the other Member States and to the European Commission; obligation of the European Commission to publish and update the list of competent authorities
		Article 5	Obligation to make information on the terms and conditions applicable to posted workers generally available on one single official national website in official languages of host Member State and in other most relevant languages; indicate contact person in liaison office for requests of information
		Article 6	Principles of mutual assistance, cooperation and exchange of information; obligation to reply to reasoned requests for information and carrying out of checks, inspections and investigations on non-compliance or abuse of applicable rules on posting; obligation to inform the European Commission in case of persisting problems in the exchange of information; time lines for replies (2 working days in case of urgencies, 25 working days as standard); accessibility of registers in which service providers are entered.
		Article 7	Administrative cooperation between host Member State and Member State of establishment
		Article 8	Accompanying measures including exchanges of officials, training and promotion of best practices initiatives; development of databases or joint websites
		Article 10	Obligation to conduct checks and inspections based on risk assessments; Exchange of information in case of inspections
		Article 11	Obligation to install mechanisms for posted workers to lodge complaints, administrative and judicial proceedings
		Articles 13-19	Cross-border enforcement of financial administrative penalties and fines; designation of national competent authorities for enforcement of penalties and procedures, IMI
		Article 20	Obligation to notify the rules on penalties to the European Commission
Article 21	IMI and possibility for Member States to conclude bilateral agreements		
Directive (EU) 2020/1057	Specific rules for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012	Article 1 section 9, 11, 14 and 16	Obligation to make the information on the terms and conditions of employment available in an accessible and transparent way to transport undertakings from other Member States and to posted drivers; Administrative cooperation before and upon completion of a posting, IMI
Regulation (EC) 1072/2009	Common rules for access to the international road haulage market	Articles 11-14	Penalties
Regulation (EC) 1073/2009	Common rules for access to the international market for coach and bus services	Articles 18-24	Penalties
EU legislation on the coordination of social security systems for persons who are moving within the EU		Reference articles and provisions	
Regulation (EC) 883/2004	Coordination of social security systems	Articles 71 - 75	Administrative Commission, Technical Commission, Audit Board
		Article 76	Administrative cooperation and exchange of information
(Implementing) Regulation (EC) 987/2009	Procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems	Article 2	Exchange of data between institutions
		Article 20	Cooperation between institutions
		Chapter III	Recovery of contributions and benefits

Source: Authors' own elaboration

### 3.2 EU legislation on access to the occupation of Road Transport Operator

As set out in the previous chapter, Regulation (EC) 1071/2009 (as amended by Regulation (EU) 2020/1055) determines the conditions for the access/admission to and the pursuit of the occupation of Road Transport Operator within the EU (for both the transport of goods and transport of passengers).

In summary, transport companies established in the EU must comply with the following four cumulative criteria in order to qualify for a Community licence: (1) have an effective and stable establishment in the EU, (2) be of good repute, (3) have an appropriate financial standing, and (4) be professionally competent. Failing to comply with one of the conditions implies that the transport operator concerned cannot be granted a Community licence or that its licence may be suspended or withdrawn with the result that the company will not have access to the EU road transport market. Transport managers may in certain instances lose their good repute and be declared unfit.

Various *cooperation obligations and measures* between Member States were defined in Regulation (EC) 1071/2009. They primarily relate to the cross-border verification of the first two requirements with which transport operators have to comply: stable and effective establishment (Article 18 sections 4-7 and Article 26 section 3) and good repute (Articles 18 section 3 and Article 26 section 4). No specific cooperation obligations and measures were directly linked to the conditions of financial standing or professional competence. Article 6 furthermore determines the obligation for enforcement agencies to *prioritise their checks* and inspections on the basis of the list of serious infringements drawn up by the European Commission and on the information they receive from other Member States. Member States are hence obliged to take into account the information of which they have been notified by other Member States when they plan and conduct investigations into transport companies. Article 11 establishes *mandatory checks on good repute* of both the companies and their managers when operators apply for a Community licence in the Member State of establishment.

Whereas Regulation (EC) 1071/2009 established the obligation for Member States to have *national electronic registers* of transport undertakings to ensure that the relevant data contained in the national registers are accessible to authorities from other Member States and that the national registers are connected with ERRU, Regulation (EU) 2020/1055 strengthened these cooperation obligations, requiring Member States to ensure the data in their national registers are up-to-date and accurate.<sup>120</sup> It furthermore stipulates that some of the data contained in the national registers should be publicly accessible while other data may only be accessible (directly or upon demand) for competent (or other authorised) authorities from other Member States. Member States may hence have different registers for the identification data of transport companies and for the more sensitive data like those related to the infringements, the declarations of managers who are unfit to manage an undertaking and the risk ratings of the undertakings.

Whereas Regulations (EC) 1072/2009 (road haulage) and Regulation (EC) 1073/2009 (coach and bus services) do not directly fall within the remit of ELA, they both provide for *mechanisms of mutual assistance and penalties* in relation to Regulation (EC) 1071/2009 and are hence of importance to ELA's operations. Mutual assistance and penalties relating to road haulage under Regulation (EC) 1071/2009 are set out in Articles 11-14 of Regulation (EC) 1072/2009 whereas those regarding passenger transport are in Articles 18-24 of Regulation (EC) 1073/2009. These provisions assert the principle of mutual

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<sup>120</sup> Article 16 section 4

assistance and divide various responsibilities between the Member State of establishment and the host Member State.

The relevant EU legislation sets out **various general and specific cooperation measures and obligations** for Member States and their competent public authorities with a view to ensuring effective enforcement in cross-border road transport operations within the EU.<sup>121</sup> These cooperation obligations have been described in different ways in the text of Regulation (EC) 1071/2009 (and its amending Regulation (EU) 1055/2020): Member States are obliged to ‘exchange information’, to ‘closely cooperate’, to ‘provide swift mutual assistance’, ‘to maintain and update national registers containing mandatory data on the transport operators’ and to ‘conduct checks, investigations and inspections’.

When trying to classify the different types of cooperation measures and obligations for Member States, five main categories can be discerned:

- (1) to set up an **institutional and operational framework** in support of the cross-border information exchange and mutual assistance with a view to effectively enforcing EU legislation within their territory;
- (2) to **record and maintain specific data in national electronic registers on the transport operators** established within their territory including on their *risk rating* and on the *convictions/penalties* to which these transport companies and their transport managers have been subject, to make the data accessible to authorities from other Member States, and to ensure the technical connection between the national registers through ERRU;
- (3) to **provide information, exchange information and data with other Member States generally and upon request** from other Member States;
- (4) to **conduct checks/investigations/inspections generally and upon request** from other Member States;
- (5) to **periodically report** to the European Commission on the outcome of their actions.

The exchange of information between Member States (3) and the conducting of checks (4) are closely interconnected and are presented together subsequently.

### 3.2.1 National Contact Points

Member States are obliged to designate **national contact points** for the exchange of information and data dealing with the cross-border implementation and enforcement of the relevant EU legislation on road transport operators. Member States have to inform the European Commission of the *names and addresses* of the national contact points and the Commission draws up the list of national contact points and shares this list with all Member States. These national contact points are also assigned as the liaison bodies for **the maintenance of the national registers and operations under ERRU**<sup>122</sup>.

The national contact points in Member States are generally established within the Transport Ministries according to the list published by the Commission.<sup>123</sup> This was also found in the national replies to the

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<sup>121</sup> See also the new administrative cooperation mechanism established under Article 18 Regulation (EU) 2020/1055, which contains the key provisions related to the cooperation obligations between Member States.

<sup>122</sup> The list of national contact points established under Regulation (EC) 1071/2009 and national registers is available on the website of the European Commission at: [https://transport.ec.europa.eu/transport-modes/road/rules-governing-access-profession/european-register-road-transport-undertakings-erru\\_en](https://transport.ec.europa.eu/transport-modes/road/rules-governing-access-profession/european-register-road-transport-undertakings-erru_en)

<sup>123</sup> [https://transport.ec.europa.eu/document/download/87e9daa2-644c-4696-b280-31feb5e53495\\_en?filename=list-of-national-contact-points.xlsx](https://transport.ec.europa.eu/document/download/87e9daa2-644c-4696-b280-31feb5e53495_en?filename=list-of-national-contact-points.xlsx)

questionnaire used for this report, i.e. Member States entrust this task mainly to the ministry responsible for transport (AT, BE, HR, CY, CZ, ES, FR, DE, EL, HU, IE, IT, LU, MT, NL, PT, SK, SI) or to an executive agency operating under the umbrella of the ministry of transport or infrastructure (BG, DK, FI, LT, LV, RO, SE). In Poland the inspection service is the national contact point whereas in Estonia the ministry acting as the national contact point is the Ministry of Economic Affairs.

### 3.2.2 National electronic registers on transport operators

Member States are required to establish and maintain up-to-date **national registers on the transport operators** established on their respective territories. These national registers record various types of information and data on the road transport companies and their management, on their operations and on their risk rating. The national registers should in addition contain information about cases of companies having been subject to *convictions or penalties for serious infringements* and of the transport manager/executive director of a transport operator having been declared unfit in accordance with the national regulations. Member States are not only obliged to keep these records on convictions/penalties in their national registers when these were issued on their territories by the national authorities/courts but also when they were imposed in other Member States. Member States are also required to keep and update records on the *registration numbers of the vehicles* operated by the transport company, on the *number of people employed* and on the *risk rating* of the transport companies. These data should be 'always available' in order to facilitate the roadside checks that are conducted throughout the EU.

The **national registers** function as the **main databases or tools** in support of the Member States' obligation to exchange information with other Member States on the road transport operators by means of ERRU and the IMI.

Two main categories of data that are to be recorded in the national registers can be discerned.

- (1) data concerned with (a) the **identification of the transport operators/companies** (names, legal personality, company address) and their management (names), and (b) data on the national **authorisations** required and the **Community Licence** (serial number) for international road transport operators. *These data should be publicly available;*
- (2) data on (a) the transport **company's operations**, such as the registration numbers of the vehicles and the number of people employed on 31 December of the previous year, (b) the **risk rating** of the company and (c) the number, category and type of **serious infringements which have resulted in a conviction or a penalty** during the previous two years and the **names of persons declared unfit** to manage a transport undertaking, including the rehabilitation measures applicable (data to be maintained until good repute has been restored). *This information is only accessible to enforcement agents who are duly endowed with supervisory powers on supervision/imposition of penalties while they are bound by a secrecy obligation.*

At the time of writing this report (last revision, June 2023), it appears from the information available online that not all links to the national registers from Member States have been published. The information on the national registers of Croatia, Cyprus, Luxembourg, Malta, Romania and Spain<sup>124</sup> is missing. This may either mean that these national registers are not publicly available online and/or that the information on the online link has not been made available for incorporation into the Commission's website. Another interesting point is that the online national registers are in the national language(s) of

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<sup>124</sup> However, the link to the Spanish national contact point was provided by the Spanish questionnaire and is given [here](#). All others can be found at the following link, in the excel file called "ERRU – list of national contact points": [https://transport.ec.europa.eu/transport-modes/road/rules-governing-access-profession/european-register-road-transport-undertakings-erru\\_en](https://transport.ec.europa.eu/transport-modes/road/rules-governing-access-profession/european-register-road-transport-undertakings-erru_en).

the Member States and are primarily designed for the registration or administrative purposes transport operators have to comply with.

The national electronic registers must be accessible by the authorities of other Member States and Member States are under an obligation to apply the procedures and technical connection requirements for the interconnection of their national registers with ERRU and its message exchange system established in Commission Implementing Regulation (EU) 2016/480 (amended by Implementing Regulation EU 2017/1440). The Regulation contains in its annexes implementing rules concerned with the architecture and management of the message exchange information system and its functionalities, the minimum requirements for the content of the XML messages being exchanged between the national registers through ERRU and the service levels that national electronic registers have to guarantee. Following the adoption of Regulation (EU) 2020/1055 which requires national registers to include additional information on road transport undertakings that needs to be made available to authorities from other Member States during roadside checks, the connection requirements linking the national registers to ERRU need to be updated accordingly. The European Commission is at present preparing a new Implementing Regulation on the interconnection of the national electronic registers, which it is expected will be adopted in mid-2023.

### 3.2.3 Mutual assistance by means of general information provision and exchange, information exchange upon request from another Member State, and carrying out checks, investigations and inspections following a request

The obligation on the **information exchange and swift mutual assistance** between enforcement agencies from two or more Member States on the data contained in the national electronic registers can **take effect in two different ways**.

First, Member States can make their national registers **directly accessible** to the public authorities of other Member States (subject to the condition on the second category of information data, e.g. accessibility only by duly mandated enforcement agents) or the information exchange is **the result of a request** from a particular requesting Member State to provide particular data or information by another Member State from which it is requested. When national registers are not directly accessible to public authorities from other Member States and the information needed cannot be retrieved directly, Member States of whom the request is being made have *5 working days* to respond to a request to provide information that is contained in their national registers.

Second, the legislation established a **general obligation** for Member States to cooperate closely and to provide one another with mutual assistance or with any relevant information swiftly in order to facilitate the implementation and enforcement of the EU legislation. The exchange of information takes place through ERRU, which currently allows Member States to: 1) check the good repute of a company or transport manager, 2) notify infringements or penalties/convictions, and 3) check the Community licence of a transport company in the Member State of establishment. Member States are furthermore **specifically obliged to exchange information on convictions and penalties for any serious infringements** committed by transport operators. Member States of establishment are obliged to record infringements which have led to a conviction or a penalty in another Member State in their national electronic registers. Member States are obliged **to reply to requests for information from other Member States** and **to carry out checks, investigations and inspections** on compliance by road transport operators established in their territory. Requests must be duly justified and reasoned, contain indications of possible infringements and specify in detail the information or documents that are being requested. Upon receipt of a request to supply information or conduct a check/investigation, Member

States have an obligation to reply in *30 working days*. However, when the request is unclear or insufficiently substantiated, Member States have 10 working days to ask for further clarification. When the requesting Member State is unable to substantiate the request, the Member State being asked for information may decide to reject the request.

Member States of whom the request is being made have 10 working days to inform the requesting Member State of any difficulties they may encounter in providing the information or in carrying out the checks/investigations. The notification has to provide the reasons why difficulties have been encountered. The Member States concerned are obliged to hold further discussions with a view to finding a solution. In the case of persistent delays in providing the information to the requesting Member State, the European Commission needs to be informed and take appropriate measures.

The main type of **mandatory check, exchange of information and swift mutual assistance** relates to the **verification of the 'good repute'** of a transport operator, which is one of the prerequisites for being granted a Community licence.

The good repute requirement applies to both *the company* and to its management: the executive director, the transport manager or any other person as determined by the legislation of the Member State of establishment. In order to verify the good repute of both the company and its management, enforcement agencies perform checks on (1) the (non-)existence of offences or infringements committed by the transport company and its directors, and (2) whether convictions ensued or penalties were imposed. Such checks can be performed in either the Member State of establishment or in other Member States, or in both (consecutively or in parallel). Member States have to perform a check on the existence of any offences or serious infringements when companies apply for their Community licence, but Member States are also obliged to conduct an administrative on-site inspection when the transport company or its director has been convicted of a serious criminal offence or has incurred a penalty for one of the most serious infringements of EU rules in one or more Member States as defined in the EU legislation concerned<sup>125</sup>. These checks can lead to either the loss of good repute or a decision that the company/director is of good repute. The decisions on the outcome of the administrative procedure must be mentioned in the national registers, and hence also when a check has resulted in a positive outcome and the company has been considered of good repute following the administrative on-site inspection.

The checks that can be performed in both the Member State of establishment and in other Member States in which international transport operations take place relate to verification of the (non-)existence of offences/penalties/infringements under *prevailing EU legislation* relating to international road transport. Regulation (EC) 1071/2009 defines a wide list of issues that are subject to such checks: *access to the road haulage/passenger transport market, driving and rest times, the qualification/training of drivers including the validity of the driver's licence, technical compliance of the vehicles, the presence of a tachograph, compliance with posting rules and specific rules for animal transport, the carriage of dangerous goods and cabotage*.

Apart from the wide list of issues which are subject to checks that can be carried out by the enforcement agencies of all Member States with a view to establishing or confirming that the transport operators and their management are of 'good repute', additional checks are to be undertaken in the Member State of establishment. These aim at verifying that there are no offences/penalties/infringements under *prevailing national legislation* such as *national commercial law, insolvency legislation, pay and*

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<sup>125</sup> Annex IV

*employment conditions, road traffic rules, professional liability, trafficking of drugs and human beings, and tax law.*

As described in Chapter 1, the European Commission has been entrusted with the responsibility of drafting the list of categories, types and degrees of gravity of serious infringements of EU legislation which may lead to the loss of good repute. Regulation 2022/694 has listed the serious infringements and defines three categories of seriousness (MSI, VSI, SI) and a methodology to assess the consequences for the loss of the good repute status when infringements have been detected.

### 3.2.4 Reporting

Member States have to report to the European Commission *every two years* on the activities of the competent authorities. The country reports which Member States have to produce need to contain the following information and data:

- overview of the sector in relation to the criteria of good repute, financial standing and professional competence;
- the number of authorisations that have been granted by year and type, the number of suspended authorisations, the number of withdrawn authorisations, the number of declarations of unfitness and the reasons on which the decisions were based; when reporting on periods after 21 May 2022, the data must contain a breakdown of items by road passenger transport operators, road haulage operators using only vehicles with a permissible laden mass below 3.5 tonnes and all other road haulage operators<sup>126</sup>;
- the number of certificates of professional competence that have been issued each year;
- core statistics relating to the national electronic registers and their use by the competent authorities;
- overview of requests made by the Member States and of the replies that they have received as well as of the actions that they have undertaken on the basis of the information provided. The information should include the annual number of infringements that have been notified to other Member States and the responses received.

Based on the national reports, the European Commission is required in turn to report to the European Parliament and the Council on the pursuit of the occupation of road transport operator. Its report must contain an assessment of the exchange of information operations between Member States and on the functioning and data contained in the national registers. By 21 August 2023, the European Commission is to produce a report on the extent of the administrative cooperation between Member States, on possible shortcomings and on possible ways to improve the cooperation. The Commission is also to produce an evaluation of Regulation (EU) 2020/1055 by that date.

As mentioned previously, Member States are also obliged to inform the European Commission if there are persistent delays in supplying information to the requesting Member States.

Finally, it is worth mentioning that under Regulation (EC) 1072/2009 (as amended by Regulation (EU) 2020/1055) on road haulage transport services, Member States have *to report every second year* to the Commission by 31 March (1) the number of road hauliers possessing Community licences; (2) the number of certified true copies corresponding to the vehicles in circulation; and (3) the number of driver

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<sup>126</sup> A new provision which is introduced by Regulation (EU) 2020/1055.

attestations issued and in circulation on 31 December of the previous two years.<sup>127</sup> By the same date Member States also have to report on enforcement operations performed in the previous calendar year, including the number of checks and checked vehicles in line with their national enforcement strategies.<sup>128</sup> Similar provisions and reporting obligations are included in Regulation (EC) 1073/2009 on coach and bus services, which requires Member States to also report on the number of authorisations for regular services.<sup>129</sup>

### 3.3 EU social legislation specific to road transport operations in the EU<sup>130</sup>

Regulation 561/2006 (as amended by Regulation 2020/1054) and the enforcement Directive 2006/22 (as amended by Directive 2020/1057) regulate the **(daily, weekly and fortnightly) driving times, breaks and (daily and weekly) rest periods** for drivers in the international road transport sector.

The cooperation measures and obligations are in Articles 19 section 2 (penalties) and 22 (administrative cooperation) of Regulation (EC) 561/2006 and in Articles 4-9 and 11 of the Enforcement Directive 2006/22/EC. As mentioned previously, these Articles were amended by the new instruments adopted under Mobility Package I.

The legislation established **several general and specific cooperation measures and obligations** on the Member States which are similar to those identified under the EU legislation on the road transport operators:

- (1) to set up an **institutional and operational framework** in support of the cross-border information exchange;
- (2) to comply with a **minimum quota for national mandatory checks/investigations/inspections**;
- (3) to **exchange information and data with other Member States** *generally and upon request* from other Member States;
- (4) to **conduct checks/investigations/inspections** *generally and upon request* from other Member States;
- (5) to **periodically report** to the European Commission on the outcome of their actions;
- (6) to organise **joint training and staff exchanges**.

#### 3.3.1 Liaison bodies

Member States are first of all obliged to set up **bodies for intra-Community liaison** with a view to ensuring coordination and information exchange with equivalent bodies established in other Member States on the enforcement of the social legislation applicable to the international road transport sector.<sup>131</sup> The list of liaison bodies is published and available on the European Commission's website (DG MOVE)<sup>132</sup>. The replies to the national questionnaires collected as part of the present research showed that in relation to the EU legislation on **the driving times and rest periods** for international road

<sup>127</sup> Article 17 of Regulation (EC) 1072/2009.

<sup>128</sup> These national enforcement strategies had to be submitted to the European Commission by 21 August 2022.

<sup>129</sup> Article 28 of Regulation (EC) 1073/2009.

<sup>130</sup> Regulation (EC) 561/2006 as amended by Regulation (EU) 2020/1054, and the Enforcement Directive 2006/22/EC as amended by Directive (EU) 2020/1057.

<sup>131</sup> Article 7(1) of Directive 2006/22/EC.

<sup>132</sup> [https://transport.ec.europa.eu/transport-modes/road/social-provisions/enforcement\\_en](https://transport.ec.europa.eu/transport-modes/road/social-provisions/enforcement_en)



transport drivers, Member States have usually designated as **liaison bodies the same institutions as those designated as national contact points for the access to the occupation of road transport operator**. However, sometimes different departments within the same **Ministry of Transport/Mobility** are competent for the respective areas. However, in some cases, Member States have designated a **different or an additional public body** than the one entrusted with the legislation on market access for road transport operators. For example, the liaison body for enforcement of the social legislation in Denmark and Latvia is the National Police (Ministry of Internal Affairs) whereas in Cyprus and Slovakia, the Ministries of Labour or labour inspectorates respectively have been designated as the national liaison bodies for the working conditions of international road transport drivers.

This confirms that when it comes to the application of the EU legislation on road transport operations, including compliance with the labour and social conditions, the contact points in the Member States are usually the **Ministries of Transport** (or an independent Road Transport Agency) and, to a far lesser extent, the **Ministries of Labour or the labour inspectorates**. The country reports also reveal the significant role of the **(road traffic) police** as a third national stakeholder for the enforcement of the relevant legislation, in addition to the Ministry of Transport and the Ministry of Labour. The involvement of the police is obviously related to their role in ensuring effective enforcement when performing roadside checks of the vehicles.

### 3.3.2 Mandatory national enforcement strategy and checks

The enforcement Directive establishes **minimum requirements to which Member States** have to adhere in terms of enforcing the Regulation effectively by setting **minimum numbers of annual mandatory checks/investigations and inspections**. Member States are obliged to conduct *roadside checks, concerted checks* and *checks at the premises* of the undertakings. At least 3% of the number of working days performed by drivers must be checked while at least 30% of the checks must be conducted during roadside checks and at least 50% at undertakings. Member States are furthermore obliged to conduct concerted checks on drivers and vehicles falling within the scope of the Regulation at least six times per year <sup>133</sup>.

With a view to the organisation of these national inspection campaigns, Member States have to adopt a **national enforcement strategy** and may designate a body for the coordination of the enforcement strategy. Member States are obliged to report to the European Commission on the outcome of the roadside checks and checks at the undertakings in terms of number of checks conducted at the roadside and at the premises, number of working days checked, and the number and type of infringement reported with an indication whether it concerned goods or passengers transport services.

### 3.3.3 Exchange of information and mutual assistance

Member States are in addition required to **exchange information regularly** on (1) infringements committed by non-residents and any penalties imposed; (2) penalties imposed by Member States on its residents for infringements committed in other Member States; and (3) any other relevant information including the risk rating of the undertakings. Member States are obliged to exchange information when there are reasons to believe during a roadside check on a driver of a vehicle registered in another Member State that infringements have been committed.

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<sup>133</sup> Regulation (EU) 2020/1055 amending Regulation (EC) 1072/2009 introduces the obligation for Member States to conduct annually at least twice a year concerted roadside checks on cabotage operations.

Member States are obliged to operate a **risk rating system** for transport undertakings, which is based on the relative number and gravity of any infringement concerned with the driving times and rest periods and with the use of the tachographs<sup>134</sup> as a means of measuring the working time of the drivers. The European Commission is tasked with establishing common formulae for calculating the risk rating of the undertakings and has done so by means of Commission Implementing Regulation (EU) 2022/695.<sup>135</sup> The formula takes into account (1) the number, gravity and frequency of occurrence of the infringements; (2) the results of controls where no infringement was detected; and (3) whether the smart tachograph has been used in all the undertaking's vehicles. The initial list of serious infringements and the weighting of their gravity was set out in Annex I of Regulation (EC) 2016/403. This has meanwhile been replaced by a new list under Implementing Regulation (EU) 2022/694 as described in the previous Chapter. Member States are furthermore obliged to make the information contained in their national risk rating systems directly accessible to enforcement agencies in other Member States (at the time of the control) through interoperable national electronic registers (ERRU).

Whereas the legislation requires Member States to closely cooperate and to provide each other with mutual assistance without undue delay, it also determines specific **timelines for the information exchange upon request from another Member State**. The time lines are comparable (though not identical) to those applied under the EU legislation on road transport operators: in relation to information and data related on the risk rating system, *3 working days* have been established as the time limit for responding to requests for data/information. For other requests for information, *25 working days* have been determined as the timeline for replying to a request for information from another Member State while shorter timelines can be agreed bilaterally. Member States of which information is requested and which consider that requests for information are insufficiently substantiated can ask the requesting Member State to further substantiate the request within 10 working days. If the target Member States finds it difficult or impossible to comply with a request for information or with a request to carry out checks, it has 10 working days from the date of the request to inform the requesting Member States of the difficulty or impossibility, with reasons and justifications.

Information that is contained in the national registers is exchanged through ERRU while the IMI is used for the exchange of (additional) information that is not contained in the national registers.

### 3.3.4 Reporting

Member States are obliged to report to the European Commission on the *outcome of their mandatory minimum annual roadside checks* and checks on undertakings designed to check at least 3% of the working days performed by drivers in international road transport. Member States are also obliged to maintain statistics and to report them to the European Commission.

Finally, Member States are obliged to inform the European Commission of *national rules on penalties applicable to the infringements* of the provisions of Regulation (EC) 561/2006 (social legislation) and of Regulation (EU) 165/2014 (tachographs).<sup>136</sup> Similar reporting obligations on the rules on penalties are included in Regulation (EC) 1072/2009 (road haulage)<sup>137</sup> and Regulation (EC) 1073/2009 (coach and bus services)<sup>138</sup>. The information on the national rules on penalties is available on the site of the

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<sup>134</sup> Pursuant to the provisions of Regulation (EU) 165/2014.

<sup>135</sup> Commission Implementing Regulation (EU) 2022/695 of 2 May 2022 laying down rules for the application of Directive 2006/22/EC of the European Parliament and of the Council as regards the common formula for calculating the risk rating of transport undertakings.

<sup>136</sup> Article 19 (1) of Regulation (EC) 561/2006.

<sup>137</sup> Article 16 of Regulation (EC) 1072/2009.

<sup>138</sup> Article 27 of Regulation (EC) 1073/2009.

European Commission (DG MOVE)<sup>139</sup> for all Member States, with the exception of Belgium, Ireland, Italy, Malta and Romania. The published lists need to be up-to-date with the classification of serious infringements established by Regulation (EU) 2022/694.

### 3.3.5 Training and staff exchanges

Member States are obliged to establish **joint training programmes** on best practices and to facilitate **staff exchanges** of their respective bodies for intra-Community liaison at least once a year.

## 3.4 EU legislation on the posting of drivers in international transport

As Chapter 1 described, four Directives contain all EU rules on the posting of drivers in international road transport: the general Posting of Workers Directive 96/71/EC as amended by Directive (EU) 2018/957, the Enforcement Directive 2014/67/EU and Directive (EU) 2020/1057 on posting in the road transport sector.

The EU posting rules aim at ensuring that the hard-core labour legislation and working conditions of the host Member State (adopted by law or by universally applicable collective agreements) where the worker is posted are complied with. This applies to, amongst others, *remuneration including overtime rates, minimum pay annual leave, health and safety at work, conditions of workers' accommodation where provided by the employer to workers away from their regular place of work and expenditures for travel, board and lodging for workers away from home for professional reasons*. Directive (EU) 2020/1057 excludes drivers in bilateral and transit operations from the scope of the general posting rules while maintaining drivers engaged in cross-trade and cabotage operations within their remit. The Directive also establishes specific enforcement mechanisms for the posting of drivers engaged in international road haulage and passenger transport operations.

The relevant posting legislation contains **some general and specific cooperation measures and obligations** that Member States' public authorities and enforcement agencies are obliged to adhere to. Several co-operation mechanisms involve posting situations in all economic sectors whereas some are specific for the international road transport:

- (1) to set up an **institutional and operational framework** in support of the cross-border information exchange;
- (2) **to provide general information;**
- (3) to **exchange information and data with other Member States** *generally and upon request* from other Member States;
- (4) to **conduct checks/investigations/inspections** *generally and upon request* from other Member States;
- (5) **specific cooperation with regard to posting declarations and documentation upon completion of the posting of international transport drivers;**
- (6) **to report** to the European Commission;
- (7) **training and staff exchanges.**

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<sup>139</sup> [https://transport.ec.europa.eu/transport-modes/road/social-provisions/enforcement\\_en](https://transport.ec.europa.eu/transport-modes/road/social-provisions/enforcement_en). Information retrieved on 13 June 2023.

### 3.4.1 National liaison offices

The EU posting rules require Member States to designate one or more competent bodies or one or more **liaison offices** responsible for monitoring the mandatory rules on the terms and conditions of employment which have to be complied with in posting situations. Member States are obliged to notify each other and the European Commission of their liaison offices and competent bodies.

Member States have most often designated their **Ministries of Labour or Labour Inspectorates** as the **national liaison offices for the application of the (new) EU posting rules**. The national ministries of labour already operated as the national contact bodies for the general EU posting rules and are now also tasked with ensuring the effective application of the new EU provisions on the posting of drivers in international road transport.

The national liaison offices dealing with the posting of drivers in international transport operations in the EU are hence **different from the national contact points** and liaison bodies dealing with the cross-border enforcement of the **rules on the access to the occupation of transport operator** and **on driving times** in international commercial road transport. The list of national liaison offices is published on the site of the European Commission (DG EMPL) (Table 4).<sup>140</sup>

**Table 4: National Liaison Offices for the application of the EU posting rules on road transport**

National Liaison Offices – posting of drivers	
Country	Name of the (list extrapolated from the EC website <sup>141</sup> )
Austria	Federal Ministry of Labour and Economy
Belgium	FPS Employment, Labour and Social Dialogue, Belgian liaison office, Directorate-general labour law and legal studies
Bulgaria	Ministry of Labour and Social Policy - General Labour Inspectorate EA
Croatia	Ministry of Labour, Pension System, Family and Social Policy
Cyprus	Ministry of Labour, Welfare and Social Insurance - Department of Labour
Czechia	Ministry of Labour and Social Affairs
Denmark	Danish Working Environment Authority
Estonia	Labour Inspectorate
Finland	Occupational Safety and Health Administration
France	Directorate General for Labour - Ministry for Labour
Germany	Directorate VII of the Central Customs Authority - Financial Control of Undeclared Work
Greece	Ministry of Labour and Social Affairs
Hungary	Ministry for National Economy - Hungarian Labour Inspectorate
Ireland	Workplace Relations Commission
Italy	Ministry of Labour and Social Policy
Latvia	State Labour Inspectorate
Lithuania	State Labour Inspectorate

<sup>140</sup> Retrieved from: [https://europa.eu/youreurope/citizens/work/work-abroad/posted-workers/index\\_en.htm#shortcut-6](https://europa.eu/youreurope/citizens/work/work-abroad/posted-workers/index_en.htm#shortcut-6)

<sup>141</sup> Retrieval date of Table 4: 14.06.2023.

National Liaison Offices – posting of drivers	
Country	Name of the (list extrapolated from the EC website <sup>141</sup> )
Luxembourg	Labour and Mines Inspectorate
Malta	Department for Industrial and Employment Relations
Netherlands	Ministry of Social Affairs and Employment - Labour Inspectorate
Poland	National Labour Inspectorate - Chief Labour Inspectorate
Portugal	Authority for Working Conditions
Romania	Labour Inspectorate
Slovakia	National Labour Inspectorate
Slovenia	Ministry of Labour, Family, Social Affairs and Equal Opportunities
Spain	General Directorate of Labour
Sweden	Swedish Work Environment Authority

### 3.4.2 General information provision

Member States are furthermore obliged by **Directive 96/71/EC** to make **the information on the terms of employment and working conditions generally available** in an accessible and transparent way. Member States are obliged to publish the information on a single website and to keep the information accurate and updated. The information shall be published in all the official languages of the Member State concerned but also in other relevant languages. This requirement applies also for the labour legislation and working conditions in the road transport sector.<sup>142</sup> The information must be made accessible to the transport undertakings from other Member States and to posted drivers.

### 3.4.3 Exchange of information and mutual assistance upon request

The EU posting rules contain a general obligation for Member States to *closely cooperate and provide mutual assistance without undue delay* with a view to facilitating the proper enforcement of the EU posting rules.

The EU posting rules also contain a specific obligation for Member States to reply to reasoned requests for information from other Member States on the *transnational hiring-out of workers*, and to *tackle manifest abuse or possible cases of unlawful activities*, such as transnational cases of undeclared work and bogus self-employment linked to the posting of workers.<sup>143</sup> Requests for information include *information regarding the cross-border recovery of an administrative penalty or fine or the notification of a decision imposing a penalty or fine*. Member States are also specifically obliged to *carry out checks, inspections and investigations on request from another Member State in situations of postings including investigations of any non-compliance or abuse of the applicable rules*.

When a request for information is urgent (such as checking a VAT number in the country of establishment), the information needs to be supplied within *2 working days, according to Directive (EU)*

<sup>142</sup> Article 1 (9) of Directive (EU) 2020/1057.

<sup>143</sup> Article 4 (2) of Directive 96/71/EC as amended by Directive (EU) 2018/957.

2014/67. The reasons for the urgency need to be justified in the request. For all other requests for information, Member States have *25 working days* to respond and supply the information, according to the same Directive and also repeated by Directive (EU) 2020/1057.

If Member States are operating *registers* in which service providers providing services in their territory have been entered and such registers can be consulted by the competent bodies of that Member State, they are obliged to ensure that these registers can also be consulted by equivalent bodies from other Member States insofar as these registers are listed in the IMI.

When a liaison office or competent body in a Member State from which a worker is posted has been requested by a Member State to whose territory the worker is posted to provide information, but it does not possess the information, the liaison office or competent body has the obligation to seek and obtain the information from other bodies or authorities in their Member State.

When there are persistent delays in the provision of the information to the Member State to which the worker is posted or in cases of a refusal to provide the information, there is *an obligation to inform* the European Commission, which is required to take appropriate measures.

Member States are, with the assistance of the European Commission, obliged to take measures to *develop, facilitate and promote the exchange of information* between the officials in charge of the implementation of the administrative cooperation and mutual assistance, and the monitoring of the compliance with the applicable rules. Inspection agencies and enforcement bodies are obliged to avail themselves of the cooperation and exchange of information in order to verify whether the rules applicable to posted workers have been respected.

Member States are also obliged to ensure that service providers or transport operators established on their territories supply the necessary information that will allow them to respond to requests for assistance from competent authorities in other Member States. Member States are obliged to communicate the relevant information to other Member States when they encounter facts which indicate possible irregularities.

In cases where information is needed in the course of an inspection, the host Member State and the Member State of establishment are required to cooperate in accordance with the rules on administrative cooperation.

The host Member State examines the constituent factual elements characterising the temporary nature of a posting and the condition that the employer is genuinely established in the Member State from which the posting takes place, in close cooperation with the Member State of establishment. The host Member state can request information on the legality of the service provider's establishment, the service provider's good repute and the absence of any infringement of the applicable rules and the Member State of establishment is obliged to supply the information.

#### **3.4.4 Specific cooperation before and upon completion of a posting in the international transport sector**

Under the (new) posting rules, applicable in the international road transport sector, established in Directive (EU) 2020/1057, specific notifications and information requirements have been entrusted to *transport operators* established in the EU and making use of the posting mechanism for the posting of their workers.

Transport operators established in another Member State are obliged to submit a *posting declaration* to the national competent authorities of the Member State to which a driver is posted at the latest at the commencement of the posting. They must use a standard form that is available on the public interface connected to the IMI – ‘Road Transport – Posting Declaration’ module. The posting declaration requires some mandatory data or information.

The transport operators also have to ensure that the driver has paper or electronic copies of (1) the posting declaration, (2) the electronic consignment note and (3) the tachograph records at their disposal during the international transport operations.

Once the period of posting is completed and at the request of the competent authorities of the host Member State, transport operators have eight weeks to provide the electronic consignment note, the tachograph records, the employment contract and the documentation related to the remuneration of the driver during the period of posting, time-sheets and proof of payment. These documents are supplied through the IMI.

When transport operators fail to submit the requested documentation, competent authorities from the Member State of posting can request assistance from the competent authorities in the Member State of establishment. When such a request is made, the authorities in the Member State of establishment must have access to all the information that the transport operator has submitted via the public interface connected to the IMI – ‘Road Transport – Posting Declaration’ module. The competent authorities from the Member State of establishment have to ensure that they provide the requested documentation within *25 working days* from the date of the request for mutual assistance.

Regulation (EU) 2020/1055, amending Regulation (EC) 1072/2009, added the obligation to conduct roadside checks on **cabotage operations** in each Member State at least twice a year. Such checks are undertaken at the same time by the national authorities in charge of enforcing the rules in the field of road transport of two or more Member States, each national authority operating in its own territory. The national contact points designated in accordance with Article 18(1) of Regulation (EC) No 1071/2009 shall exchange information on the number and type of infringements detected after the concerted roadside checks have taken place.

### 3.4.5 Reporting

Member States are obliged to inform the European Commission of *their national rules on penalties* (as well as of changes) applicable in the event of infringements of national provisions adopted on the basis of the posting Directives. This also applies to *new provisions* adopted as a result of transposition of the new rules established by Directive (EU) 2020/1057 on the posting of road transport drivers.<sup>144</sup>

### 3.4.6 Training and staff exchanges

Member States have to take accompanying measures to develop, facilitate and promote *staff exchanges* with assistance from the European Commission. The Commission is tasked with supporting staff exchanges, training, exchanges on best practices, and the *development of databases and joint websites* containing general or sector-specific information on the terms and conditions of employment applicable to posted workers.<sup>145</sup>

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<sup>144</sup> See: [https://transport.ec.europa.eu/transport-modes/road/social-provisions/enforcement\\_en](https://transport.ec.europa.eu/transport-modes/road/social-provisions/enforcement_en)

<sup>145</sup> Article 8 of Directive 2014/67/EU.

### 3.5 EU legislation on social security coordination

The EU legislation on social security coordination primarily aims to determine which (single) national social security legislation is applicable to an individual in intra-EU cross-border mobility. The social security legislation applicable in the competent Member State, which in principle is the legislation of the country where the individual is professionally active, will define the level of social contributions which have to be paid as well as the social security benefit entitlements. In the context of international road transport operations, EU social security coordination rules thus establish the national social security system to which the driver is affiliated and where the social contributions have to be paid (by the transport operator or the driver depending on the specificities of the case).

When compared to the other three clusters of EU legislation applicable to international road transport, the implementation and enforcement of social security coordination rules is of a very different nature. The prime objective is to establish or clarify the social security rights of mobile individuals (drivers) not to ensure companies' compliance with EU rules on the access to the international transport market or the working conditions of their workers when working in another Member State. The need for cooperation and information exchange between Member States is often triggered by individual queries from citizens wanting to know their rights and less by administrative requests aimed at ensuring compliance with EU legislation. Consequently, the Regulations establish an obligation for Member State institutions to respond to all queries from individuals within a reasonable time and to provide them with any information required so that they are able to exercise their rights to move freely within the EU and not be denied their social security rights. Thus, the Implementing Regulation stipulates that the exchanges between Member State authorities and social security institutions on the one hand and mobile persons covered by the Regulation on the other must adhere to the *'principles of public service, efficiency, active assistance, rapid delivery and accessibility, including e-accessibility'*.<sup>146</sup>

The lead role in applying social security coordination rules in Member States is entrusted to the public authorities and social security institutions which administer the different branches that fall under the scope of the basic Regulation, such as pension schemes, sickness insurance benefits or unemployment benefits. Obviously, enforcement agencies and inspection services connected to the social security administration are also involved but more in a secondary role. The administrative cooperation and exchange of information between Member States in social security coordination matters hence relies on a network of more than 5 000 competent social security institutions across the EU. The exchange of information is based on the Electronic Exchange of Social Security Information (EESSI), a specific information system designed specifically for electronic information exchange between social security institutions in the EU on individual cases. EESSI uses Structured Electronic Documents (SED), which are documents designed in a specific format that allows for electronic exchange.

The prevailing EU legislation on social security coordination (Regulations (EC) 883/2004 and Regulation (EC) 987/2009) contains several specific cooperation measures and obligations for the Member States. Unlike the cooperation under other relevant legislation on international road transport discussed above, the cooperation obligations between Member States have been extensively institutionalised in the area of social security coordination by establishing several bodies with clear responsibilities and *modus operandi*.<sup>147</sup>

The Administrative Commission for the Coordination of Social Security Systems (AC), which is composed of Member States' representatives, has been entrusted with several tasks, including:

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<sup>146</sup> Article 2 of Regulation (EC) 987/2009.

<sup>147</sup> Article 71-75



- to deal with all administrative questions and questions of interpretation of the EU Regulations;
- to facilitate uniform application of the Regulations by promoting exchange of experiences and best administrative practices;
- to foster and develop cooperation between Member States and the social security institutions;
- to encourage the use of technologies, in particular by modernising procedures for the exchange of information;
- to make proposals to the European Commission on social security coordination;
- to draw up annual accounts relating to the costs that have to be borne by the social security institutions of the Member States.

A Technical Commission and an Audit Board are both attached to the AC. The former develops the common architecture rules for the operation of data processing services between the Member States' social security institutions. The latter is mainly responsible for the calculation of the annual statement of claims from the Member States. Finally, the Advisory Committee for the Coordination of Social Security Systems is a tripartite mechanism in which social partners from across the EU are also engaged in addition to the Member States' representatives. It examines general questions arising from the implementation of the Regulations and issues opinions for the AC.

The EU social security coordination legislation contains **some general and specific cooperation measures and obligations** as well. In addition to their involvement in the Administrative Commission and related bodies, Member States' public authorities and social security institutions are obliged to:

- (1) set up an **institutional and operational framework** in support of the cross-border information exchange;
- (2) engage in **general information provision**;
- (3) **exchange information and data** through the EESSI **with other Member States** generally and upon request from other Member States;
- (4) engage in **specific cooperation on cost claims and recoveries**.

### 3.5.1 National liaison bodies

It is mandatory for Member States to designate **one or more liaison bodies** representing all or specific social security branches covered by the basic Regulation. These bodies respond to requests for information and assistance and follow up on the financial transfers between Member States in cases where costs incurred in one Member State have to be reimbursed by another Member State or when a Member State has paid social security benefits that were not due and these moneys have to be recovered in another Member State. The **Ministries of Social Affairs or the social security institutions** are usually designated in Member States as the **liaison bodies in matters of social security coordination** in cases of cross-border work performed by road transport drivers. Often several national liaison bodies will be designated depending on the specific social security branch concerned (e.g. old age, health, unemployment insurance branches).

### 3.5.2 General information provision

Member States must inform each other of *measures* they take with a view to implementing EU social security coordination regulation. They are also obliged to inform each other about *changes to their national social security legislation* which might affect the implementation of the EU coordination rules.<sup>148</sup>

### 3.5.3 Exchange of information between liaison bodies and social security institutions

Member States' social security institutions are obliged to contact the liaison body or their direct counterparts in another Member State in order to resolve queries relating to the social security legislation applicable in individual cases. The institutions are required to provide and exchange all the data necessary for establishing and determining the rights and obligations of persons who are covered by the Regulations and to do so 'without delay'.<sup>149</sup> The necessary data must contain information on the date from which the social security legislation becomes applicable in a specific individual situation. As mentioned above, Member States are obliged to respond to queries they receive from persons covered by the Regulations. When such queries contain a cross-border dimension, Member States' social security institutions have to rely on each other to obtain the necessary information. Member States are required to transfer to the counterpart institutions in the other (competent) Member State documents which individuals mistakenly submitted to their institutions. In the event of difficulties in the interpretation or application of the Regulations, the social security institutions of both the competent Member State and the Member State of residence must contact each other in order to find a solution within a reasonable period. When such a solution cannot be found, the Member States may ask the AC to intervene or approach ELA for mediation.

Documents and the related evidence produced by a Member State's social security institution are *legally valid* in any other Member State and must be enforced by that State's institutions. However, when there are doubts about the validity of documents or the accuracy of facts, Member States can ask the issuing Member State for clarification and, when appropriate, for withdrawal of the document. The issuing Member State is obliged to reconsider the grounds for issuing the document and, if necessary, withdraw it but remains solely responsible for this decision. In cases where there are doubts about the information provided to individuals and these relate to the validity of a document, supporting documents or factual accuracy, the institution in the Member State of residence has to verify, insofar as possible, the information or documents at the request of the competent Member State. In situations of disagreement between social security institutions from different Member States, the issue can be taken to the Administrative Commission for conciliation, but at the earliest one month from the date the request was submitted by the requesting Member State to the other Member State<sup>150</sup>.

### 3.5.4 Specific cooperation with regard to the reimbursement of costs or recovery of undue payments

The implementation of EU social security coordination rules implies that Member States and their social security institutions may have to transfer funds to their counterparts in other Member States (reimbursement of costs that have been advanced) or need to recover moneys which have been paid unduly. This creates financial flows and transfers between the many social security institutions across

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<sup>148</sup> Article 76 of Regulation (EC) 883/2004.

<sup>149</sup> Article 2 para 2 of Regulation (EC) 987/2009.

<sup>150</sup> The Administrative Commission is required to endeavour to reconcile the different points of view within a period of six months.

the EU. Implementing Regulation (EC) 987/2008<sup>151</sup> establishes a mechanism for the transfer and recovery of moneys between the Member States' institutions. This includes an offsetting procedure and involves the Audit Board attached to the Administrative Commission.

### 3.6 Summary of the cooperation measures and obligations

The cooperation measures and obligations enshrined in the relevant EU legislation concerned with the labour and social dimension of international road transport require Member States to set up *an operational framework* and to *designate one or more liaison bodies or contact points for the exchanges of information with other Member States or in relation to the European Commission*. Depending on the specific category of legislation concerned, Member States have designated **different contact points or liaison bodies**. For the rules on access to the occupation of road transport operator, they have generally designated their ministry of transport or a dedicated road traffic agency. These bodies are usually also in charge of the national electronic registers for road transport operators and/or for the granting of the licenses. The same is broadly the case of bodies responsible for the social legislation on driving times and rest periods for road transport operations. However, there are exceptions, such as ministries of internal affairs, the police or in some cases the ministry of labour. They have generally designated ministries of labour or labour inspectorates as the liaison office for the general posting rules. It seems from the national replies to the questionnaires that they also act as the national contact points for the implementation of the specific posting rules for drivers in international transport. Finally, ministries of social affairs and/or social security institutions generally operate as the main liaison office(s) in Member States for the application of the social security coordination legislation.

Apart from the national contact points and liaison bodies entrusted with the cross-border exchange of information, **other public authorities have been assigned particular responsibilities** by EU legislation. They include the competent authorities in charge of Community licences and certified true copies for road transport operators, and of the *authorisations to operate regular passenger transport services*, those responsible for the issuance of *professional competence certificates* for transport managers, authorities entrusted with the *certification of safe and secure parking areas*, and social security institutions that provide the *portable documents* (e.g. PDA1) to mobile persons moving within the EU.

The cross-border **exchange of information and data** with a view to the enforcement of EU legislation in the road transport sector implies the involvement of **different national authorities (including licensing authorities) and enforcement agencies** depending on the type of information and data that needs to be exchanged. Data exchanges with a view to enforcing the legislation on access for transport operators, posting rules and driving times rely on the ERRU messaging system and on the IMI, which recently introduced three new road transport modules in addition to the existing IMI modules on (general) posting, services and mutual recognition of diplomas. For social security coordination purposes, these are the social security institutions entrusted with the administration of the different branches of social security and the information exchange takes place through the EESSI system.

EU legislation on the labour and social dimension of road transport requires Member States **to make information available generally or specifically to the European Commission, to other Member States** and/or to **the transport operators and (posted) drivers**. This requirement primarily concerns (new) national legislation or rules, such as national rules on the penalties and fines for infringements

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<sup>151</sup> Chapter III of Regulation (EC) 987/2009.

(mandatory notification to the European Commission), the relevant terms of employment and working conditions for transport undertakings and drivers that need to be complied with in posting situations (which need to be publicly available on single national websites and in an accessible way) or new national social security rules which may have repercussions for the application of the EU social security coordination rules. Member States also have to inform the European Commission of the (contact details of the) different national contact points and liaison bodies in the respective domains and of the various competent bodies. Finally, Member States are obliged to inform the European Commission when bilateral requests for information or notifications are systematically not attended to by the Member State of which the request is made or in cases of persistent problems.

Member States are also required **to report** to the European Commission in various ways and on different enforcement obligations. Apart from the regular reporting requirements on the transposition of Directives, it is compulsory for Member States to report, through statistics, the **mandatory checks and inspections conducted** (both roadside checks and checks at premises), on the **number of authorisations** (Community licences, certified true copies, authorisations to operate regular passenger services and driver attestations) and certificates of professional competence issued, suspended or withdrawn, and on the **number of information exchanges** between Member States, including the number of infringements established. Member States have to adopt **national enforcement strategies** and report to the European Commission on implementation of these every second year.

An essential part of the cooperation obligations applies to **information and data exchanges** between Member States' enforcement agencies which are run through electronic request and reply systems, including notification alerts that are run through the IMI or by means of ERRU. The legislation establishes **timelines for responses** once a request has been sent by another Member State, but the reply times are different depending on the type of request and the relevant piece(s) of legislation: 2 working days for urgent requests relating to the posting of drivers, 3 working days for replies related to the risk rating system, 5 working days for information contained in ERRU, 25 working days for standard requests related to the social legislation or to the posting of drivers, and 30 working days for replies to requests on the conditions of establishment. Exchanges of information may imply the **mandatory execution of a check**, inspection or investigation by the Member State from whom information is being sought. Member States are obliged to conduct a **minimum number of roadside checks, concerted checks and checks at the premises** of the undertakings on an annual basis. Regulation (EU) 2020/1055, amending Regulation (EC) 1072/2009, added the obligation to conduct roadside checks on **cabotage operations** in each Member State at least twice a year.

Mobility Package I introduced a *series of new substantive rules* that are applicable to transport operators established in the EU and to transport operations carried out on the territory of the EU. Examples of these new provisions are **the right of the drivers to return home every four weeks**, the **obligation to ensure that the vehicles return to the country of establishment every eight weeks** and the **prohibition on drivers spending their weekly rest period inside the cabin** but be accommodated in appropriate facilities at the expense of the transport company. Mobility Package I introduced **new rules for the posting of drivers in the road transport sector** applicable to cross-border trade and cabotage transport operations. This includes a specific posting declaration for the drivers and a limitation on the documents that can be verified during roadside checks. However, transport operators must provide the necessary information within eight weeks after completion of the posting upon request of the host Member State. Enforcement agencies in the Member State of establishment can be called upon if such information is not provided by the transport undertaking and are obliged to provide their assistance.

The European Commission adopted a **new, extended and integrated list of serious infringements** in the course of 2022 replacing the previous lists and provisions from earlier legislation. At the same

time, a **new methodology for the risk rating system for transport operators** was adopted. This needs to be transposed into Member States' practice. The data and results of the risk rating applied to operators, convictions and penalties related to infringements and declarations of the unfitness of transport managers have to be recorded in **national electronic registers**. These must be accessible (directly or upon request) for enforcement agencies through the ERRU message exchange system in Member States other than the Member State of establishment.

The 2020 Mobility package I introduced **three new IMI modules for information exchanges** between authorities and enforcement agencies. These deal with the data on the stable and effective establishment of transport operators, the posting of drivers and the applicable social legislation. They have been operational since Spring 2022 and allow Member States to check the good repute of transport managers and the existence of a community licence in the country of establishment, to notify infringements or penalties imposed, to request clarifications on interpretation of EU social rules and on the validity of posting declarations. The use of ERRU has also been reinforced by making it the interconnected database for data related to transport operators, their compliance with the legislative requirements and their risk rating. The Commission is currently preparing a new Implementing Regulation on the **interconnection of the national electronic registers with ERRU**.

Finally, the EU rules on driving and rest times as well as the '*lex specialis*' on the posting of drivers in the international road transport sector require Member States to **exchange best practices**, to organise **staff exchanges** and **training for the staff** of the enforcement agencies.

## 4.0 Cooperation practices and challenges in Member States

Whereas the previous chapters presented a more descriptive overview of the applicable EU legislation and of the cooperation measures and obligations for Member States in the area of road transport, this chapter and the following chapters aim to explore how the different EU provisions and requirements are being put into operational practice in Member States. The focus is mainly on the **role of the national administrative bodies and enforcement agencies** entrusted with the task of ensuring effective implementation of the EU legislation as complemented by the national laws of the Member States concerned.

EU law establishes several material provisions that need to be applied and checked on uniformly across the EU (e.g. the obligation to return the vehicles to the Member State of establishment every eight weeks and the right for drivers to return home every four weeks), but it has also designed methodologies (e.g. the risk rating of transport operators) and is facilitating the exchange of information by means of the Road Transport Modules in the IMI and the use of ERRU. National legislation remains important, however, as it is national law that applies to individual situations in terms of, for instance, the exact scope of the mandatory rules on the terms and conditions of employment conditions for posted drivers, the social security regime applicable for international drivers and the sanctioning regime where infringements have been detected (type of sanctions and penalties, determination of which authority can impose different types of penalties and fines, the structure of the administrative and judicial proceedings for different infringements, etc).

Before embarking on the cross-border cooperation practices and challenges between Member States, it was considered useful to explore **how the different implementing bodies and enforcement agencies in the individual Member States are cooperating with each other** in the area of road transport. Well-performing inter-agency cooperation in the Member States is indeed a pre-requisite for effective cross-border cooperation between these agencies in the wider EU context. The questionnaire that was used as the basis for the local interviews with stakeholders in the last quarter of 2022 contained some specific questions with a view to assessing these interinstitutional cooperation practices in Member States.

It follows from the national replies that a **multitude of authorities and enforcement agencies in Member States are involved in the implementation and daily enforcement of EU and national legislation dealing with international road transport. Apart from the national competent authorities in charge of Community Licensing and other authorisations, many inspection agencies are involved in daily enforcement in the Member States:** (road/traffic) police, ministries of transport or infrastructure, labour ministries and labour inspectorates, social (security) ministries and institutions, tax inspection services and various other bodies, depending on the Member State concerned. The existence of a high number of authorities and enforcement agencies in Member States and the related risk of overlap of competencies in the field of road transport enforcement are reported to be key factors that trigger particular challenges to information exchange and other cooperation issues between the different agencies in the Member States. The national replies almost univocally indicate an urgent need to develop cooperation arrangements and smooth information exchange procedures between relevant authorities in order to enforce the rules set out in EU legislation effectively and efficiently. This chapter aims to describe the various inter-institutional cooperation practices which exist within Member States, whilst also looking into the several challenges related to cooperation between

national authorities and bodies at regional or local level. The information contained in this chapter is based on the replies to the questionnaire and on the interviews with stakeholders which were held in Member States in the last part of 2022.

## 4.1 Inter-institutional cooperation practices within Member States

The implementation and enforcement in the Member States of the EU rules on international road transport operations implies the *involvement of numerous public bodies and agencies at national level*. The replies from the country reports revealed furthermore the **importance of the regional levels** in the enforcement of road transport legislation. For instance, in **Portugal**, in the Greater Lisbon area, in the last week of each month, inspection bodies from different areas meet to prepare inspection actions for the following month. In **Spain**, coordination with regional departments of transport is achieved through the General Commission of the [Regional] Directors General of Transport (*Comisión General de Directores generales de Transporte*), which holds coordination meetings at least every quarter to provide guidelines for action and to establish common criteria. In **Belgium**, mention was made of the fact that tackling social fraud in the area of road transport efficiently requires reasonably easy cooperation between the various federal and regional inspectorates. Cooperation between social inspectorates is formally organised within (regional) district cells, which are set up under the jurisdiction of labour courts. Labour court auditors and inspectorates work together in these district cells. The cells are chaired by the labour auditor of the corresponding district and are further made up of representatives of the various inspection services, the tax authority, the police, a magistrate from the public prosecutor's office and a representative of the Bureau of the Social Intelligence and Investigation Service. It is up to the labour auditor to monitor whether the targets set at national level are met and make adjustments where necessary.

The spread and overlap of competencies in the field of road transport indicate the **need to develop cooperation arrangements and smooth information exchange procedures** between these authorities to enforce the rules laid out of the European legislation effectively and efficiently. The reply from **Austria** highlighted that, although each enforcement authority has its own mission, it is inevitable that the competencies also overlap. For instance, while the financial police mainly perform roadside checks and the Austrian health insurance fund mainly checks the companies concerned at their premises, the latter are occasionally accompanied by the financial police in order to be able to read out certain data. Similarly, **Poland** pointed out that although there is a division of competences between the authorities in charge of inspections, overlapping is inevitable. In particular, checks at the premises are carried out by the National Labour Inspectorate with the support of the Road Transport Inspectorate, while roadside checks are carried out exclusively by the Road Transport Inspectorate with the support of the police and the border guard. Both authorities, however, express concerns regarding the control of the correct application of social legislation, which supervision does not seem to be clearly assigned to either authority, resulting in duplication of work in some cases, and a lack of control in others. To address this issue the Polish authorities are currently working on a plan to unify the national strategy, which basically consists of creating a two-year framework agreement signed by the Chief Inspector of the Road Transport Inspectorate, the Chief of Police, the Chief of Border Guard, the Chief of the National labour Inspectorate and the Head of the Fiscal Administration for the control of the regulations on driving times, mandatory breaks and rest periods for drivers, pursuant to Article 54(2)(5) of the Road Transport Act. Another interesting example was provided by the **Netherlands**. While there is no direct overlap in competences between the Labour Inspectorate and the Environment and Transport Inspectorate, international road transport mostly involves very large investigations, so the two inspectorates meet frequently. In the case of small investigations, the Labour Inspectorate regularly shares information with

the Environment and Transport Inspectorate. However, in practice, the Labour Inspectorate needs more information from the Environment and Transport Inspectorate than vice versa, given that only the Environment and Transport Inspectorate has the software to read the tachographs.

The **Czech** reply even hinted at the possible benefits of establishing a *single authority* with the competencies to control the area of road transport independently. In their view, the need to involve the police, which is necessary under Czech law if a driving vehicle needs to be stopped, reduces the number of inspections that can be carried out as the police has many other priorities and their capacity to support this type of inspections can be limited. This was indirectly echoed by a stakeholder from **Germany**, who stated that the combination of different authorities in charge makes it more complicated for drivers and enterprises, while in other countries only one institution is in charge.

Having cooperation arrangements that are working well at national level also has implications for efficient and effective *cross-border* cooperation practices. Put differently, potential issues and challenges which may exist in the practical implementation at national level may very well lead to cross-border cooperation challenges at European level between Member States. For instance, the ERU system provides a means to interconnect the national registries through the exchange of structured (XML) messages to a central hub. That means it is reliant on inputs organised and provided at national level. These may be hampered and this may subsequently lead to challenges in the cross-border exchange of information about e.g. the most serious infringements committed by hauliers established in another Member State.

The replies to the questionnaire revealed that in a number of Member States nevertheless (e.g. AT, BG, CZ, DE, ES, FI, HR, PT) information exchange is standardised and regulated by law. More generally, it is possible to discern several categories of coordination/cooperation/information exchange instruments.

First, it is apparent from the country reports that competent authorities within the Member States have established (quasi-)permanent **coordinating meetings/working groups/panels** (e.g. CY, DE, ES, NL, PT, RO, SI). For instance, in **Germany**, several coordinating panels were mentioned. One example is the so-called working group on traffic police matters, AGVPA (*Arbeitsgemeinschaft verkehrspolizeiliche Angelegenheiten*). Among others, this group exchanges experiences and develops harmonised approaches in the field of traffic controls. Apart from forums such as these, checks by the respective recording authorities are usually handed over to the competent prosecution authorities. In addition, different authorities carry out joint checks in different areas of the law. In **Romania**, regular meetings are organised between the Ministry of Transport and the social partners on issues related to the area of road transport. In **Cyprus**, the country reply stated that the imposition of administrative fines is decided by a three-member Committee consisting of civil servants from different ministries.

Additionally, many Member States have put in place **information exchange agreements or protocols** in place, thereby standardising to some extent the flow of information between different competent authorities (e.g. BE, BG, ES, FR, IE, IT, PT, SE). For instance, in **Italy**, at the local level, agreements have been concluded between the traffic police and the provincial labour inspectorates to ensure the presence of labour inspectors when there are targeted checks on commercial traffic so that the labour inspectors can directly acquire elements useful to guide the inspection activity at the premises of the company. In **Bulgaria**, it was reported that the Executive Agency Road Transport Administration and the Executive Agency General Labour Inspection plan a bilateral agreement to ensure the application of the rules by enterprises with a high degree of risk, as well as on the procedure for carrying out checks on the roads and in enterprises for compliance with labour legislation. The **Spanish** country reply also highlighted the fact that the degree of collaboration between the competent authorities is satisfactory in part because of the existence of an ad-hoc Coordination Protocol of 22 July 2021 between the State



Agency for Labour and Social Security Inspection (OEITSS) and the Transport Inspectorate against the underground economy and the fight against social dumping in the transport sector (*Protocolo de Coordinación entre el Organismo Estatal Inspección de Trabajo y Seguridad Social (OEITSS) y la Inspección de Transporte contra la economía sumergida y la lucha contra el dumping social en el sector del transporte*). Additionally, in the case of the Transport Inspectorate, an agreement is in place with the national police and the civil guard. As a result, there is a permanent liaison officer of the Traffic Civil Guard (Guardia Civil) at the Ministry of Transport, who oversees coordination. In **Ireland**, there is a Memorandum of Understanding in place between the Road Safety Authority and the Workplace Relations Commission which provides a high-level framework for cooperation, exchange of information and coordinated actions. These may occur both formally (at senior management level) or informally (between the Enforcement Officers / Inspectors of the two bodies). In **Belgium**, joint road checks are carried out in cooperation with the competent tax departments in the three Regions of Brussels, Flanders and Wallonia (*Vlabel, Bruxelles Fiscalité and Direction générale opérationnelle de la Fiscalité du Service public de Wallonie*). The regional tax services put their data on the non-payment of road tax on motor vehicles, of the tax on entry into service of the vehicle, and the Eurovignette at the disposal of the Social Inspection Services and the Inspection Service of the Federal Public Service Mobility in order to carry out more targeted checks. In **Sweden**, The Swedish Transport Authority and the Police Authority have a “strategic agreement” on enforcement actions.<sup>152</sup>

In many Member States, competent authorities have also adopted **strategies and operational plans** in the area of road transport (e.g. BE, FI, ES, FR, HU, IT, PT). For instance, in **Finland**, the division of tasks of the competent supervisory authorities and the objectives for supervision are agreed on in more detail in the national enforcement strategy. In accordance with Directive 2002/15/EC, inspection rates, methods of inspection for both roadside checks and checks at the undertakings, cooperation and joint checks between authorities and implementation of the sanction system are agreed upon in the national enforcement strategy. In **Spain**, according to the representatives of the Transport Inspectorate, roadside checks are planned on an annual basis and included in the Land Transport Inspection Plan. Planning is coordinated with the police forces and several joint meetings are held throughout the year. As noted above, there is a permanent liaison officer of the Traffic Civil Guard (Guardia Civil) in the Ministry of Transport, who oversees coordination. In 2022, they were expected to conduct eight joint inspections of undertakings suspected of being letterbox companies. In **Belgium**, the Social Intelligence and Investigation Service (SIOD) has developed check lists and guidelines for certain sectors, including road transport<sup>153</sup>, with the aim of formulating clear guidance for the sectors and social partners. Social inspectorates uniformly apply these guidelines so that equality is maintained between the players in the relevant sector. In **France**, roadside checks are part of a regional control plan (plan régional de contrôle - PRC), established in partnership with the forces of law and order (gendarmerie, national police). Similarly, in **Hungary**, the capital and county government offices issue annual plans, which contain the minimum number of checks related to driving and rest times.

Other Member States emphasised the importance of the **use of (electronic) databases** in the enforcement of road transport rules (e.g., BG, CZ, ES, IT, LV, PL). The **Italian** country report mentioned that there is a National portal of undeclared work was established (*Portale nazionale del lavoro sommerso*) in which all the supervisory activities carried out by the competent authorities will be gathered. The portal covers all economic sectors, including the transport sector. It will be an all-round portal on the regularities or irregularities of companies from a labour point of view, allowing for a more standardised and institutionalised (information) exchange. In **Bulgaria**, a special environment for

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<sup>152</sup> The strategic agreement's diary number is A234.042/2021, TSV 2021-1378.

<sup>153</sup> See: <https://www.siod.belgie.be/nl/flipbook-wrapper/guidelines-transportsector>

inter-register exchange (RegiX) is used. It provides an opportunity to implement an interface for automated electronic submission and service of standardised requests for administrative services. Its components to connect the information systems of the administrations make it possible for information users to automatically extract data from all the main registers. In practice, 65 main registers administered by 25 central administrations – ministries and executive agencies – are connected. In **Poland**, the national database, KREPTD<sup>154</sup> ensures an efficient flow of information between all the entities involved in the process of issuing permits to pursue the occupation of road transport operator, issuing, amending and revoking international licences for the transport of passengers and goods or certificates for own transport, entities conducting examinations and issuing certificates of professional competence, and entities responsible for supervision of and checks on road transport.

In some country reports, **(joint) training** was noted as a necessary component to enforce road transport rules effectively. For instance, in **Spain**, it was reported that the Labour and Social Security Inspectorate and the Transport Inspectorate have made a significant effort to exchange information and to provide coordinated training to the inspectors of both bodies. **Finland** has organised joint training of the different authorities on the enforcement of the posting rules.

Lastly, **shared inspections** between different enforcement authorities were mentioned frequently by the country reports. For instance, in **Italy**, roadside checks are normally carried out by the Traffic Police and the Ministry of Infrastructure and Transport (they have a number of checks to be carried out on a local and provincial level on a monthly basis) while controls on the premises of the undertakings are carried out by the National Labour Inspectorate (provincial labour inspectorates). However, sometimes, the checks are carried out jointly between the Traffic Police and the National Labour Inspectorate. The National Labour Inspectorate then sends inspectors to carry out joint checks with the Ministry of Infrastructure and Transport and the Traffic Police. This makes it possible to ensure full protection of the workers and compliance with the highway code. When separate checks are carried out, only partial information is obtained. For this reason, the information that comes from roadside checks is often useful if cross-referenced and vice versa. In **Finland**, the Police is responsible for directing and coordinating the supervision of road transport between the Police, Customs and the Border Guard. In practice, the Border Guard takes part in the supervision of social legislation in conjunction with border controls in cooperation with other authorities (Police and Customs). The cooperation may include e.g. joint inspection events. The Customs and Border Guard supervise the social legislation in the transport sector to the extent agreed upon between the supervisory authorities.

## 4.2 Inter-institutional cooperation challenges in Member States

With regard to the **challenges** cited by the respondents, it is clear that, although several cooperation and information exchange arrangements are in place, there are still several issues around coordinating work between the different competent authorities (e.g. FR, HU, NL, SE). For instance, in the **Netherlands**, the competent authorities stated that although coordination and cooperation practices work well, with a multidisciplinary approach to enforcement, the **information exchange** remains a challenge. For instance, it was pointed out that it is not always clear under whose authority a certain case would fall. Furthermore, the Environment and Transport Inspectorate explained that they have been given guidelines on how to investigate but not on how to exchange information. In practice,

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<sup>154</sup> The national Electronic Register of Road Transport Entrepreneurs is available at: <https://kreptd.gitd.gov.pl>.

information is exchanged, but this is not spelled out on paper. In **Germany**, it was pointed out that the number of operating checks is too low, with just about 1 % of traffic checked. This is partly due to the shortcomings of the participating authorities' coordination processes. The **Swedish** report mentioned that the Swedish authorities are independent and have different priorities, which makes it hard to cooperate in practice. The Work Environment Authority also pointed out that problems arise in practice when the surveillance of the rules must be carried out by other authorities (the Police and the Customs' Authority).

**Coordinating issues** which led to delays in the processing time of possible violations in the area of road transport were also put forward frequently in the country replies. **Latvia's** Road Transport Administration mentioned that there is a delay in the exchange of information on violations. In their estimation, these delays could be explained by the right of persons who have violated the obligations to appeal the decision. It then takes some time until the final decision on the existence or non-existence of the violation can only be entered in the sanctioning database once a sanction is established as final. Timing challenges were also reported by **Bulgaria**, where it was stated that receiving structured information from another competent authority usually takes a long time. This is (in part) because requests are made through the head of the requesting administration to the head of the relevant competent administration. At the same time, in many cases, additional requests for re-checks and clarifications are required, which only adds to the processing time of possible violations. In **Ireland**, the country reply mentioned that the procedure for the imposition of penalties by the responsible authorities is cumbersome and thus enforcement is less than optimally effective. The various enforcement authorities in the road transport sector are not competent to impose penalties themselves. If penalties are to be imposed, those authorities must make an application to the District Court, which will then make the appropriate order. An application might take many months or even more than a year to be heard. Additionally, it was highlighted that Ireland does not have a system of administrative penalties imposable by regulatory authorities.

Another recurring challenge put forward in the country reports is related to the **lack of uniform interpretation** of the legal framework within Member States. In **Portugal**, the enforcement authorities interviewed emphasised that the lack of a uniform interpretation of the normative framework in the area of road transport constitutes a problem in their system. The creation of an inter-institutional working group to establish interpretative guidelines was put forward as a possible solution. Similarly, in **Romania**, it was highlighted that there is a need for complete information on the applicable EU and national rules for the application of the *lex specialis* on the posting of drivers. It was reported that, while Romania has legislative obligations on providing accessible, accurate and user-friendly information, different standards in the quality and accessibility of the information provided may cause relevant gaps. In **Poland**, it was emphasised that the cooperation between the National Labour Inspectorate and the Road Transport Inspectorate is primarily hampered by the challenges posed by the doubts regarding the application of the provisions concerning the working time of drivers and the exchange of information on experiences carried out to eliminate hazards in road transport. **Czechia's** country reply mentioned that the main challenge seems to lie in the fact that the new rules only entered into force on 1 August 2022 and the local authorities are still finetuning the processes. An example provided stems from the fact that the State Labour Inspection Office (SLIO) currently does not have access to the Czech Register of Road Transport Undertakings. It needs this to obtain data about road transport operators that they should investigate and about infringements committed outside their area of competence. Somewhat similarly, the **Latvian** stakeholders interviewed underlined the fact that the biggest drawback to control and enforcement stems from the fact that applicable EU law is not yet fully implemented. It was reported that the Ministry of Transport was working on drafting legal acts for the practical implementation of Mobility Package I.

Another challenge mentioned in the country reports related to the **use and interconnection of the different databases** within the Member States. For instance, in **Lithuania**, the competent authorities highlighted the need for better integration of the databases and a more user-friendly and better maintained interface, but that there seem to be limited financial means to improve these IT systems. In **Portugal**, it was reported that it was a challenge to structure and interconnect the computer support of the various entities and to exchange of information without jeopardising GDPR requirements. In **France**, the reply highlighted that the regional nature of transport company registers was a problem: companies that have already been fined for various offences change region (e.g. companies initially located in the Vosges migrate, with a slightly different name, to Alsace or Franche-Comté) to try to circumvent the law.

Additionally, some Member States mentioned the **lack of standardisation of the information exchange** between the different competent authorities (e.g. IT, LV, NL, SI). For instance, in **Italy**, the Traffic Police deplored this lack of standardisation in their cooperation with other competent authorities, which in practice is often left to good practices and relationships established at the local level between the territorial inspectorates and the provincial traffic police sections. Likewise, in **Latvia**, the need for detailed and improved legal regulation on the competences and cooperation among the competent authorities was emphasised. In the **Netherlands**, the Environment and Transport Directorate explained that they have been given guidelines on how to investigate but not on how to exchange information. Although in practice, information is exchanged but it is not spelled out on paper. This constitutes a challenge in their estimation.

Another recurring challenge put forward in the country replies related to (potential) **limitations to the exchange of information connected with personal data** (e.g. DE, IE, PT, SI, SE). In **Slovenia**, some authorities identified particular drawbacks to coordinated control stemming from lack of competence or delayed access, in particular in the comparison of tachograph data with data from highway control cameras or tools for fear that full or direct access to particular databases might represent a disproportionate measure as well as violate privacy rights. Similar arguments were put forward in the **Irish** country reply, where it was reported that the constantly evolving regulatory environment for the sharing of information has the potential to restrict information-sharing as authorities may be uncertain as to what information can be shared between them. They mentioned that, although applicants for an operator's licence issued by the Department of Transport must sign a consent form agreeing that all information relating to their business can be shared between the relevant authorities, the complexity of the data protection regime often makes authorities hesitate to share such information. **Swedish** authorities are not allowed to share information with each other for GDPR reasons, which causes a problem for cooperation. There is however an ongoing inquiry into a governmental directive to liberalise the GDPR rules for information exchanges between authorities, with new legislation expected in 2023. In **Portugal**, it was mentioned that national data protection regulations have established a limitation on the sharing of information, for example regarding the complete identification of drivers, as well as those that might be jointly responsible (e.g. when it is necessary to identify the person who is carrying out de facto management responsibilities).

Some Member States (e.g. HR, FR) pointed to particular difficulties regarding the **coordination of shared inspections**. For instance, **Croatia** highlighted that the time and location of inspections, the number of inspectors needed in a particular case, and the determination of the inspection methods needs to be better streamlined and coordinated. Currently shared inspections are only undertaken sporadically. Similarly, the **French** country reply drew attention to the fact that it is difficult to establish joint availability with the police when conducting potential roadside checks.

Several Member States (e.g. AT, BE, BG, CZ, EL, FR, NL, PT) mentioned a **lack of staff** and in particular qualified staff with the necessary competence and expertise. For instance, the **Dutch** reply

highlighted that all inspectorates face capacity challenges. In their estimation, the number of inspectors is not in line with the number of tasks they need to perform. This inevitably leads to situations where the two inspectorates need to agree on which case has priority. Similarly, **French** stakeholders reported that a major challenge lies in the fact that there is a lack of knowledge of the respective competences of each actor. In **Portugal**, it was pointed out that human and technical reinforcement is needed to keep up with the changes to IT tools and the newly introduced rules in the area of road transport. In **Belgium**, it was pointed out that, while the detection of driving and rest period infringements is reasonably smooth and partly automated, the wage calculation based on tachograph data in company checks remains a mainly manual and particularly labour-intensive task. On average, two full working days are needed. Therefore, integral checks are not feasible and extrapolations are usually made based on a sample of a few employees. The labour-intensive nature limits the number of checks that can be carried out and further automation should be explored. In **Greece**, it was mentioned that familiarisation with checks, experience and optimisation of organisation could reduce the time which is now required to conduct controls.

## 5.0 Cooperation practices and challenges between Member States

This chapter presents the **cross-border cooperation practices and challenges** of national enforcement agencies involved in the enforcement of the EU road transport rules and which have to engage and exchange information with their counterparts in other Member States. The findings are the result of the **national research** undertaken by a team of independent experts who interviewed three stakeholders in the last quarter of 2022 and the ensuing national replies to a structured questionnaire distributed for this purpose (see Annex 1). The information obtained in these national replies was complemented by additional desk research and in-depth interviews with staff members from some selected national enforcement agencies as part of three case studies which are presented in Chapter 7.

### 5.1 Cooperation practices

#### 5.1.1 Factors enabling more intensive cooperation between Member States

The national replies to the questionnaire indicated that there are six dimensions which seem to play a role in determining the level of cross-border cooperation between enforcement agencies from Member States: i) geographical proximity; ii) number of drivers coming from a given Member State; iii) uniform interpretation of EU law; iv) similar working practices, v) personal contacts with the competent authorities of other Member States; and vi) the existence of bilateral agreements or protocols. It is clear, in particular, that where one or more of the criteria is met, cross-border cooperation between competent national authorities from different Member States seems to run more smoothly and information is transmitted more easily.

**Table 5** presents for each of the Member States the list of Member States with which, on the basis of the six criteria, they have established enhanced cooperation in the enforcement of the legislation on the international road transport sector. The information presented is based on the replies to the questionnaire obtained during the research in late 2022.

**Table 5: Enhanced levels of cooperation between Member States as reported by the national replies**

Member States with a reported higher level of cooperation	
AT	DE, CZ, IT (neighbouring countries)
BE	PL, PT
BG	AT, BE, ES, NL
CY	NL
CZ	AT, DE, PL, SK (neighbouring countries)
DE	CZ, FR, NL, PL (neighbouring countries)
DK	BE, DE, FR, NL, LU

Member States with a reported higher level of cooperation	
EE	N/A
EL	None in particular
ES	FR, PT (neighbouring countries)
FI	EE, LV, LT
FR	BE, DE (neighbouring countries)
HR	All, especially neighbouring countries
HU	N/A
IE	FR, (UK)
IT	ES, FR, RO, BE
LT	NO, PL
LU	Neighbouring countries
LV	EE, LT (neighbouring countries)
MT	N/A
NL	BE (neighbouring country)
PL	AT, CZ, DE, LT (neighbouring countries)
PT	ES (neighbouring country)
RO	N/A
SE	DK, FI, NO (neighbouring countries)
SI	HR, HU (neighbouring countries)
SK	None in particular

Source: Authors' own elaboration based on the information from the replies to the national questionnaires

### 5.1.1.1 Geographical proximity

Several Member States (**AT, BE, CZ, DE, ES, FI, FR, HR, LU, LV, NL, PT, PL, SE, SI**) reported that they have a **higher level of cooperation with their neighbouring countries**. This is due to the geographical proximity and hence to the more intensive traffic across the borders with neighbouring countries. For example, respondents from **Austria** reported that cooperation is in general more intense with neighbouring countries than with other countries. **Czechia** has close cooperation with all neighbouring countries (Austria, Germany, Poland, Slovakia) and mentioned that the geographical proximity facilitates the organisation of joint inspections. Similarly, the reply from **Croatia** confirmed that its enforcement agencies have established cooperation with all Member States but, in particular, with neighbouring countries. **Sweden** cooperates more closely with Denmark, Finland and Norway than other countries. In **Poland** a higher level of cooperation is established by the Polish Road Transport Inspectorate with the counterparts from bordering countries such as Czechia, Germany and Lithuania.

### 5.1.1.2 Number of drivers resident in or posted from a given Member State

The country replies confirmed that a higher level of cooperation has also been established with those Member States where a higher number of drivers are based (**IE, IT**), i.e. where drivers are resident or from where they are being posted (and hence implicitly where the transport companies have their establishment). For example, Romania is the country with which enforcement agencies from **Italy** collaborate the most given that most of the posted drivers are sent by companies established in Romania. Likewise, **Ireland** reported that a high level of co-operation has been established between the Irish and the United Kingdom authorities given that the main market for the Irish road haulage industry

in Ireland and Northern Ireland is concentrated on the island of Ireland. However, the Irish report also mentions that following Brexit there has been an increase in road haulage operations carried out by Irish undertakings in France. This has led to more intensive exchanges to strengthen co-operation between the Irish and the French authorities.

### 5.1.1.3 Uniform interpretation of EU law

The replies reveal that more cooperation also takes place between Member States interpreting EU law in a similar manner (**FR, LV, NL**). For example, **Latvia** reported better cooperation practices with the Baltic countries (Estonia and Lithuania) than with the Nordic countries as the latter tend to interpret certain rules and obligations differently. Similarly, the **Netherlands** reported close cooperation with Belgium as they both interpret EU legislation in a similar way and that there is no cooperation with France given the different interpretation of EU law. Similarly, **France** reported that there have been some challenges in the cooperation with Poland given the different interpretations of certain cross-border practices and operations.

### 5.1.1.4 Similar working practices

Some country replies mentioned that more cooperation takes place with those Member States with similar working practices (**NL**). The reply from **Netherlands** mentioned in this regard that a good understanding of the working practices in the other Member State and the hierarchy within the public administration in that Member State is necessary for good cooperation. Germany and Poland, for example, were reported to have a very strict hierarchy between the more central and local (operational) levels, and a Dutch inspector can only cooperate with inspectors at the same hierarchical level.

### 5.1.1.5 Informal contacts with staff of competent authorities of other Member States

Some replies revealed that personal contacts with the competent authority of other Member States also play a role in strengthening cooperation (**CY, LV**). For example, **Latvia** reported that they have good cooperation with the competent authorities in the other Baltic states which is also due to personal contacts. Similarly, according to the reply from **Cyprus**, personal contacts between institutions have been invaluable in resolving cross-border challenges.

### 5.1.1.6 The existence of bilateral agreements

Finally, more cooperation also exists with those Member States with which (general) bilateral agreements or protocols are in place (**AT, IT, PT**). For example, **Italy**, reported a high level of collaboration with France and Spain with which specific bilateral agreements have been concluded. Likewise, **Austria** reported that Germany is the main country with which they cooperate by virtue of a bilateral agreement. Finally, **Portugal** has close cooperation with Spain pursuant to a protocol on mutual cooperation.

#### **Bilateral agreements - A solution for a better cooperation?**

The conclusion of bilateral or multilateral cooperation agreements with other Member States in the application of social legislation in the field of road transport does **not seem to be common practice** in the EU-27 Member States.



Many Member States reported that they either do not have such bilateral cooperation agreements in place or, if they do, that these bilateral agreements are not specific to the international road transport sector (i.e. **BE, BG, CY, DE, DK, ES, FI, FR, HR, HU, IT, LV, NL, PT, RO, SI, SK**).

Few Member States seem to have a cooperation agreement in place which specifically targets cooperation obligations in the application of social legislation in the field of road transport. An example of such an agreement is the agreement between **Czechia** and **Estonia** dated 31 May 2000 which aims at reinforcing cooperation and improving the working conditions of drivers in international road transport. The agreement mentions mutual cooperation and exchange of information. The reply from **Sweden** also reported that the Nordic countries have a cooperation agreement on driving times and rest periods. Sweden also has bilateral agreements on travel to or through the European Conference of Ministers of Transport (ECMT) member countries, but these are limited to the exchange of permits.

In **Belgium, the Netherlands and Luxembourg**, the Benelux Treaty (Treaty of Liege) allowing cross-border cooperation on road transport inspections entered into force in 2017. This multilateral treaty provides, among others, that Dutch, Belgian and Luxembourg inspectors in the three countries are able to carry out inspections with full authority in the area of road transport in their respective neighbouring countries. In sum, the Benelux countries use this Convention to intensify cooperation by achieving far-reaching harmonisation of inspections, exchange of information and joint training of personnel in order to save costs and making it possible for inspectors from one country to participate with full authority in inspections in another Benelux country. Cooperation on the basis of this Benelux treaty has led to more uniform supervision of road transport, cost savings and fair competition between transport companies and working conditions for drivers (see also Chapter 7).

## 5.1.2 Specific cross-border practices in the different thematic areas

The questionnaire and national interviews inquired about the practices enforcement agencies from Member States have in relation to the various cross-border information exchange and cooperation obligations within the different thematic areas that fall under the prevailing EU legislation concerned with international road transport. As has been set out before, Regulations (EU) 2020/1054<sup>155</sup> and (EU) 2020/1055<sup>156</sup>, and Directive (EU) 2020/1057<sup>157</sup>, which are part of Mobility Package I, amended the rules on market access, posting and social legislation concerning the road haulage and passenger transport services provided within the EU while the social security coordination rules applicable to international transport drivers remained unchanged. Apart from a series of new substantive rules, the main changes in the new legislation aimed at increased enforcement and cooperation between the Member States.

The findings presented next are based on interviews with relevant stakeholders in Member States in the third quarter of 2022, or shortly after the new amendments entered into force.

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<sup>155</sup> Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs, OJ 31/7/2020, L 249/1.

<sup>156</sup> Regulation (EU) 2020/1055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector, OJ 31.7.2020, L 249/17.

<sup>157</sup> Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012, OJ 31.7.2020, L 249/49.

### 5.1.2.1 Access to the EU market for transport operators

When looking at Regulation (EC) 1071/2009, as amended by Regulation (EU) 2020/1055, which established four requirements road transport operators need to comply with in order to be able to access the European road transport sector market<sup>158</sup>, country replies revealed that check of the **good repute requirement** is subject to effective cross-border information exchanges on a regular basis. In fact, while the replies from all Member States mentioned that the exchange of information on the presence of these four requirements is carried out via ERRU and IMI, most replies emphasised that they only **verification of good repute** through ERRU is done consistently, while, on the contrary, the verification of the other three requirements is not carried out systematically or if it is done, Member States are not yet reporting it.

**Table 6** presents the number of checks of good repute requests sent by Member States via ERRU in the course of 2022.

**Table 6: Number of checks of good repute per Member State**

Number of requests on checks of good repute <u>sent to other MS</u> through ERRU in 2022			
Member State	Requests sent	Member State	Requests sent
AT	3	IE	1
BE	31	IT	1
BG	30	LT	0
CY	0	LU	5
CZ	0	LV	0
DE	26	MT	0
DK	0	NL	2
EE	0	PL	8
EL	1	PT	27
ES	2	RO	2
FI	2	SE	0
FR	84	SI	0
HR	4	SK	0
HU	1		

Source: Authors' own elaboration based on information received in the framework of the case study carried out with France

As can be seen from the above, **some Member States** are already **regularly using the information exchange** system for the purposes of **checking the good repute of transport companies**, but that a large majority of Member States has made limited use of such information exchanges. Ten Member States have not used it at all. It also seems that at present the level of exchange of information and data related to the financial standing, professional competence and effective establishment of transport companies between the competent authorities from different Member States is rather moderate.

<sup>158</sup> (1) have an effective and stable establishment in the EU, (2) be of good repute, (3) have an appropriate financial standing and (4) be professionally competent.

### 5.1.2.2 Driving times and rest periods

The national replies indicated that at the end of 2022 very **few cross-border cooperation practices** had been put in place by the Member States with a view to enforcing the correct application of the social rules in road transport. The protection of drivers working in international road transport is ensured by rules established in Regulation (EC) 561/2006, as amended by Regulation (EU) 2020/1054, on the maximum (daily, weekly and fortnightly) driving times, breaks and minimum (daily and weekly) rest periods. The country replies revealed that **the application of these rules is particularly complex** because there are **multiple bodies** dedicated to their enforcement and that the respective competent authorities in Member States are very different. For example, while the competent bodies in **Denmark** and **Latvia** for the enforcement of the social legislation are established within the National Police (Ministry of Internal Affairs), in **Cyprus** and **Slovakia**, the Ministries for Labour or labour inspectorates have been designated as the competent bodies for the labour conditions of international road transport drivers.

Moreover, some Member States **have assigned the verification of compliance with these rules to several authorities** and bodies within the Member State. For instance, in **Spain**, the transport inspectorate is responsible for roadside inspections, while the labour and social security inspectorate is responsible for inspections at the premises of the undertaking (including the monitoring of compliance with the European posting obligations). In the **Netherlands**, the Environment and Transport Inspectorate is responsible for verifying the driving and rest times, the duty roster and the return of driver to their place of residence every four weeks and it can conduct roadside checks and checks at the premises, while the labour inspectorate is responsible for the enforcement of general labour legislation and for inspections for this at the premises of the undertakings.

Some other interesting cooperation practices emerged from the national research. The country replies from Germany and Latvia indicated that the **enforcement agencies conducting the checks are not necessarily those that will exchange the information and data with the enforcement agencies in the other Member States**. It seems moreover that in some instances inspection agencies are not obliged to do this. In **Latvia**, the police send a report on the violations and infringements of the social legislation to the Road Transport Administration (RTA) and it is the RTA which then sends the same report - through ERRU - to the relevant competent authorities of other Member States. In **Germany**, although the Federal Logistics and Mobility Office (BALM) is not responsible for the verification of the chain liability, the duty roster for drivers and the payment of suitable accommodation by the employers, drivers do have the right to communicate a possible infringement spontaneously to the police during a regular inspection. The BALM could decide on that basis to signal a suspicious practice to the competent authorities of the Member State of establishment. However it does not have an obligation to do so.

#### **The existing transport network groups: a good practice for better cooperation?**

The replies to the questionnaire often referred to **different international transport networks** in which national implementing bodies and/or enforcement agencies participate, sometimes together with other stakeholders, with a view to promoting the exchange of information and experiences.

Of specific relevance for the present report is the Confederation of Organisations in Road Transport Enforcement (**CORTE**)<sup>159</sup> which has been operating since 1977 and fosters the cooperation between enforcement agencies in road transport. Member organisations are public authorities from 21 EU Member States (AT, BE, BG, CZ, CY, DK, FI, FR, ES, HU, HR, IE, LV, MT, NL, RO, PT, PL, SL, SI and

<sup>159</sup> <https://www.corte.be>

SE) but also from Switzerland, Norway and the UK, transport associations (including the International Road Transport Union, IRU) and companies that are active in the transport sector (such as tachograph producers and software developers). CORTE is implementing the TRACE 2 project which aims at efficient and harmonised implementation of the new rules and changes introduced by the 2020 Mobility package I. The project has three main strands corresponding to the three main areas in which changes have been introduced: (1) the rules on driving/resting times and tachographs, (2) the 'lex specialis' on the posting of drivers and (3) the rules relating to the access to the market and to the profession.

Euro Contrôle Route (**ECR**) is another network of European Road Transport Enforcement Agencies. It was first established in 1994 as a BENELUX intergovernmental initiative and expanded its membership gradually. ECR has road transport inspection services from 13 EU Member States (AT, BE, DE, FR, ES, HR, HU, IE, LU, NL, PL, RO, SI) and the UK as members; the inspection services from three other Member States (CZ, PT, SI) participate as observers. The ECR's aim is to promote coordinated cross-border checks, exchange information, organise training and develop policy papers on issues of common interest.

**ROADPOL**, or the European Road Policing Network, is composed of the road traffic police forces from all Member States, Norway, Switzerland, Serbia and Turkey. Its main goal is to strive for safer roads. It runs working groups on operational matters, technology and on tachographs. ROADPOL supports cross-border roadside checks.

Another important body several country reports referred to is the International Road Transport Union (**IRU**) which represents *national associations for passengers and goods transport* (associations of truck, bus, coach and taxi operators) at international level and has members in more than seventy countries around the world. IRU was the forefather of the international TIR Convention facilitating the transit of goods across borders and of the Convention on the Contract for the International Carriage of Goods by Road (CMR). The CMR defines the responsibilities and liabilities of private parties involved in the transport of goods and its documents are used for shipments between senders, recipients and transporters. It provides a record of the transport operation and contains essential information about the load carried. The TIR and the e-CMR are the standard for digitalised custom transit procedures and road transport operations.

### 5.1.2.3 Social security protection of drivers working in international road transport

The national replies to the questionnaire revealed that one of the most recurring challenges for Member States' enforcement agencies is the **determination of the social security legislation applicable to international road transport drivers** together with the establishment of their employment status. EU social security coordination rules determine that only a single national social security system can apply to an individual case.<sup>160</sup> Applying the social security coordination rules to highly mobile workers when they are working simultaneously in different Member States or when they are being posted in the EU is reported to be particularly difficult in international road transport enforcement practices.

Some replies from Member States mentioned that, pursuant to Articles 5, 11 and 12 of Regulation No 1071/2009 and Article 4 of Regulation No 1072/2009, a **Community licence for road transport operations constitutes irrefutable evidence** of the existence of an effective and stable establishment in the Member State which issued the Community licence, and, therefore, of that **company's registered office in that Member State** for the purposes of Article 13(1) of Regulation No 883/2004. Based on this

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<sup>160</sup> As stated in Article 11, Title II, of Social Security coordination Regulation (EC) 883/2004.

assessment, enforcement agencies in some Member States deduce that the drivers are affiliated with the social security system of the country where the company is established where they are working simultaneously in different Member States. However, the European Court of Justice in March 2023 ruled (C-410/21 and C-661/21) that verifying which Member State has issued the Community licence is **not sufficient evidence** to determine that the applicable social security legislation is that of the state that issued the Community licence.<sup>161</sup> Most country replies that raised the issue of the Community Licence as an indicator for social security affiliation when a driver is working simultaneously in different Member States **did not mention the recent case law** from the CJEU.

Most country replies indicated that the national enforcement agencies follow a logical path in determining the applicable social security legislation. The reply from **Hungary** gave a comprehensive illustration of this, which is presented in the box below.

In cases of posting, the **Hungarian health insurance body** competent for the place of establishment of the employer certifies the Hungarian social security status of the posted worker by means of an A1 form. In the case of parallel (simultaneous or alternating) activities in two or more Member States, the health insurance body competent for the place of establishment of the Hungarian employer or the place of residence of the insured person issues an A1 form. In the case of a temporary declaration of an insurance obligation under Hungarian legislation, the health insurance body competent for the place of work or the place of residence of the insured person issues an A1 form which is valid for 6 months, indicating that the declaration of an insurance obligation is temporary. The health insurance institution sends a copy of the A1 form to the institution of the Member State on whose territory the insured person is also employed. If the institution of the other Member State does not object within two months of receiving the provisional decision, the determination of the insurance obligation becomes final. In the event of a dispute with the institution of another Member State on the determination of the insurance obligation, the institutions consult each other. If, in the course of conciliation, the parties agree that the law of the other Member State is applicable, the determination of the insurance obligation takes effects retroactively to the date of commencement.

All respondents to the questionnaire stated that they use EESSI (Electronic Exchange of Social Security Information) for the exchange of information between authorities on social security matters and use the conciliation tool provided by the Administrative Commission whenever there is uncertainty. No replies mentioned having relied on the ELA mediation procedure for the resolution of disputes between the Member States.

#### 5.1.2.4 Posting in international road transport

The replies to the country questionnaire provided **only a partial overview** of the enforcement practices around the existing posting Directives (96/71/EC<sup>162</sup> and 2018/957/EU<sup>163</sup>) and the Enforcement Directive

<sup>161</sup><https://curia.europa.eu/juris/liste.jsf?nat=or&mat=or&pcs=Oor&jur=C&num=C-410%252F21&for=&jge=&dates=&language=en&pro=&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&oqp=&td=%3BALL&avg=&lgrec=fr&lg=&page=1&cid=22590953>.

<sup>162</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

<sup>163</sup> Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

2014/67/EU<sup>164</sup>, and of the recent Directive (EU) 2020/1057 on the posting of drivers in international transport.

Chapter 1 discuss the current status of the implementation of Directive (EU) 2020/1057, while this section presents a **selection of practices** put in place by Member States. Directive (EU) 2020/1057 requires that in order to verify that the posting rules are being applied correctly to the road transport sector, transport operators established in the European Union are obliged to submit a posting declaration to the national competent authorities of the Member State to which a driver is posted at the latest at the commencement of the posting. They use a standard form on the public interface connected to the IMI 'Road Transport – Posting Declaration' module<sup>165</sup>. In addition, the transport operators have to ensure that the driver has the following restrictive list of documents at their disposal in paper or electronic form during the international transport operations:

- the posting declaration,
- the electronic consignment note (also called 'CMR'),
- the tachograph records<sup>166</sup>.

If the competent authorities of the host Member State so request once the period of posting is completed, the transport operator might have to provide through IMI, the electronic consignment note, the tachograph records, the employment contract and the documentation related to the remuneration of the driver during the period of posting, timesheets and proofs of payment. This information needs to be transmitted within eight weeks of the date of the request<sup>167</sup>. Member States of establishment can be called upon by the host Member States to assist in the collection of the information and data from the transport company.

***Issue 1- How to assess and establish the type of transport operation being carried out***

Country replies indicated that Member States' enforcement bodies are experiencing challenges when assessing **whether the driver involved in the international road transport is posted, or not, and which kind of transport operation the driver is carrying out** (whether bilateral transport, cabotage or cross-trade).

In **Czechia** the Ministry of Transport has issued **an explanatory note** with a comprehensive summary of the posting rules to support the enforcement bodies. The assessment itself is made by the police and the transport authority during the roadside checks and the State Labour Inspection Office relies on the information provided from them. However, the country reply underlined that the State Labour Inspection Office has at present insufficient experience in this area, and that they are working internally work on a **manual** to address this issue.

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<sup>164</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 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.

<sup>165</sup> Article 1 [11(a)] of Directive 2020/1057, the posting declaration shall contain the following elements: (i) the identity of the operator, at least in the form of the number of the Community licence where this number is available; (ii) the contact details of a transport manager or other contact person in the Member State of establishment to liaise with the competent authorities of the host Member State in which the services are provided and to send out and receive documents or notices; (iii) the identity, the address of the residence and the number of the driving licence of the driver; (iv) the start date of the driver's contract of employment, and the law applicable to it; (v) the envisaged start and end date of the posting; (vi) the number plates of the motor vehicles; (vii) whether the transport services performed are carriage of goods, carriage of passengers, international carriage or cabotage operations.

<sup>166</sup> Article 1 [11(b)] of Directive 2020/1057.

<sup>167</sup> Article 1 [11(c)] of Directive 2020/1057.

In **Denmark**, the Danish Road Traffic Authority reported that they started enforcing Directive (EU) 2020/1057 as of 1 May 2022 – for cabotage, cross-trade operations and combined transport. As a result, the **number of cabotage operations has declined locally**. This is seen as a good result as this had previously been a grey zone of exploitation and unfair competition.

In **Spain** the representatives of the Ministry of Transport mentioned that they have produced **an explanatory document** for transport inspectors to help them differentiate between the types of transport operations and the subsequent application of the transport regulations. The main challenge detected concern the **identification of cabotage**. This type of transport operation can only be checked at the roadside and according to the interviewee it is difficult to determine whether it is cabotage or a cross-trade operation. The representatives of the National Anti-Fraud Office considered that smart tachographs are essential tools in distinguishing between different types of transport operations.

The report from **Finland** mentioned that it is the **Occupational Health and Safety Administration** which assesses ‘posting’ on a case-by-case scenario from the perspective of the [Act on Posting Workers \(447/2016\)](#) and which verifies whether the operation being carried out can be considered bilateral transport, cabotage or a cross-trade operation. No particular challenges were reported.

The country reply from **France** mentioned that most of the checks nowadays target cabotage operations, as these type of operations generate the highest interest from enforcement agencies.<sup>168</sup>

The national reply from **Italy** confirmed that in order to determine whether a driver who is involved in international road transport is a posted driver, the check consists of verifying the conformity of the transport documents and the administrative position of the driver and the carrier, without prejudice to the need to investigate the nature of the goods transported. The check of the documentation also takes place through the display of documentation in digital format and, in the near future, will do so through direct access by the traffic police (Polizia Stradale) to IT platforms as required by Regulation (EU) 2020/1056<sup>169</sup>. For the purpose of verifying compliance with the legislation on transnational posting, the traffic police are still<sup>170</sup> verifying during roadside checks the presence on board of the following documentation in Italian<sup>171</sup>: (1) the employment contract and (2) pay statements. Additionally, the driver must have a copy of the prior declaration of posting communicated to the Ministry of Labour and Social Policies or generated through the public interface connected to IMI. During the controls carried out by the traffic police, the cabotage activity is checked on the basis of documentation presented by the driver relating to the goods transported that is suitable for use in reconstructing the traffic relationship carried out by the carrier in the previous seven days<sup>172</sup>. To assess whether the carriage is pure bilateral transport, cabotage, or a cross-trade transport operation, the National Labour Inspectorate analyses the records of the tachograph printouts and commercial documents at the premises of the companies.

In **Latvia**, the RTA carries out checks on international transport operations. The RTA provides consultations to the undertakings on the basis of information provided by the undertakings themselves.

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<sup>168</sup> The interviewee indicated a [website](#) where it is possible to find the documents useful for carrying out cabotage operations lawfully.

<sup>169</sup> Regulation (EU) 2020/1056 of the European Parliament and of the Council of 15 July 2020 on electronic freight transport information.

<sup>170</sup> The report mentioned at the same time that the new posting provisions in international road transport have not yet been fully transposed.

<sup>171</sup> As Directive (EU) 2020/1057 had not yet been transposed in Italy, the traffic police interviewed on 19 September 2022 reported on the modalities of roadside checks then in force.

<sup>172</sup> The foreign carrier is under cabotage (and therefore this is a transnational posting) when one or more goods loading / unloading operations (maximum three in seven days) are carried out in the national territory after the end of the international transport.

If the transport operator does not agree on the type of operation and applicable law as defined by the Latvian Authority, then the only solution is to bring the case before a national court.

***Issue 2 – Different treatment for undertakings established in the EU and in third countries***

The replies to the questionnaire from several Member States which have transposed Directive 2020/1057<sup>173</sup> (BG, DK, HU, LT, RO, SE, SI) did not specify any special measures for dealing with companies with registered offices in countries outside the European Union. However, some national replies (CZ, ES, FI, FR, IT, IE, SK) seemed to indicate possible differences in treatment between undertakings established within the EU and third-country operators.

With regard to the type of paperwork that needs to be completed by undertakings when they post drivers to an EU Member State, **the rules applicable may be different** depending on whether the undertaking is established in a Member State or in a third country outside the European Union. Article 1(4) of Directive 96/71/EC, and Article 1(10) of Directive (EU) 2020/1057 prohibit Member States from treating undertakings established in a non-member State more favourably than undertakings established in an EU Member State.

The replies from Member States which mentioned differences in treatment between EU and non-EU undertakings generally specified that these differences do not favour the undertakings established in third countries. In fact, most of these replies emphasised that, although the rules are different due to the fact that the IMI system does not (yet) allow the posting declaration to be made by employers who have their company headquarters in a third country, national administrative systems are in place which require the third-country operators to notify the same (or more detailed) information than applies to EU operators under the new EU provisions.

In **Czechia**, the Czech Act on Employment envisages a general obligation for foreign employers who post their employees to perform work on Czech territory to retain copies of employment contracts, including their translation into Czech, at the local workplace. A recent amendment to the Act on Road Transport implemented this provision in a way that this obligation applies to road transport operators from third countries, but not to those from other EU Member States. The explanatory note to the draft Act mentioned that this measure was being taken in order to implement the Article 1 (10) of Directive (EU) 2020/1057.

In **France**, the national SIPSI online system for posting notifications<sup>174</sup> allows the French authorities to collect posting declarations from undertakings established in a third country.<sup>175</sup> These undertakings need to have a representative in the French territory who can liaise with national controls officers.

Although the above makes it possible to argue that, in general, the treatment reserved to undertakings with registered offices outside the European Union is not more favourable than that reserved to EU undertakings, it appears that some exceptions should be highlighted.

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<sup>173</sup> By 1 April 2022, 14 Member States had communicated to the Commission transposition measures relating to Directive (EU) 2020/1057, declaring transposition to be either complete or partial. Of those 14 Member States, six (DK, ES, FR, HU, RO, SK) indicated that their transposition was complete.

<sup>174</sup> <https://www.sipsi.travail.gouv.fr/>

<sup>175</sup> This transitional provision is provided for in Article 2 of Decree No. 2022-104 of 1 February 2022.



The country replies from **Czechia** and **Slovakia** mentioned that third country undertakings are at present **not required to notify posted drivers**, as is the case for companies with registered offices in Europe. This is because no system of registration or notification of posted drivers for companies with registered offices outside the EU has as yet been implemented in these two countries, contrary to **France**, for example. Although it is not possible for third-country operators to notify posting declarations through IMI, in France they are required to do so through the national register. This makes it reasonable to believe that in Member States where no parallel national system has been implemented to register posting declarations submitted by employers who have their company headquarters in a country outside the European Union, there may be a latent inequality to the disadvantage of EU-based undertakings. The latter will be obliged to notify the presence of a posted worker - through IMI - whereas an undertaking with its registered office in a third country will not be obliged to do so, at least in Czechia and in Slovakia and perhaps also in other countries.

Finally, the country reply from Poland raised the issue of the AETR agreement (i.e. European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR)) still applying to transport companies established outside the European Union. The AETR agreement has not yet been modified/updated since the adoption of Mobility Package I. As a consequence, drivers and undertakings to whom/which this agreement applies cannot be fined based on the new rules that have been introduced for EU operators.

### **Issue 3 – Law applicable law to temporary agency work and intra-group postings**

Article 1 (2) of Directive (EU) 2020/1057 states that the Directive only applies to drivers employed by undertakings established in a Member State which take the transnational measures referred to Article 1 (3) a of Directive 96/71/EC. Under this type of posting, drivers remain under the direct authority of their original employer and provide their services to companies that require to have their goods transported. The Directive does **not apply to drivers who are employed by a temporary work agency or to intra-group posted drivers**. The national questionnaire inquired if there were specific rules in the different Member States for these categories of posted workers.

Some of the respondents to the questionnaire (e.g. BG, IE, LT, LV, RO, SE) did not describe any particular regulatory scheme applicable to drivers who fall outside the personal scope of Directive (EU) 2020/1057 and who are posted by temporary work agencies or within a group of companies.

Several country replies (e.g. AT, DE, DK, ES, HU, NL, PL, SK<sup>176</sup>, SI) claimed that **they use the general legal system for the posting of workers for these categories** and some of these replies provided some further details.

The country reply from **Denmark** mentioned in this regard that transport companies are not allowed to hire out drivers for the carriage of goods for hire or reward to other transport companies unless the (leasing) company is approved by the Danish Road Traffic Authority<sup>177</sup>.

The **Spanish** reply mentioned that the general rules on posting apply in cases of intra-group or temporary agency posted workers<sup>178</sup> and that, subsequently, in the case of a posting exceeding 8 days:

<sup>176</sup> Section 5 of Act No. 311/2001 Coll., the Labour Code and Section 4 of Act No. 351/2015 Coll (reflecting Directives 96/71/EC, 2014/67/EU and 2018/957/EU).

<sup>177</sup> It is possible to consult which are the transport companies currently approved at this address: <https://fstyr.dk/da/Erhvervstransport/Buskoersel/Udlejning-af-chauffoervikarer#godkendte-chauffoerikarvirksomheder> (DK)

<sup>178</sup> Chapters I to IV of Law 45/1999.

- temporary employment agencies must report the posting period to the authorities of the place where the centre of the user company is located;
- groups of companies must report the posting period to the authorities of the place where the headquarters of the group company is located.

The country reply from **Finland** indicated that the minimum standards of employment are applicable to all categories of posted workers<sup>179</sup> including in situations of subcontracting, temporary agency work and intra-group posting. However, “specific administrative requirements such as providing information into IMI prior to the posting and after the posting, and the requirement for the operator to ensure the driver has at his or her disposal certain documentation when requested at the roadside apply only to subcontracting”.

Other Member States (CZ, FR, IT, PT) specified that they have **a specific regime for workers who fall outside the scope of Directive (EU) 2020/1057**.

In **France**, there are special requirements for temporary drivers and intra-group posting. They must have a certificate provided for in Article L1331-1 (and R1331-1 to 1331-8) of the Transport Code, which replaces the declaration provided for in Art. L1262-2-1 of the Labour Code.

The reply from **Italy** mentioned a new provision that has been inserted in the immigration code (*Testo Unico Immigrazione* (TUI)).<sup>180</sup> This new article concerns third country national workers who have already been admitted to another Member State and who are subsequently transferred to Italy at the request of their employer in the framework of intra-corporate transfers (ICTs). The reply also make reference to a series of specific information obligations for the user company making use of posted temporary agency workers<sup>181</sup>:

- a user company based in Italy, which makes use of posted temporary agency workers, is required to inform the posting temporary work agency of the working and employment conditions that apply to the posted workers. In addition, for the entire duration of the provision of services and up to two years after its termination, the user company is required to keep a copy of the information translated into Italian and evidence that it was transmitted to the supervisory bodies;
- in the event of posting by work agencies established in a Member State other than Italy, a user company based in Italy must inform the work agency without delay of the worker having been posted to another company;
- in the case of posting by work agencies established in a Member State other than Italy, before sending the worker/s to Italy, a user company has an obligation to inform the work agency in writing about the number and identify of the relevant workers, the dates of start and end of the transnational service supply, the place where the services will be supplied and the sector of the services. Moreover, the user company is required to give the Italy-based company receiving the service a copy of the information translated into Italian.

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<sup>179</sup> [Act on Posting Workers \(447/2016\)](#)

<sup>180</sup> [Legislative decree 253/2016 introduced](#) Article 27-sexies of Decreto Legislativo 25 luglio 1998, n. 286 - Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero (Testo unico sull'immigrazione - TUI) (n 92).

<sup>181</sup> Article 10-bis of [Legislative Decree 136/2016](#), as amended by [Legislative Decree 122/2020](#).

### 5.1.3 Summary

The country replies to the questionnaire revealed **relatively limited bilateral cross-border cooperation practices** between enforcement agencies from different Member States with a view to enforcing the EU legislation applicable to the road transport sector. Member States seem to have closer and more intense cooperation with their neighbouring Member States, with Member States from which drivers are often posted, when they share similar working practices or a uniform interpretation of EU legislation, when they have established informal contacts with their counterparts and where there are bilateral agreements. The country replies often referred to existing practices that have been established in the international transport network groups such as CORTE and the ECR. It is furthermore not surprising that the cooperation and exchange of information is most advanced in the social security coordination field (where they can use the EESSI system), while there is thus far little experience with the use of the three new IMI road transport modules. From the replies it can be deduced that enforcement agencies mainly **exchange information on the good repute requirement** through ERRU and the IMI 'Road Transport' modules whereas currently no or little information is exchanged when companies do not comply with the stable establishment requirement, their financial standing or professional competence. Cross-border cooperation and exchange of information relating to driving and rest times is reportedly less prevalent in daily practice, the reason often given relating to the fragmentation of responsibilities and the multitude of agencies involved in the inspections. Determining the **social security affiliation of international transport drivers** is mentioned in the country replies as one of the key challenges for inspectors. Finally, it is clear from the country replies that the implementation of the **new posting rules** for international transport drivers is one of the biggest challenges for Member States, with the characterisation of the type of transport operation (cross-border, cabotage, bilateral and transit) and employment status of the drivers being key focal issues.

## 5.2 Cross-border cooperation challenges

The questionnaire and interviews with national stakeholders inquired as to the challenges national enforcement agencies are confronted with when implementing the EU road transport legislation and inspecting international road transport services in the EU. The information that presented below is based on the country replies collected at the end of 2022.

### 5.2.1 The detection of letterbox companies

The establishment of letterbox companies, i.e. businesses which have their administrative domicile in one Member State through a mailing address, whilst conducting their actual operations in other Member States, is used as a way of cutting costs by avoiding legal and conventional obligations. These include taxation, social security, value-added tax and wages.

The new rules introduced under Mobility Package I, particularly the new posting rules and stronger establishment criteria for transport operators, are aimed at deterring carriers from using letterbox companies to circumvent labour and social security laws in road transport. Moreover, new tools, such as the IMI "Road Transport - Conditions of Establishment Module", should facilitate administrative cooperation, information exchange and mutual assistance among Member States to track letterbox companies.

The national research undertaken for this study in autumn 2022 demonstrated that the **fight against letterbox companies is still high on the agenda** in several Member States. However, some national

replies (e.g. **AT, LV, LU** mentioned that they had almost overcome the problem of letterbox companies in their own territory.

Of particular interest in this regard was the country reply from **Slovenia** which reported on the practices of letterbox companies established in its territory and the **related repercussions for the working conditions and social security rights of drivers posted** abroad by these letterbox companies. The reply observed that numerous letterbox companies are posting drivers (permanently) to other Member States applying a shift from the use of Article 12 to Article 13 of Regulation 883/2004. These drivers, who are often third-country nationals from Bosnia and Herzegovina, and Serbia receive only the minimum wage. Holidays, sick leave and other contingencies, like temporary unemployment due to road closures, are costs borne by the drivers themselves since they are *de facto* paid on the basis of the kilometres covered. The report also mentioned that around 97% of Slovenian employers in the transport sector do not pay mandatory additional pension insurance contributions for their drivers (early retirement pension schemes for hazardous and harmful professions) and that they commonly pay social security contributions and taxes only on the basis of the minimum Slovenian wage. Often cost reimbursements are applied in practice, which do not form part of contributory and calculation bases in social security schemes. However, following the entry into force of a new Law on Transnational services in Slovenia, the calculation of the social security contribution basis is set to change as of 1<sup>st</sup> January 2024.

Several Member States' enforcement agencies reported that they are still experiencing challenges with **letterbox companies in the cross-border context**, i.e. when these are established in other Member States. Some of the replies provided some further **information on their challenges** or on **their specific approaches to tackling letterbox companies**.

The reply from **Spain** confirmed that the inspection and verification of letterbox companies established in other Member States is one of the biggest challenges for the Spanish inspection agencies and noted that the current procedure for requesting the withdrawal of the Portable Document (PD) A1 is not entirely efficient, because the counterpart enforcement agencies are often not cooperative. In Spain the National Anti-Fraud Office takes the lead in the fight against letterbox companies. The National Anti-Fraud Office opens an investigation in order to determine the Member State where the driver is paying taxes, receiving healthcare and/or is sending their children to school with a view to establishing which national social security legislation is applicable. If, based on the assessment, the Member State is Spain itself, the PDA1 issued by another Member State should be withdrawn but this is often refused by the Member State which issued the PDA1. The reply from **Cyprus** reported that the risk of letterbox companies is minimised by carrying out serious and spot checks on all employers requesting a PDA1, which is issued by the Social Insurance Services. In order to obtain the PDA1, the employers are interviewed, and they must present the required documentation, such as financial statements, employment and client contracts. If companies do not satisfy these requirements the Social Insurance Services orders an inspection at the premises of the undertaking. In order to combat or prevent abuses by letterbox companies, the Department of Social Protection in **Ireland** has access to company reports and files from the Irish Company Registrations Office, which include the detailed information provided at the point of the company's incorporation. Where necessary, that information is used to research or investigate the accuracy of the information provided as to the location of business premises, the background of the company directors and the company activities that are stated to be being carried out in Ireland. The purpose of these checks is to ensure that companies seeking to use postings have substantial activities in Ireland.

While illustrating the national initiatives to combat and/or monitor letterbox companies, some Member States reported some **examples of cooperation challenges that have been encountered** in the past few years. Recurring problems arise in the **exchange of information**. For instance, the reply from

**Denmark** hinted that it is often difficult to find the right contact in another Member State for a specific matter, or to obtain information about letterbox companies in other Member States. The same difficulty was echoed in the report from **France**, which reported that it is particularly complex to obtain information from Poland and Luxembourg, while the cooperation with Germany, Italy and Belgium, on the other hand, is perceived as very positive, as those countries always quickly answer the questions asked.

The reply from **Spain** indicated another possible connected challenge relating to the existence of letterbox companies in the EU international road transport sector. The **granting of Community licences** for international road transport operators is handled by licensing authorities in Member States, but the procedures, practices and related checks applied by inspection services differ between Member States. Some Member States apply stricter conditions and inspections than others and the application procedures for obtaining a Community licence are very different between the Member States. In cases where a Community licence has been granted without the proper checks on the applicant transport company, it becomes more complicated to detect and address possible fraudulent practices in a cross-border context.

## 5.2.2 Identifying the correct competent authority in other Member States

Several national replies reported on the difficulties in identifying the right competent national authorities in other Member States. Apart from the reports from Denmark and France already mentioned, this was also explicitly mentioned in the replies from Latvia and the Netherlands. Additional research confirmed that this particular challenge is more common than this across the EU and that many enforcement agencies are experiencing this particular difficulty. The **Netherlands** reported that despite IMI, it is “not always clear which authority needs to be contacted and often the case / question keeps on shifting to various authorities”. Similarly, **Latvia** reported that even at the national level it is not always clear which institution is in charge of reviewing and answering requests from competent institutions from other Member States and requests for information have been dealt with on a case-by-case basis.

## 5.2.3 Cross-border enforcement of penalties and fines

The cross-border follow-up and enforcement of penalties and fines was raised systematically as a main challenge in the country replies. Whereas the information obtained remains rather limited and fragmented, the research clearly demonstrates that Member States have very different sanctioning regimes and that the penalties and sanctions for (serious) infringements differ considerably. Whereas in some countries (e.g. IE) sanctions can only be established before a court, most Member States seem to apply administrative penalties and fines which the competent enforcement agencies can impose and collect on the spot for infringements detected on their territory (during roadside checks and/or at the premises of the undertakings) in addition to penalties that result from criminal court proceedings.

Several country replies reported on the possibility for the competent enforcement agencies to **immediately impose fines when infringements are detected during a roadside check**. These fines are charged on the spot and have to be paid instantly by the driver or the transport company (e.g. **HR, HU, LV**). Some reports mentioned the possibility for the enforcement agencies to immobilise the vehicle (e.g. **ES, FR, LT**) or to seize the company’s documents (e.g. **LT**) until the fine has been paid. The reply from **Slovakia** mentioned in this regard that the enforcement of fines can be problematic if the driver does not have the means to pay during the roadside checks and the fine needs to be collected in another country.

Country replies indicated that most **problems arise for those infringements which are detected ex-post** and are charged to the transport manager/operator (e.g. **AT, FR, HR, LT, PL, SI, SK**). The reports often mentioned the lack of cross-border cooperation between the competent authorities in such cases. The reply from **Lithuania** mentioned that the problem with collecting fines and penalties in other Member States arises because ERRU does not always contain information about the transport manager's infringements while different countries require different kinds of information to report on an infringement. Without this information, it is sometimes impossible to issue a fine. Finally, some country replies (e.g. **ES**) mentioned that it is not possible to enforce fines and penalties imposed in other Member States because Article 13 and seq. of Directive 2014/67 have not yet been transposed into national legislation. Finally, in some cases the problem arises because the authority in charge of enforcing the sanction that has been notified has difficulty getting in touch with the authority of the other Member State that notified the infringement, since they have already notified and closed the case, not allowing an exchange with the other party (e.g. **PL**).

## 5.2.4 Identification of the transport operator and managers

Several country replies mentioned the absence of a uniform (transport) company identification number as one of the important obstacles for effective cross-border enforcement of EU road transport rules. Each Member State has its own system for identifying transport operators and this makes it difficult to search and identify transport undertakings and to verify whether the company is registered or not. Similarly some country replies observed that the Community licences and the certified true copies issued by Member States have no uniform coding system. This is also impeding enforcement as it makes the tracing of transport companies difficult. Replies from **Portugal** and **Italy** advocated a pan-European company identification number.

The responses from the interviews in **Italy** raised the difficulty of identifying transport managers who have obtained a certificate of professional competence (CPC) in other Member States and of establishing the connection between transport undertakings and their transport managers or the other way around. Some interviewees pleaded for an EU-wide 'shared' database of CPCs or of transport managers which would allow enforcement agencies to check whether individuals have effectively obtained a CPC in other Member States and whether these CPCs are still valid. Such a database would also allow enforcement agencies to verify whether a transport manager had already been employed by a transport company established in another Member State.

## 5.2.5 The posting of drivers declaration

As mentioned elsewhere in this study, several replies from Member States indicated that the provisions of Directive (EU) 2020/1057 on the posting of drivers in international transport have already been transposed into the national legislative framework whereas others mentioned that some time will still be needed before transposition is fully achieved. Additional information is provided below on the main experiences and challenges Member States which have completed transposition are encountering in verifying the posting declarations for international transport drivers. As introduction is recent, the information retrieved through the national questionnaires remained limited however.

The reports from **Czechia and Hungary** indicated that the posting declarations are often **incomplete** and do **not contain all the information** that is required. The replies mentioned that the reasons for incomplete posting declarations might relate to the fact that transport companies are often not aware of and/or that it is not always clear what information needs to be provided and/or how to fill in the posting declarations correctly. The country reply from **Denmark** mentioned that it is possible for transport

companies posting drivers to submit posting declarations without providing the (required) personal details of the drivers, such as the name and contact details of the drivers. This may be **conducive to fraudulent practices** as declarations can be easily changed or re-assigned to other persons. It also implies that the current system can easily be circumvented by transport operators. The Danish reply stated that only drivers who are physically stopped during roadside checks are effectively checked while all other posted drivers are likely not to be registered in IMI before the commencement of their posting period. According to the interviewees, it is not possible for police inspectors to verify during a roadside check what information has been updated and/or changed in the posting declaration. The same challenge was mentioned with regard to the licence plate of the vehicles as transport companies can also easily manipulate this information. Similar concerns were raised in the reply from **France**, which confirmed that the posting declarations registered in IMI can be modified during roadside checks since there is no historic traceability function.

The reply from **Slovakia** mentioned another challenge relating to operational practice around the posting declaration. This relates to establishing a link between vehicles and the individual posted drivers. Every time a transport operator buys a new vehicle, it needs to link the registration number with the relevant posted driver. This poses difficulties for larger companies which do not permanently assign vehicles to individual drivers. Posted drivers often drive different vehicles during different posting periods so the requirement to link vehicles with individual drivers per posting period can be administratively cumbersome.

## 5.2.6 Social security affiliation

As already reported elsewhere, **establishing the correct social security affiliation** for highly mobile heavy goods vehicle and bus drivers is generally considered to be one of the main challenges for national enforcement bodies. The country replies indicated that Member States generally apply the social security coordination rules on multi-state employment to international road transport drivers and not the posting provisions. However, country replies mentioned the difficulties that enforcement agencies are confronted with when applying the multi-state employment rules in operational practice.

Several country replies (e.g. **CY, FI, HU, LU**) explicitly raised the (additional and related) challenge of the **applicable social security legislation possibly changing** in individual situations and the administrative burden such a change in the applicable legislation entails for the respective enforcement agencies and social security institutions. For instance, only 12% of the drivers working in Luxembourg reside there, while 66% reside in a neighbouring country, especially France and Germany. If the drivers perform more than 25% of their activity in their country of residence, they should in principle be affiliated with the social security system of their country of residence and the transport undertaking should pay the social security contributions in the country of residence. Country replies mentioned the long administrative processes in cases of doubt as to which Member State's social security legislation is applicable. Some country replies mentioned that, to avoid the administrative burden and the shift of applicable legislation, bilateral agreements or multilateral agreements with neighbouring countries (e.g. Belgium, France and Germany) could be a possible solution. An alternative that was mentioned would be to raise the threshold for substantial activities performed in the home country from 25% to 50%.

## 5.2.7 Resource-related obstacles to cooperation

The lack of resources was identified by several replies from Member States as a key challenge for effective cross-border enforcement. **Denmark**, in particular, reported that cross-border cooperation is

difficult, burdensome and expensive and that this may be part of the reason for the reluctance of national enforcement agencies to cooperate in a cross-border context.

Similarly, the reply from the **Netherlands** reported that given the complex set-up (e.g. employee from country A, transport company in country B, inspection in country C), it is often very difficult to conduct investigations related to road transport and investigations can easily take 2-3 years. On top of that, the result from such an investigation is not always successful (or certain), and it is not straightforward to dedicate a lot of time and resources to such a case. The success of the investigations also depends on the goodwill from the authorities in the other Member States. In addition, very often the language spoken by the authorities is different, as is the language to access the different digital tools. This constitutes a further obstacle to overcome. For example, the **Netherlands** reported that it is likely that a Bulgarian inspector will not speak English and that interpretation will need to be found. There are also differences between the Dutch-speaking part of Belgium (Flanders) and the Netherlands where, although the language is the same, some words (e.g. the word 'truck') have a different meaning. In **Poland**, several initiatives have been undertaken to improve cooperation between transport companies which often becomes complicated because of language barriers. An example of such an initiative is a multilingual lexicon created to facilitate communication between drivers and inspectors during inspection activities. Another example is the 'Complaints desk' electronic version, which is also available in Polish. This tool enables drivers and/or transport companies to submit comments on sanctions imposed as a result of inspections and irregularities in inspection activities carried out by inspectors.

## 6.0 ERRU and the IMI modules on road transport

### 6.1 ERRU

Exchanges between competent authorities from different Member States can be processed through ERRU, which interconnects the national electronic registers of transport undertakings. ERRU facilitates the exchange of information and data, such as infringement notification messages (including penalties imposed, penalties requested, etc) and infringement response messages as well as search requests and response messages with a view to verifying the good repute compliance of the transport undertaking and managers.<sup>182</sup> ERRU, in its current version (Version 2.5), has three main functionalities: (1) the Check of the Good Repute functionality (CGR), which allows Member States to initiate a query to other Member States on the fitness of a transport manager and hence on the authorisation to operate a transport undertaking; (2) the Infringement Notification Functionality (INF), which allows Member States to notify the Member State of establishment that a transport operator has committed a serious infringement or to ask the Member State of establishment to apply a penalty to the transport undertaking and (3) the Check of Community Licence functionality (CCL) allowing Member State to initiate a query to other Member States in order to verify whether a transport undertaking is operating with a valid Community licence.

National registers are required to **contain data on the serious infringements established and the corresponding sanctions** imposed on transport undertakings. Each Member State has its own implementing approach but needs to comply with the EU catalogue of serious infringements and EU methodology for the risk rating. Both have recently been updated through the adoption of Implementing

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<sup>182</sup> Article 18 (8)



Regulations (EU) 2022/694 and (EU) 2022/695. The connection requirements and procedures for the technical exchanges between the national registers and ERRU are, however, currently under review. As a consequence, national implementation modes and practices have not yet been aligned with the newest and anticipated EU provisions.

The national replies to the questionnaire used for this research in late 2022 provided limited and very fragmented information on the use of ERRU and related national registers. They often referred to the fact that the new provisions have not yet been implemented in national systems and practices.

Before presenting these findings, it may be worthwhile to provide an example of how the **EU system of serious infringements for road transport offences and the previous methodology for sanctioning was operationalised in a national register and inspection practices by presenting the Dutch case.**

In the **Netherlands**, the national electronic register uses reference scores, which are considered as upper ceilings and applies penalty points when infringements are established<sup>183</sup>. In line with the EU rules, it uses three categories of serious infringement. The most serious infringement category receives nine penalty points, the middle category receives three and the lowest category one. When the **reference score** has been reached, there are question marks over good repute and reliability and an administrative procedure is launched, which may lead to the loss of good repute and hence loss of the licence and the transport manager's fitness<sup>184</sup>. **The level of the reference score is determined by the size of the company measured by the number of certified copies of the licence.** For transport managers working for several companies, the permit declarations of the different companies are added together to determine the limit value.

**Table 7: Reference scores in the Dutch national electronic register for transport operators**

Number of certified copies	Reference score
1	18
2-10	27
11-20	36
21-50	45
51-100	54
101-500	$54 + 0,40 \times (\text{number of certified copies} - 100)$
> 501	$230 + 0,20 \times (\text{number of certified copies} - 500)$

**Penalty points are only registered in the system when the infringement can be considered irrevocable**, meaning that it will be registered when all means for an administrative or judicial review of the penalty have been exhausted. The inspection services (ILT: Inspectie Leefomgeving en Transport) inform the transport undertaking when an infringement and corresponding penalty points have been registered in the national register for the first time. From that point on, transport companies can always request how many penalty points they have using an online electronic form. When 50% of the reference score is reached, the inspection services contact the transport undertaking to discuss possible corrective actions the company could consider. When 100% of the reference score is reached, the inspection services open a formal procedure resulting in an advisory report and proposed decision for a sanction,

<sup>183</sup> Transport en Logistiek Nederland, *Dé ondernemersorganisatie voor de transport- en logistieksector* <https://www.tln.nl/erru-het-sanctieregister-voor-vervoersovertredingen/>

<sup>184</sup> The Dutch policies at this proposal can be found here: <https://zoek.officielebekendmakingen.nl/stcrt-2021-10050.html>.

which is subsequently submitted to NIWO (Nationale en Internationale Wegvervoer Organisatie), the Dutch authority entrusted with issuing Community licences for road transport undertakings. In a second stage NIWO conducts a proportionality test and organises hearings to which the transport company is invited. NIWO's conclusions may result in a decision to suspend or withdraw the licence or to declare the transport manager unfit. In such cases, a two-year rehabilitation period starts during which the transport manager has the opportunity to regain his professional competence.

The national questionnaire inquired to what extent the different inspection agencies involved in road transport enforcement knew of and used ERRU and what the experiences were when using ERRU.

From the answers provided to the questionnaire, it can be seen that **most of the authorities in the different Member States know ERRU and its main functionalities**. Among all replies received, only six did not provide any information on the use of ERRU (AT, CY, EE, HR, LU, MT).

Some country replies **pointed out some room for improvement to ERRU (Table 8)**.

**Table 8: Suggestions for improving ERRU**

<b>ERRU room for improvement reported in the country replies</b>	
<b>DK</b>	<ul style="list-style-type: none"> <li>• <b>“Time Out” status.</b> The information received from ERRU often contains the status “Time Out” from a selection of Member States. When this happens, the requesting authority must repeat the process and, occasionally, more than once. <b>Implications:</b> The erroneous information has consequences for the hauliers. The consequences are that the processing of the applications drags on because the Authority must wait for adequate information from ERRU before issuing the Community Licence.</li> <li>• <b>The use of a different alphabet</b> (e.g. æ,ø,å) can cause problems. A similar problem is the use of Greek and Cyrillic letters.</li> </ul>
<b>HU PT</b>	<ul style="list-style-type: none"> <li>• <b>Technical issues.</b> The country report from Hungary, echoed by Portugal, highlighted the technical problems in the IT connection of ERRU to the national registers and software.</li> </ul>
<b>IT</b>	<ul style="list-style-type: none"> <li>• <b>Difficulties with identifying transport operators, community licences and certified true copies as</b> each Member State has its own system of numbering/coding licences and certified copies while the character strings are usually very long. National measures could be accompanied by uniform measures at EU level which will facilitate the identification of the right transport company and the exchange of information on the infringements and sanctions that concern the individual transport companies.</li> </ul>
<b>LT</b>	<ul style="list-style-type: none"> <li>• <b>Accuracy of data.</b> Lithuania reported that sometimes data in ERRU is not accurate. There are often cases when numbers are not correct or valid (e.g. licence plate numbers, licence numbers). The ideal situation would be for the system and the national registers to check the numbers.</li> </ul> <p><b>Implications:</b> Sometimes missing information or errors prevent timely issuance of infringement protocols because every Member State has different requirements for issuing these protocols.</p>

**LV Useful additions that could improve ERRU:**

- (1) According to Latvia, ERRU should be amended with additional information on transport managers of dangerous cargoes for undertakings operating with transportation of dangerous cargoes.
- (2) In order to calculate the precise risk number in the assessment of good repute, ERRU would need to be amended with information on established violations which is provided outside ERRU or have been established during checks on the premises of the undertakings.
- (3) For the retrieval of European Community licences/copies of licences to function better, a uniform numbering system of the documents should be used.

While the exchange of information, in particular on convictions and penalties, may take place outside ERRU, most respondents to the questionnaire stated that, to their knowledge, all information is exchanged via ERRU (BE, BG, CZ, DE, DK, EL, ES, FR, FI, IT, LV, LT, NL, PT, SE, SI, SK). Nevertheless, a minority (CZ, EL, FR, LV, PL, SI) reported some uncertainties. Czechia, Latvia and Slovenia stated that although ERRU is fully implemented, the exchange of information with some Member States (Italy and Norway were mentioned by Latvia) may take place via email or on paper. France reported that informal exchanges with Poland and Spain, which do not go through ERRU.

The questionnaire that served as a basis for the interviews with national stakeholders inquired also on their experiences and viewpoints on the **practical challenges arising from CJEU case C-906/19**<sup>185</sup> that challenged the extra-territoriality principle for sanctions imposed for infringements of EU rules on the use of tachographs detected in other Member States.

**CJEU C-906/19**

Decision C-906/19 states that: “in the current state of Union law, the competent authorities of a Member State may not impose penalties in respect of infringements of Regulation No 165/2014 which are detected on the territory of that Member State but committed on the territory of another Member State.”

Most Member States that replied to the specific question explicitly mentioned that it would be desirable for European legislation to be amended on this subject so that the offence can be penalised uniformly wherever it is found (FR, ES, HU, IT). On the other hand, Poland noted that the restriction imposed by the CJEU decision does not apply to the provisions of the European agreement, concerning the work of crews of vehicles engaged in international road transport (AETR). Of the other Member States, some did not provide any answers, while others (LV, PT) did not reply because - to the knowledge of the interviewed person – there had never been an extra-territorial case of a tachograph infringement. Spain reported that in order to guarantee proper enforcement of C-906/19, where sanctioning/imposition of a penalty for certain tachograph infringements is not permitted when these are detected on the territory of another Member State, these kinds of infringement are reported through ERRU to the national authority of the Member State where the undertaking is established; however, this procedure is not automated. Eventually, Poland pointed out that the restriction imposed by the CJEU decision does not apply to

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<sup>185</sup> Case C-906/19, Judgment of the European Court of Justice (Fifth Chamber), 9 September 2021, Criminal proceedings against FO, Request for a preliminary ruling from the Cour de cassation.

companies established outside the European Union, for which provisions of the European agreement, (AETR<sup>186</sup>) still applies.

There is still a degree of uncertainty about the current use of the INF function in ERRU; almost all country replies from Member States were not able to state clearly whether this is used or not. Nevertheless, it stands to reason that Member States that said they exchange all information via ERRU are likely to use it.

The country replies in some cases also specified whether their **National Risk Rating System** (set up under article 9 of Directive 2022/26 EC) **includes infringements and sanctions recorded in ERRU**. Bulgaria, Czechia, Denmark, Finland, France, Lithuania, Poland, Portugal and Slovakia answered that this is the case. Romania, Spain and Latvia answered that the connection would be operational very soon. The other Member States did not answer this specific question.

Among Member States that have connected their National Risk Rating System with the infringements and sanctions recorded in ERRU, only a few (BG, CZ, DK, FI, FR, LT, PT, SE, SK) described what systems they have (or will have) in place to facilitate the transfer of this information from ERRU to the Risk Rating System and the corresponding databases. In France, GRECO (Gestion Régionalisée des entreprises de transport routier et des Contrôles), the French national information system, is connected to ERRU. Infringements recorded in ERRU are automatically taken into account (through GRECO) in the system for calculating the risk level of transport undertakings (risk-rating score) as defined by the EU. Although a version of this system is already operational, a new formula is currently being tested<sup>187</sup>.

Following the recent adoption of the integrated list of serious infringements and methodology for risk rating in 2022 by means of Regulations (EU) 2022/695 and (EU) 2022/694, ERRU's functionalities will be further adapted and improved in the course of 2023. Member States are subsequently expected to adapt their national electronic registers and risk rating databases in order to ensure the interoperability and interconnection of their systems and databases with ERRU.

## 6.2 The IMI road transport modules for the exchange of information

Following the adoption of the 2020 Mobility Package I, Regulation (EU) 2020/1055 and Directive (EU) 2020/1057 introduced new rules on the use of the Internal Market Information System (IMI) for information exchanges and cooperation between the Member States in the road transport sector. In particular, three new Road Transport modules were introduced, namely the Conditions of Establishment module, the Social Rules module and the Posting Declarations module.

Article 1 (13) of Regulation (EU) 2020/1055 amends Article 18 'Administrative cooperation between Member States' of Regulation (EC) No 1071/2009 by establishing, among others, that Member States are *obliged to respond to requests for information* from other Member States and carry out checks, inspections and investigations concerning compliance with the conditions laid out in Article 3(1) 'Requirements for engagement in the occupation of road transport operator' of Regulation (EC) 1071/2009 through the use of IMI. The Regulation has been applicable since 21 February 2022.

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<sup>186</sup> European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport.

<sup>187</sup> The French respondent has noted that in view of the delay by the European Commission in adopting the implementing act (adoption on 02/05/2022, R(EU) No 2022/695 published in the OJEU on 03/05/2022, with an entry into force on 23/05/2022), the latter is still required to define the functionalities for access to the risk assessment data of transport undertakings in the national registers for roadside checks (Art. 16.6 R(EC) No 1071/2009) within 14 months of the adoption of the formula. The access of enforcement authorities to these data will have to be ensured by the Member States within 12 months of this implementing act.

Article 1 (11) of Directive EU) 2020/1057 introduces an *obligation for the operator established in another Member State to submit a posting declaration* to the national competent authorities of a Member State to which the driver is posted at the latest at the commencement of the posting using IMI. Article 2 (8) of this same directive also amends Article 8 of Directive 2006/22/EC on ‘Exchange of Information’ by establishing, among others, that the information exchange under Article 22 (3) of Regulation (EC) 561/2006 on *driving times and rest periods* is to take place through IMI. The deadline for the transposition of Directive EU) 2020/1057 was 2 February 2022.

Given the very recent introduction of the new rules on the use of the Road Transport IMI modules, the information obtained through the national questionnaires and interviews at the end of 2022 related to only a few months’ experience.

## 6.2.1 National competent authorities using the road transport modules of IMI

Only part of the replies to the country questionnaires provided some information on which authorities in Member States have access to the three IMI Road Transport modules. The information provided was furthermore not always complete and needs to be cross-checked with other sources.

**Table 9** provides an overview (as reported by the national replies to the questionnaire) of the national competent authorities or other stakeholders using the Road Transport IMI modules to share information with the national competent authorities of other Member States. Country replies which did not indicate any authority have not been included in the overview. The titles of the organisations used are those provided in the country reports, but do not necessarily reflect the official English translation where that exists.

**Table 9: Access to the IMI road transport modules in Member States**

Competent authorities using the IMI road transport modules in the Member States	
BG	IMI is used by the the General Labour Inspectorate Executive Agency (GLI) and the Road Transport Administration Executive Agency (RTA) and by the transport operators.
CZ	<u>Posting of drivers module</u> : Ministry of Transport and the State Labour Inspection Office (SLIO) <u>Conditions of establishment module</u> : Ministry of Transport <u>Driving times and rest periods module</u> : Ministry of Transport
DE	<u>Posting of drivers module</u> : The Central Customs Authority and the main custom offices (back office). Transport companies use the front office of this module. <u>Conditions of establishment module</u> : The Federal Office for Goods Transport.
EL	<u>Posting of drivers module</u> : Directorate on Planning and Coordination of Labour Relations Inspections as well as Regional Directorates on Labour Relations Inspections <u>Conditions of establishment module</u> : Ministry of Infrastructure and Transport. <u>Driving times and rest periods module</u> : Ministry of Infrastructure and Transport.
ES	IMI is used by the central services of the Transport Inspectorate and the Labour and Social Security Inspectorate.
FR	IMI is used by the Directorate-General for Labour (DGT) and by the Directorate General for Infrastructure, Transport and Mobility (DGITM).
HR	IMI is used by the traffic inspectors.
IT	<u>Posting of drivers module</u> : The national authorities are the National Labour Inspectorate, the Ministry of Infrastructure and Transport, and the Ministry of Labour, which includes the Road Police Departments for checks carried out in the regions of

Competent authorities using the IMI road transport modules in the Member States	
	<p>competence. The National Association of Italian Municipalities is another competent authority as a coordination body for local police.</p> <p><u>Conditions of establishment module</u>: The competent authority is the Ministry of Infrastructure and Transport to which the Ministry of Internal Affairs and the National Labour Inspectorate are connected.</p> <p><u>Driving times and rest periods module</u>: The competent authority is the Ministry of Infrastructure and Transport to which the Ministry of Internal Affairs and the National Labour Inspectorate are connected.</p>
LT	IMI is used by the State Labour Inspectorate under the Ministry of Social Security and Labour (VDI) and the Transport Safety Administration (LTSA).
LV	<p><u>Posting of drivers module</u>: Road Transport Administration (RTA), the State Police (SP) and the State Labour Inspectorate (SLI). The information is processed by the SLI and dealt with by the SLI.</p> <p><u>Conditions of establishment module</u>: Road Transport Administration (RTA) and the State Police (SP). Control is provided jointly by RTA and the SP. The SP is in charge of sending the requests if it establishes that a vehicle has not been returned to the Member State of registration within 8 weeks.</p> <p><u>Driving times and rest periods module</u>: Road Transport Administration (RTA) and the State Police (SP). The SP processes this information and the RTA receives these reports for information.</p>
NL	<p><u>Posting of drivers module</u>: Labour Inspectorate.</p> <p><u>Conditions of establishment module</u>: The National and International Road Transport Organisation (NIWO).</p> <p><u>Driving times and rest periods module</u>: Environment and Transport Inspectorate.</p>
PL	As of February 2022, the Road Transport Inspectorate is directly involved in the exchange of information and has access to personal data in IMI.
PT	IMI is used by the Mobility and Transport Institute (IMT), the Authority for working conditions (ACT), the Social Security Institute (ISS) and transport operators.
SE	<p><u>Posting of drivers module</u>: Work Environment Authority.</p> <p><u>Conditions of establishment module</u>: Transport Authority.</p> <p><u>Driving times and rest periods module</u>: Transport Authority.</p>

Source: replies to the national questionnaires

## 6.2.2 Number of requests/actual exchanges between Member States via IMI

Only a few Member States reported on the number of requests or actual exchanges with other Member States via the Road Transport IMI modules since the introduction in spring 2022.

Table 10 presents replies collected. Similar to the case of the information provided in Table 8, the information needs to be treated with caution and may for several reasons be incomplete or outdated. In order to obtain an accurate view on the number of exchanges, the information would need to be cross-checked with the data collected by the relevant units of the European Commission.

Table 10: Use of IMI road transport modules by Member States

Number of requests/actual exchanges between MS as of late 2022	
BG	7 requests through the posting of drivers module: 5 from Denmark, 2 from France.
CZ	2 requests through the posting of drivers module: 1 from France, 1 from Austria.
DE	5 requests through the posting of drivers module.
EL	No requests received or made.
ES	6 requests made and answered by the other Member State.

Number of requests/actual exchanges between MS as of late 2022	
IE	No requests received or made.
LT	3 requests received.
LV	No requests received or made.
SI	1 request made.
PL	3 requests through the posting of drivers module: 1 out of 3 withdrawn.
PT	No requests received or made.
SE	The driving time and rest module has never been used.

Source: Replies to the national questionnaires (late 2022)

### 6.2.3 Challenges/benefits of IMI

When asked about the benefits and challenges of the IMI Road Transport modules, the country replies mentioned that at that stage the tool had been in place for a too short period of time, which made it difficult to provide any meaningful feedback. However, the tool was perceived positively in the country replies as it has considerably simplified communication exchanges and safe transmission of documents and of any other information.

The challenges identified by the country replies in relation to the use of IMI included the need to ensure *rapid response times*, *improve communication* in cases where there is *no posting declaration* but there is a suspicion of posting, and adjusting the *user-friendliness* of some features of the portal.

Some Member States provided more extensive feedback on the challenges of IMI as described below.

**Italy** reported that in relation to the **enforcement of social legislation in the road transport**, IMI had been oversimplified, resulting in a loss of data which would have been useful for the planning of inspections and which was instead envisaged by the 'national' platform. On this point the **Italian National Labour Inspectorate (INL)** provided extensive feedback and suggestions as reported below.

#### **Interview with the Italian National Labour Inspectorate (INL):**

With the new simplified methods of **the posting declaration provided for by Directive (EU) 2020/1057**, it has become more difficult for the inspection bodies in general and in particular those carrying out checks at the premises of the companies (INL) **to determine the employment relationship during posting**. In fact, the only source of information the INL has on the existence of a posting is the reports made by the traffic police when performing roadside checks. Alternatively, INL could activate checks by drawing on data from the archive containing all the posting declarations active in Italy. However, this does not suffice because during the checks carried out by the INL at the premises of the company, it is not possible to find the drivers. The INL can only access the posting declarations to verify whether the labour protection for the posting period in Italy has been recognised in relation to the driver whose relationship is not subject to Italian law. So, without the driver being present, the INL needs to base its assessment on the posting declarations through IMI, which are often not up-to-date enough. For communication of a secondment for six months, there is no obligation to communicate any changes, days of presence or non-presence in the territory. So the company still submits the information, but in such cases there is no way of knowing whether the driver was actually present in the country, for how many days and for which itineraries. Moreover, in order to understand if a driver is in transit, bilateral transport or other type of transport operation, inspectors need to download all the data from the tachographs, look at all the bills, commercial communications, and loading and unloading operations, which is extremely complicated. The INL may request

information through IMI on drivers who have never been to Italy. In any case, the companies should provide the required documents even if in fact there was no posting.

A possible solution could be for the Member State to activate checks through IMI with the supervisory authority in the country of establishment of the posting transport company while the posting is under way and there is suspicion of a possible irregularity. At that point the checks can be made.

Each Member State can only view incoming posting communications; therefore, it is not possible to know if and how many drivers are being posted in the various Member States by Italian-based companies. The state of the establishment does not know if, when and how many drivers are posted abroad. The Italian authorities do not know this information as the posting declarations are only sent to the host Member States, but it would be more useful if the checks on those workers and the salaries they receive (or not) were made by the Italian authorities.

**Possible solution:**

The proposal by the National Labour Inspectorate is to consider access to the posting declarations for **all incoming and outgoing postings** (posting of drivers from companies established in Italy to other Member States and posting of drivers from abroad to Italy).

The **ESSPASS (European Social Security Pass)** project<sup>188</sup> is considered by the National Labour Inspectorate to be a very interesting model for overcoming these difficulties. This Commission pilot project, which covers a number of Member States including Italy, is planning to establish a digital solution that allows the release of the PD A1 for posting in real time. A1 portable documents certify that the worker is registered with the social security system of the country of posting. Although A1 portable documents are designed to certify social security coverage, they can be useful evidence to certify more generally that the worker has indeed been posted.

Given that the INL is not able to access the posting declarations of Italian based companies which are posting drivers to other Member States, the alternative could be to access the Italian platform that ascertains this posting, i.e. the release of the A1 which is the responsibility of the social security institute, INPS. Although A1 certificates are designed to ascertain social security coverage, this system could provide the National Labour Inspectorate with additional information to use in verifying working conditions and compliance with all rules. At the moment, there is no direct way to access information about the A1 portable documents. This information can only be obtained during the ex-post inspection phase. The point however is to **have the information in the preventive phase to plan interventions, to identify situations at risk. A risk index on posting** could be created in this way.

Considering it is relatively new, the posting of drivers module may need to be subject to some further improvements according to some users, including aspects such as optimising search options, distinguishing between the types of tachograph data that are requested, and adding the possibility of attaching files. In Finland the occupational health and safety authority also suggested the possibility of transferring the information from notifications in IMI into a downloadable document. Another shortcoming raised by Poland was the inability to translate documents exchanged through IMI, which have been attached from outside the system.

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<sup>188</sup> <https://ec.europa.eu/social/main.jsp?catId=1545&langId=en>



## 7.0 Case studies

### 7.1 Case Study 1: Cooperation practices of enforcement bodies in Denmark and Lithuania to combat the establishment of letterbox companies in road transport

#### 7.1.1 Introduction

The establishment of letterbox companies, i.e. businesses which have their administrative domicile or registration/incorporation in one Member State through a mailing or postal address whilst conducting their actual business operations in other Member States, is used as a fraudulent way of cutting costs by avoiding legal and conventional obligations. These include taxation, social security, value-added tax, wages, and working conditions. The establishment and use of letterbox companies is a challenge in European road transport.

The new rules introduced as part of Mobility Package I, and in particular *the stricter establishment criteria for transport companies*, are aimed at discouraging transport undertakings from using letterbox companies to circumvent the relevant EU and national laws. Moreover, new tools, notably *the “IMI’s Road Transport Conditions of Establishment Module”*, envisage the facilitation of administrative cooperation, information exchange and mutual assistance between enforcement agencies from Member States to track alleged letterbox companies in the international road transport sector. A particular difficulty for administrative cooperation arises from the great cross-country regulatory differences, as infringements related to the activities of letterbox companies are subject to different legal statutes in the Member States<sup>189</sup>.

This case study explores in more detail (1) how Member States are tackling letterbox companies in the EU road transport sector and if/how the enforcement agencies responsible for EU road transport rules are involved in the fight against letterbox companies, and (2) whether and to what extent recent EU rules and tools that aim to combat letterbox companies in the transport sector have (already) been incorporated into the operational practices of the competent road transport enforcement agencies in the Member States.

Two Member States were selected for this case study: Denmark and Lithuania. International road transport is highly relevant in both Member States and they both have coordinating bodies for the enforcement of EU road transport rules. Whereas Denmark is mainly a receiving country in cross-border postings, Lithuania is primarily a sending Member State. Finally, enforcement agencies from both countries were found to be willing to provide additional information in addition to the information gathered through the national research in all Member States presented in the previous chapters.

The case study examines first which national enforcement agencies in Denmark and Lithuania are tasked with detect and prosecuting the establishment of letterbox companies in road transport, what their respective competences are and how they cooperate both in the national context as well as bilaterally. Second, it investigates how enforcement bodies are using or planning to use the new IMI

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<sup>189</sup> European Commission, Directorate-General for Justice and Consumers, De Wispelaere, F., Schuster, E., Morel, S., et al., *Letterbox companies: overview of the phenomenon and existing measures: Executive summary*, Publications Office, 2021, <https://op.europa.eu/en/publication-detail/-/publication/66764f95-5191-11ec-91ac-01aa75ed71a1/language-en/format-PDF/source-search>).

'Conditions of establishment' module and share information with each other and across borders in the detection and prosecution of letterbox companies.

### 7.1.2 Methodology of the case study

The original data gathered for the case study are based on responses to a separate questionnaire covering the issues of competent authorities' cooperation practices to track down and investigate letterbox companies in international road transport. The questionnaire was answered by the following four authorities in Denmark and Lithuania in February and March 2023:

- Danish Road Traffic Authority (*Færdselsstyrelsen, RTA*)
- Danish Ministry of Taxation (*Skattestyrelsen*)
- Lithuanian Transport Safety Administration (*Lietuvos transporto saugos administracija, LTSA*)
- Lithuanian State Labour Inspectorate (*Valstybinė darbo inspekcija, VDI*).

The questionnaire was in two parts: the first part covered questions related to the IMI "Conditions of Establishment" module and dealing with concrete requests and follow-up of requests; the second part gathered general information on other systems in use to exchange data and information about transport operators' effective establishment and authorities' experiences with administrative cooperation.

The key questions of the case study are:

- 1) Is the "IMI Conditions of Establishment" module already operating in Denmark and Lithuania? What is the experience of this tool? What added value does the tool have compared to cooperation and information exchange practices before its introduction? What are the main challenges related to the module?
- 2) What alternative means for information exchange and mutual administrative assistance have been and/or are in place to track down letterbox companies in the two countries?
- 3) What procedures and cooperation practices have proved successful for checking whether a road transport company has incorrectly declared its registered office abroad (e.g. in Lithuania), even though the main transport service is provided domestically, e.g. in Denmark?

In addition to the four responses by national key stakeholders to the case study questionnaire, information from the national reports of Denmark and Lithuania gathered by the national experts for the main report on Labour and Social Aspects in Road Transport feeds the case study report.

### 7.1.3 Brief explanation of European regulatory framework

Regulation (EC) 1071/2009<sup>190</sup> and Regulation (EU) 2020/1055<sup>191</sup> introduced under Mobility Package I stipulate conditions that need to be met by transport undertakings to be able to operate in European

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<sup>190</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009R1071>

<sup>191</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1055>

road transport, among them **criteria**<sup>192</sup> relating to the stable and effective establishment of an undertaking in road transport<sup>193</sup>.

#### “Stable and effective establishment”

To comply with the “stable and effective establishment” requirement, road haulage companies operating in the European transport market need to demonstrate (by providing adequate documentation, from dispatching to labour contracts to personnel management documents) that they are effectively and continuously conducting their operations with **appropriate technical equipment and facilities at an operating centre** in the Member State in which they are registered. In addition, Member States *may* require that the undertakings have duly qualified administrative personnel at the premises in the country of establishment, that the transport manager be reachable during regular business hours, or have additional operational infrastructure (e.g. parking spaces) in addition to the necessary technical equipment. An important new rule to prevent the establishment of letterbox companies is the **obligatory return of transport undertaking vehicles** to the premises in the Member State of establishment every eight weeks.<sup>194</sup> This obligation is implemented in synchronisation with Article 1 (6d) of Regulation (EU) 2020/1054<sup>195</sup> amending Regulation (EC) 561/2006 according to which transport operators need to organise the drivers’ schedules to enable them to return home at regular intervals.

#### Cooperation obligation and IMI

Various general and specific cooperation measures and obligations for Member States and their competent public authorities are designed to ensure the effective enforcement of relevant EU legislation for road transport operations within the EU<sup>3</sup>, including the verification of the “stable and effective establishment” criterion transport operators must comply with.

One relevant tool for doing so is the **IMI’s “Conditions of Establishment” module** which has been operational since the beginning of 2022. Using this, Member States can request information on the conditions of establishment of a transport company established in another Member State by targeting their request to a competent authority that has been granted access as a user to the IMI. The tool makes it possible to respond, to ask for clarifications and to respond to the clarifications. Member States are obliged to respond to requests for information from other Member States related to potential infringements of Regulation (EC) 1071/2009 Article 5(1) (2) and carry out checks, inspections, and investigations using the IMI. The “Conditions of Establishment” module lists a number of “credible indications of infringements” which are presented below. The module allows the requesting authority to give more *details of those indications of infringement*, a detailed description of the request and what evidence and documents would be needed from the authority to whom the request is made.

List of **credible indications of infringements** available in the IMI “Conditions of Establishment” module:

- (1) The undertaking has its main establishment or parent company incorporated or registered in the requesting Member State;
- (2) Taxes corresponding to the activity concerned are collected in the requesting Member State;

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<sup>192</sup> The other three requirements are good repute of the transport undertaking, appropriate financial standing and professional qualifications. Undertakings complying with these four requirements are authorised to obtain a Community licence that gives access to the European road haulage market.

<sup>193</sup> Article 5 of Regulation (EC) 1071/2009. Other relevant EU legislation that letterbox companies circumvent or break in order to benefit from more favourable national rules in other countries relates to rules on the posting of workers across the EU (Directive 96/71/EC, Directive 2014/67/EU), on the habitual place of work (Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I), as well as on the coordination of social security schemes (Regulation 883/2004).

<sup>194</sup> Article 1 (3) of Regulation (EU) 2020/1055

<sup>195</sup> <https://eur-lex.europa.eu/eli/reg/2020/1054/oj>

- (3) The activities concerned are run from premises located in the requesting Member State;
- (4) The administrative activities relating to the activities concerned are run in the requesting Member State;
- (5) The commercial activities relating to the activities concerned are run in the requesting Member State;
- (6) The core business documents covering the activity concerned are located in the requesting Member State;
- (7) The transport manager is available in the requesting Member State;
- (8) Administrative personnel dealing with the activities concerned are employed in the requesting Member State;
- (9) Drivers get work assignments and instructions from the undertaking established in the requesting Member State;
- (10) Equipment used for the activities concerned are located in the requesting Member State;
- (11) Drivers are not based at an operational centre in the Member State of establishment;
- (12) A significant proportion of the activity of the undertaking takes place in the requesting Member State;
- (13) Vehicles registered in the requesting Member State are being used for the activities concerned (through direct ownership, hire-purchase agreement or under a hire or leasing contract);
- (14) Examination of evidence shows that vehicles involved in the activity concerned do not return to one of the operational centres in the Member State of establishment at least within eight weeks of leaving it.

In terms of the verification of the “stable and effective establishment” criterion, it is possible to break the cooperation measures and obligations down as described in this paragraph, and compare cooperation activities before and after the introduction of the IMI “Conditions of Establishment” module, taking Denmark and Lithuania as examples: (1) Institutional and operational framework, i.e. the specification of competent national authorities as a corresponding partner for questions related to the stable and effective establishment of a transport company and the IMI module. (2) The authorities are required to maintain and update national registers containing mandatory data on the transport operators, including information about convictions and penalties, the registration numbers of the vehicles operated by the transport company, the number of people employed, and information on the risk rating of the transport companies. (3) The authorities are required to ‘exchange information’, including access to documents required to prove effective and stable establishment, to ‘closely cooperate’, to ‘provide swift mutual assistance’, i.e., to reply to requests for information from all competent authorities of other Member States within 30 days through the IMI. (4) The authorities are required to ‘conduct checks, investigations and inspections of road transport operators established in their territory’ upon request of a foreign authority<sup>196</sup>.

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<sup>196</sup> Measure under points 3 and 4 will be subsumed under one heading.

## 7.1.4 Cooperation practices to tackle letterbox companies in Denmark and Lithuania

### 7.1.4.1 Institutional and Operational Framework

The detection and prosecution of alleged letterbox companies operating in international road transport requires highly complex and time-consuming procedures, as such company arrangements are used to avoid legal and conventional obligations of various kinds: taxation, social security, value-added tax, wages and working conditions, and business licences. Therefore, the cooperation and involvement of different national authorities is needed to launch or even settle a case.

This section focuses on which authorities in Denmark and Lithuania oversee implementation and enforcement of the respective articles of Regulation (EC) No 1071/2009 as amended by Regulation (EU) 2020/1055<sup>197</sup>, and what other national authorities are competent to detect and prosecute alleged letterbox companies in road transport.

In **Denmark**, the **Danish Road Traffic Authority** (*Færdselsstyrelsen*), which was contacted for the purpose of this case study, is in charge of **the administrative compliance of road transport operators** with requirements set out in Regulation (EC) No 1071/2009 as amended by Regulation (EU) 2020/1055. The **Danish National Police**, National Traffic Center – Heavy Vehicle Section is the operational enforcement body. They share competences for the inspection of the daily, weekly and fortnightly driving times, breaks, daily and weekly rest periods and other social legislation, including the chain liability, duty roster for drivers, or the return of driver every four weeks to the place of residence, with this last being an important indicator of the stable and effective establishment of a transport company. If foreign transport companies want to hire out their drivers for a Danish transport company to transport for hire or reward, the Danish Road Traffic Authority needs to approve this.<sup>198</sup>

The **Danish Road Traffic Authority** is also the **corresponding authority** for accessing the IMI "Conditions of Establishment" module and exchanging information with their counterparts in other Member States, while the module is also used by the Danish Police. The **Danish Tax Authority**, which was also contacted for the purpose of this case study, **does not have specific competences for the new rules in international road transport**. However, it is the authority overseeing company registration, declarations and payment of tax obligations, including Danish companies registered abroad and foreign companies registered in Denmark.

In **Lithuania**, the **Lithuanian Transport Safety Administration** (*Lietuvos transporto saugos administracija, LTSA*) is the competent body for enforcing Regulation (EC) No 1071/2009 as amended by Regulation (EU) 2020/1055. The **Lithuanian State Labour Inspectorate** (*Valstybinė darbo inspekcija, VDI*) has jurisdiction for enforcing other relevant road-related **social legislation** (chain liability, duty roster for drivers, payment of suitable accommodation by employer, return of driver every four weeks to the place of residence).

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<sup>197</sup> Article 5 (stable and effective establishment criterion); Article 16 (national electronic registers) including its amendment under Article 1(12) of Regulation (EU) 2020/1055; Article 18 (administrative cooperation) including the enhanced cooperation obligations, in particular stemming from Article 1(13) Regulation 2020/1055; Article 19-21 (mutual recognition of certificates and other documents); Article 22 (penalties).

Notably, in addition, the control of the regular return of the driver to the place of residence (Regulation (EU) 2020/1054) and the verification of the type of employment of the driver including the determination of the Member State responsible for social security are indicators for the occurrence of a letterbox company.

<sup>198</sup> Transport companies currently approved are published here: [Udlejning af chaufførvikarer](https://www.fstyr.dk/udlejning-af-chaufforvikarer) (fstyr.dk)

Both the **LTSA** and the **VDI** provide information to requesting authorities from abroad in the IMI module. The **LTSA** is the **corresponding authority** in Lithuania with access to the IMI “Conditions of Establishment” module. The **VDI** is the corresponding authority for the posting of drivers’ module and for the general posting module, and provides data requested through the IMI in the field of posting and sometimes also in answer to questions on establishment.<sup>199</sup> Whereas the **LTSA** also has access to the posting of drivers module, the authorities decided that the **VDI** would not need to have access to the IMI “Conditions of Establishment” module.

#### 7.1.4.2 Exchange of information and mutual assistance, including through the IMI

The competent authorities from Denmark and Lithuania were invited to explain if and how they use or will **use the IMI “Conditions of Establishment” module** to exchange information and provide mutual assistance in detecting alleged letterbox companies, and what otherwise established cooperation strategies they have been pursuing or are continuing to pursue.

In both countries, the **IMI modules**, including the “Conditions of Establishment” module **are already operating**. However, so far, in both countries it **has hardly been consulted for investigations**, as the systems and respective legislation were introduced only very recently.

##### Lithuania

In **Lithuania**, the **LTSA**, the competent authority **to respond to queries** through the **IMI “Conditions of Establishment” module**, has received **two inquiries from abroad**. In one case, the **LTSA** received a request for payroll data, for the last date of appearance of the vehicle in Lithuania, and in what register the transport company is registered. The **LTSA** asked for the information from the transport operator, as transport operators are obliged to provide the requested data. From the IMI’s credible indications of infringements list on the effective and stable establishment of a transport operator, the following four indications were reported to the **LTSA**:

- The undertaking has its main establishment or parent company incorporated or registered in the requesting Member State;
- Taxes corresponding to the activity concerned are collected in the requesting Member State;
- Drivers get work assignments and instructions from the undertaking established in the requesting Member State;
- Examination of evidence shows that vehicles involved in the activity concerned do not return to one of the operational centres in the Member State of establishment at least within eight weeks of leaving it.

Since the **LTSA** has only recorded two incoming requests via the IMI “Conditions of Establishment” module thus far, the authority could not provide more detailed indications about follow-up actions to detect the alleged infringement or about results following the IMI requests in Lithuania. The **LTSA** also confirmed that the IMI module had – at the time of the interview (February 2023) **not been used** by the Lithuanian **LTSA to send requests to** other Member States.

On the issuance of licences for transport operators in international haulage, the **LTSA** confirmed that strict administrative checks, i.e. a real verification of requirements, are performed but mentioned at the

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<sup>199</sup> The **VDI** had recorded 35 requests since 2022 but none about the road transport sector.

same time that resources are lacking to check the premises and conditions of establishment of the transport operator onsite.

In terms of other forms of **inter-institutional cooperation** within Lithuania, the VDI and LTSA usually organise road inspections during *ELA's weeks of action*. In addition, the national databases are consulted extensively. For example, the VDI cooperates with the State Social Insurance Fund Board under the Ministry of Social Security and Labour (Sodra) to obtain information about an employee's social security status. There is no limit on data exchange, but exchange is restricted in individual cases, i.e. automatic data migration is not allowed. The possibility of accessing the databases is assessed as very effective, although improvement and maintenance of such databases requires adequate resources. In the area of interagency cooperation and information sharing in Lithuania to pursue transport companies' infringements and gather evidence, the VDI can be involved in investigations. It can also tap into data from the State Tax Inspectorate (VMI) and Sodra databases (about social insurance, taxation, registration of activity etc.). However, the LTSA indicated that there is not much practice with alleged letterbox company cases so far.

In terms of **cross-border cooperation** to check on the transport operators' stable and effective establishment criterion and cooperation to detect alleged letterbox companies, the authorities interviewed in Lithuania indicated that they had had only a very few cooperation experiences with Belgium and Netherlands in the past. The last request for cross-border cooperation to investigate an alleged letterbox company was over five years ago. The LTSA and VDI in addition responded that they have not established 111tandardized procedures for mutual administrative assistance to follow up on reported infringements. Communication and information channels or systems the LTSA uses to exchange information about transport operators' effective establishment include inquiries by email and telephone to the corresponding foreign national authority. Informally, colleagues meet on business trips and meetings abroad are relevant information sources.

Moreover, the LTSA provides publicly available information about licensed companies on specific websites<sup>200</sup> with information about carriers' electronic authorisations for national roads with large and/or heavy vehicles, information about a company's transport manager, the type of carrier, information on drivers' training certificates and attestations, and on the issuance of digital tachograph cards.

## Denmark

In **Denmark**, the Danish Road Traffic Authority is the competent authority to ask for and receive information through the IMI "**Conditions of Establishment**" module. According to their answers to the questionnaire, the Danish Road Traffic Authority had not at that time **asked for information** from another Member State on the conditions of establishment of a transport operator and had **not yet received a request** for information about conditions of establishment. Therefore, the Danish Road Traffic Authority was not able to provide information about experience with the tool, with IMI's credible indications of infringements list or about follow-up procedures after the detection of an infringement.

Theoretically, should an infringement be detected, the follow-up procedure would depend on whether the infringement was committed by an undertaking established in Denmark or in another EU Member State. However, up until now, The Danish Road Traffic Authority has not been notified of infringements of the requirements of establishment. If an infringement were committed by an undertaking established in Denmark, the Danish Road Traffic Authority would, as the competent authority, follow up with a check on the undertaking's compliance with the requirements that need to be fulfilled to retain its authorisation

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<sup>200</sup> <https://keltra.eltsa.lt/kelappweb/web/neatsak.jsp>, <https://keltra.eltsa.lt/kelappweb/web/captcha/captcha.jsp?to=infvez>

to engage in the occupation of road transport. The infringement would then be assessed, and a decision would be taken as to whether further action needed to be taken in accordance with Article 13 of Regulation 1071/2009.

The Danish Road Traffic Authority has not used the IMI module to check on the obligation to return vehicles to the premises in the Member State of establishment. The obligation on return of the vehicle is checked by the Danish Road Traffic Authority by requiring data from the undertaking directly to prove that the undertaking has fulfilled the obligation. The data the authority usually receives are tachograph data, satellite services data, or ferry receipts (e.g. from Denmark to Sweden and vice versa).

When it comes to potential **alternative or additional means, other than the IMI module, to communicate and exchange information about transport operators' effective establishment** and to provide mutual administrative assistance, the Danish Road Traffic Authority have not used alternative communication with other Member States. Current checks on undertakings with regards to the requirements of establishment have concentrated on checking the data sent by the specific undertaking itself. For example, many of the Authority's current checks on undertakings' fulfilment of the requirement to return the vehicle to the premises in the Member State of establishment have revealed relatively few trips, and most vehicles returned within the first few days of the trip. Therefore, no case has so far presented itself, which would require a report to another Member State, or a request for information from a Member State.

The Danish Road Traffic Authority is still in the process of developing a procedure to follow up on reported infringements and verify whether the responding Member State has taken action on it; no standardised procedures have been set up so far. The Danish Road Traffic Authority has not been in contact with other authorities to investigate letterbox companies since Regulation 2020/1055 went into force.

In the area of **information sharing and interagency cooperation, i.e. cooperation with other national enforcement bodies in the investigation of a foreign-based letterbox company**, the Danish Road Transport Authority is still in the process of creating strategies, tools and procedures for cooperation with other Member States.

Though not directly involved in the national implementation of the Mobility Package I in Denmark, the **Danish tax authority** plays a key role for tackling the problem of letterbox companies, including those that are foreign-based and operate in road transport. Therefore, the **Danish Ministry of Taxation** was contacted to explain an interesting example of well-established interinstitutional cooperation that was reported by the authority during the *UDW Thematic review Workshop on Tackling under-declared employment through innovative approaches (26-27 October 2022)*<sup>201</sup>.

This case related to a Danish transport operator that was flagging out transport operations from Denmark to Lithuania. The transport company changed its head office to Lithuania, while it kept its commercial and operational activities in Denmark. To prove the establishment of a letterbox company, highly complex and time-consuming inquiries needed to be conducted. The Danish tax authority does not have access to the IMI "Conditions of Establishment" module. They use other formal communication and informal channels to exchange information about transport operators' effective establishment with foreign national authorities, namely through their own network of competent tax authorities across borders. That cooperation provides for clear and standardised procedures to follow up on a reported

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<sup>201</sup> <https://www.ela.europa.eu/en/events/thematic-review-workshop-preventing-under-declared-employment-through-innovative-approaches>



infringement. All correspondence went through the competent tax authorities in Denmark and Lithuania which were also the ones collecting the evidence for the case pursuing a risk-based strategy.

As infringements relate to tax, labour and social security-related issues, the cooperation among the competent authorities (tax authority, labour inspectorate, social security institutions) was key to collecting enough evidence to prove that operational and business activities had actually taken place in Denmark, and not abroad. The first step towards confirming the initial suspicion that the transport operations of company “XY” might be being handled through a letterbox company based in Lithuania was to conduct exhaustive research on the Danish part of the company. The alleged violations included discrepancies in the actual domicile of the management. The company claimed that the registered office was in Lithuania, while the tax authority considered the registered office, and thus also the tax liability, to be in Denmark. Finally, the court acknowledged the authorities' carefully collected evidence and concluded that the company was managed from Denmark and was therefore subject to Danish tax, social security and labour law. To make the process of gathering evidence against a letterbox company established abroad more efficient, the Danish tax authority proposed having common rules for registrations and a common registration process for businesses in the European Union, which would simplify correspondence and cooperation.

### 7.1.5 Concluding observations

- This case study demonstrates that both Member States show **well established inter-institutional ‘within country’ cooperation** in the enforcement of EU road transport rules, **with one lead agency** (the Danish Road Traffic Authority and the Lithuanian Transport Safety Administration) in charge of the overall coordination. In line with the situation in all Member States, the police also have important areas of competence in international road transport enforcement in both selected Member States. However, other agencies (e.g. the VDI – the Lithuanian labour inspectorate) are involved, often in relation to the posting of drivers. These findings seem to underpin the learnings drawn from the general research, i.e. that effective and coordinated national inter-institutional cooperation between the (many) different national enforcement agencies is a prerequisite for more effective cross-border cooperation in the area of international road transport.
- On the basis of the information obtained, it appears that the **the respective road transport enforcement agencies have limited experience so far in the cross-border fight against letterbox companies**. There has not been any direct bilateral cooperation between the respective national enforcement agencies aimed at tackling potential letterbox companies. The Lithuanian respondents did report on some relevant information exchanges with other Member States, but these contacts took place some years ago.
- The case study reveals, however, that the **national tax authorities of Denmark and Lithuania have successfully** collaborated in a specific letterbox company case involving both countries. This may point to the **critical role that tax authorities play in the cross-border detection and prosecution of letterbox companies** both within Member States and bilaterally between Member States. As the example of Denmark demonstrated, **tax authorities** are key players in verifying inconsistencies on the actual domicile of management, which has consequences for the company’s tax obligations and can be an additional relevant indicator for the “effective and stable establishment” of a transport company. The involvement of the national tax authorities in the fight against letterbox companies points to the need to have **cooperation protocols, shared access to relevant databases and information exchange mechanisms between**

**the different traditional transport enforcement agencies and the tax authorities** in Member States and across borders.

- The case study demonstrates that **the new IMI module "Conditions of Establishment" is at present operational in the two Member States**. At the time of writing, there was however little experience with its use, mainly because of its recent introduction in early 2022. Lithuania had received two incoming requests for information on the conditions of establishment of transport companies that were established on its territory whereas Denmark had not yet received any request. Both countries reported that they had not yet used the module to inquire about data on transport companies established in another Member State.
- In line with the previous observations, the Danish and Lithuanian enforcement agencies consulted confirmed that they had **not had any recent experience of inspections** to check on the conditions of establishment at the request of a foreign authority. However, they both raised the importance of **direct communication**, which is a key factor for success, in addition to the administrative investigation simplified through IMI.
- **In both Member States only one authority** (LTSA in Lithuania and the Danish Road Traffic Authority) **has direct access at the moment** to the "Conditions of Establishment" module. Likewise, access to the "Posting of Drivers" IMI Module appears to be limited to another single agency in Denmark, which in accordance with the information obtained through the national research under the main study seems to be the case in most Member States. However, in Lithuania, both the LTSA and the VDI have access to the "Posting of Drivers" Module. The case study reveals in this regard that the tax authorities in the two Member States do not seem to have access to the IMI 'Conditions of establishment' Module in spite of their critical role in the fight against letterbox companies.<sup>202</sup>
- In conclusion, whereas **the present case study was explorative** in its design and the **experiences with the operational use of the new IMI 'Conditions of Establishment' Module are very limited in both Member States** due to its recent introduction, there are some **interesting learnings**.
  - (1) The new IMI 'Conditions of Establishment' Module' when used systematically and effectively seems to have the **potential for increased and improved cooperation and information exchange between national road transport enforcement agencies in the fight against letterbox companies**, as their actual role in this domain appears at present to be rather limited. The IMI module can serve as a secure channel for rapid exchange of information before and after the inspections in the cross-border fight against letterbox companies, but this requires effective use and fast responses by the Member States involved.
  - (2) The IMI module is expected to **facilitate communication and information exchange prior to inspections upon request from another Member State**. The exchange of detailed information about the alleged letterbox case, knowledge of national authorities' competences, and information on the expected results of the investigation in the requesting MS are of utmost importance for the effectiveness of an action. One key determinant of whether an artificial company arrangement (an

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<sup>202</sup> The main study revealed that in some Member States (e.g. Austria) the Financial Police (i.e. the Tax Authority) is one of the few authorities that has access to the IMI "Conditions of Establishment" module and that it has already made extensive use of it.

alleged letterbox company) exists is the personal and economic dependency between the transport operator, the client and the drivers. Therefore, it is essential to determine where the driver's habitual place of work is, where the drivers are dispatched, who is awarding bonuses, who is sanctioning misconduct, which business activities are carried out at which location. It is important to relate the place of dispatching to the company's place of establishment and the place of the driver's employment contract, and finally to the applicable driver's remuneration at the place where he performs his activities. Generally speaking, the IMI system can be an easily accessible and standardised framework to **share such information and documentation about posting, remuneration and employment status, about transport-related and company-related issues** (e.g. personnel management documents, labour and social security documents, posting documents, vehicle-related documents, transport documentation, driving time and rest period documents, commercial contracts, tax and accounting documents, licence documentation) as well as **to exchange protocols summarising and documenting findings and observations from inspections**, including on joint and concerted inspections, and to exchange explanations, declarations or replies in written form. When such information cannot be exchanged through the IMI, **alternative means of information exchanges between Member States can still play an important role.**

- (3) The role of the national tax authorities in the fight against letterbox companies (in the road transport sector) is critical. This points to the need to have **established cooperation mechanisms (e.g. protocols, data exchanges, etc.) between the road transport enforcement agencies and the tax authorities in Member States and in a cross-border context.**
- (4) **National policies with respect to the access of the various competent inspection agencies (including tax administrations) and licensing authorities** to the IMI 'Conditions of Establishment' module could be **further assessed** in the future in the light of the plurality of authorities that are involved in investigating suspected letterbox companies and the need to have efficient and rapid exchanges and actions.

## 7.2 Case study 2: ERRU in practice: the experience of France

### 7.2.1 Introduction

The European Commission established the European Road Transport Registers (ERRU) in 2010<sup>203</sup>. ERRU is a digital message exchange system *interconnecting the national electronic registers* in the Member States in order to facilitate the cross-border exchange of information on road transport operators between national licensing authorities and enforcement agencies. ERRU has been operational since 1 January 2013, but its technical operations and functionalities have been gradually improved over the years to address the challenges relating to the technical configuration of the system and aligning it with the different regulatory frameworks applied in Member States. Following the changes to Article 16 of Regulation (EC) No 1071/2009 by means of Regulation (EU) 2020/1055, ERRU is now subject to further adjustments in order to incorporate the new risk rating system and related databases, and improve the services for its users. To reflect this, the European Commission is currently preparing a new Implementing Regulation which will further improve the system and address some of the problems that have been encountered.

ERRU, as it is conceived and functioning at present under its current 'Version 2.5', is of practical use in ensuring compliance with existing European road transport rules, especially the conditions of establishment to which transport operators must adhere. There are three main functionalities at the moment: Check Community Licence (CCL), Check Good Repute (CGR) and Infringement Notification (INF). In the new ERRU 'Version 3', some functionalities will be improved while additional functionalities will be added, such as the Notification of Unfitness (NU) and the Notification of Check Result (NCR).

The country replies to the questionnaire distributed in autumn 2022 as part of the main study contained some information on the use of ERRU by Member States' enforcement bodies. However, the information obtained was rather limited and fragmented. Not all Member States replied to the questions relating to ERRU and some country replies mentioned having no or very limited experience with the use of the three main functionalities. Some country replies (e.g. DK, HU, IT, LT, LV) reported on their experiences with the use of ERRU 2.5 and provided some suggestions for improvement. These are presented in the main study under section 6.1.

The main aim of this case study was hence to find out more about the specific practices and experiences of enforcement agencies in the Member States with the use of ERRU, to assess its functionalities and identify further areas for improvement. In addition, the case study envisaged learning more about the follow-up actions in the Member States of establishment once infringements or sanctions have been notified through ERRU.

France was selected as the main country for this case study on the one hand because of the experience of its enforcement agencies in using ERRU 2.5, and specifically with the INF functionality, and on the other because of its readiness to share experiences. Additional information was collected by means of informal interviews with some other national enforcement agencies with a view to cross-referencing the information received.

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<sup>203</sup> Regulation (EU) No 1213/2010 of 16 December 2010 as repealed by Regulation (EU) 2016/480 of 1 April 2016 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings.

## 7.2.2 Methodology of the case study

The findings presented below are mainly the result of (1) a written interview with the head of the French road transport control unit at *Direction Générale des infrastructures, des transports et des mobilités* (DGITM), (2) the country research undertaken by means of written replies to the questionnaires from 27 Member States in the third quarter of 2022 and (3) additional research/interviews conducted by the study team in spring 2023.

While the questionnaire sent to independent experts from all Member States covered the general cooperation obligations, practices and challenges in the international road transport sector and only addressed ERRU tangentially, ERRU was the main focus of the interview with the representative of the French Ministry of Transport for this case study. Several questions were looked at. *Do Member States use ERRU to communicate to the Member States of establishment all infringements (committed by foreign transport operators) detected on their territory? How do Member States notify infringements and/or sanctions to the Member States of establishment and are these notifications followed-up? What happens when Member States have imposed sanctions for infringement committed on their territories and are these systematically communicated to Member States of establishment?*

In what follows a brief introduction on the functioning of ERRU 2.5 and its main functionalities is given and then the French experience is presented: who is involved in the roadside checks in France, what exactly is checked and how are the detected infringements reported and communicated via ERRU to the Member States of establishment? What has been the experience when France has notified infringements and/or sanctions to other Member States? How do inspection agencies in France deal with incoming notifications of infringements and sanctions?

Whereas the information presented here is mainly based on the interview with the French inspection services, it was cross-checked with information received through additional informal exchanges with enforcement bodies from some other Member States.

## 7.2.3 Brief explanation of the functioning of ERRU

At present<sup>204</sup> ERRU (Version 2.5) has three main functionalities which authorised enforcement agencies can use for the exchange of information on transport undertakings:

- (1) the **Check Community Licence (CCL)**, which allows Member States to initiate a query to other Member States in order to verify whether a transport undertaking is operating with a valid Community licence;
- (2) the **Check Good Repute Functionality (CGR)**, which allows Member States to initiate a query to other Member States on the fitness of a transport manager and hence on the authorisation to operate a transport undertaking;
- (3) the **Infringement Notification Functionality (INF)** which allows Member States to notify the Member State of establishment that a transport operator has committed a serious infringement or to ask the Member State of establishment to apply a penalty to the transport undertaking.

The operation of ERRU is based on interconnected national registers maintained by the Member States. The exchange of information between Member States through ERRU takes place through a central hub

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<sup>204</sup> The Commission is preparing a new version of ERRU which will be released in 2023. This version will contain more functionalities and it should allow an exchange on a wider range of information.

system that is managed by the European Commission and which centralises the data traffic by collecting the messages sent by the Member States and then forwarding them to the receiving Member States.

ERRU functions on the basis of a points-based system for assigning a **reliability score** to individual road transport undertakings. Upon registration in a national register, transport operators obtain an initial reference score, which takes into account the size of the undertaking (based on the number of authorisations of the transport undertaking for their vehicle fleet). **When a serious infringement has been established, a certain number of points proportionate to the seriousness of the infringement are recorded into the register.** Records on infringements are kept in the system for two years after which they are removed.

As the main study reported, an updated integrated list of serious infringements was established in EU Regulation 2022/694<sup>205</sup>. This classifies serious infringements in three levels of seriousness and subdivides them into various categories depending on the nature/type of the infringement: offences relating to driving times and rest periods, offences relating to tachograph operations, compliance with working time rules, offences relating to maximum vehicle weights, speed limiting devices, the validity of the driver's licences, rules on dangerous goods, market access and animal transport rules. Following the adoption of Regulation (EU) 2022/1055 offences relating to the international posting of drivers were included.

In the event of serious and repeated violations, companies that do not comply with the regulations governing road safety may ultimately be sanctioned by the suspension or withdrawal of their Community licence or by a declaration of unfitness of the transport manager. **Penalty points will only be registered in the system when the infringement is considered irrevocable**, meaning that it will be registered only when all means of administrative or judicial review of the penalty have been exhausted.

Information obtained through national research and the additional interviews revealed that national enforcement agencies **have made considerable use** of the **CGR** and **CCL** functionalities but that usually **only one authority has direct access to the "Conditions of Establishment"** module in Member States, while inspectors involved in the operational road transport checks most often have no direct access. Another observation was that in some Member States it is the licensing authority which maintains the national electronic registers and has direct access to ERRU as opposed to the various enforcement agencies in charge of the roadside checks and checks at the premises.

The **INF** module **has also been used, although use varies from Member State to Member State.** Usage is influenced by the number of violations detected in the territory that reach a stage of non-contestability. However, from 2023 onwards, the introduction of a new functionality should enable an improvement and more intensive use of the module, as not only non-contestable infringements but also the results of controls will be notified, whether they resulted in no infringement detected or in a minor infringement (NCR-Notification of Check Result).

## 7.2.4 France: a practical example of the current cooperation between Member States through ERRU

What follows is the presentation of the **French experience in the daily use of ERRU.** The key questions aim to understand how the exchange of information is working in practice in France (from the moment an infringement is detected to the moment it is 'uploaded' in the national register) and externally (from

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<sup>205</sup> Commission Implementing Regulation (EU) 2022/694 of 2 May 2022 amending Regulation (EU) 2016/403 as regards new serious infringements of the Union rules which may lead to the loss of good repute by the road transport operator.

the moment the information is uploaded on the ERRU central hub and therefore sent to the Member State of establishment). At the same time, incoming notifications on infringements and sanctions established in another Member State were also part of the research questions.

#### 7.2.4.1 France's national electronic register and the relationship with ERRU

In France, the **national electronic register** is accessible through the web application 'GRECO' (*Gestion régionalisée des entreprises de transport routier et des contrôles*), existed already before ERRU became operational on 1 January 2013.

The GRECO application is organised around two main modules<sup>206</sup>, ACCES and CONTROLE. **The ACCES module is used by regional registry managers. This module allows for the daily management of the general data on transport entities** (company, association, individual, non-resident company), the procedures for access to the profession (keeping of registers, issuance of registration certificates, conditions of good repute, and financial and professional capacity), the management of transport permits and the issue of licences, certified copies and authorisations. **The CONTROLE module is used by land transport inspectors. This module allows the entry of general data relating to roadside checks and company checks**, the printing of documents necessary for the monitoring of criminal proceedings, the monitoring of fixed fines, the processing of notices to the public prosecutor and the monitoring of the offending behaviour of companies. **GRECO is also connected to the central hub of ERRU and allows for an exchange of information and communication with other Member States via the central hub.** To ensure that the information uploaded to GRECO was subsequently carried over to ERRU, special contact persons (**référénts**) were employed whose primary and exclusive task was to ensure that information contained in GRECO but with relevance to ERRU was transferred to ERRU.

In **order to explain how communication takes place first at internal level** (from the land transport inspector, who notes the infringement during the roadside check, to the ERRU contact person who uploads it onto the ERRU central hub) **and then at the cooperation level** (the reading of the infringement by an undertaking established in another Member State, the noting on the ERRU portal by the receiving Member State and its subsequent handling) the French interviewee was asked to provide a concrete example, which is described in the following sections.

#### 7.2.4.2 A typical French roadside inspection

Since the purpose of the exercise is to illustrate the practices of a cooperation mechanism that involves the use of ERRU, a roadside check is described below. **Roadside checks** in France are always conducted by at least the police and by the land transport inspectors. In addition, the Labour Inspectorate (in the event of suspicion of illegal employment); the URSSAF (the body responsible for collecting social security contributions) and customs officers (in the event of an inspection of transport of goods) may also take part in roadside checks, but their presence is not compulsory. Each of the respective inspection agencies is in charge of checking/inspecting those matters for which they have a precisely defined mandate.

The person interviewed from the Ministry of Transport observed that inspectors in France do not use standardised checklists during the roadside inspections and that the approach/procedure during the

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<sup>206</sup> Les services chargés de la régulation des transports routiers en région, rapport d'activité 2014, available at: <https://www.ecologie.gouv.fr/sites/default/files/bilancontrole201720182019.pdf>

checks is based on a learning-by-doing approach and hence on established practices. Additional research validated this observation, as even the national report on national transport activities for 2017-2019 (the latest available<sup>207</sup>) only mentions in the description of the control procedures and which possible elements are to be controlled but does not provide an exhaustive list.

Roadside checks of trucks and buses in France follow the following procedure during the investigation conducted by the police and transport inspectors:

The control starts with interception of the vehicle by the police.

First, the transport inspectors check:

- the driver's attestation/licence
- the vehicle's tachograph. *The tool used is the Tachoscan.*

Second, the vehicle's documents are checked.

- If the vehicle is carrying dangerous goods, for example lithium batteries, the inspectors check whether the appropriate documentation is present in the vehicle.

Third, a technical inspection of the vehicle is carried out: securing the goods, checking whether the tyres are sufficiently inflated, etc.

Occasionally, inspectors may also check the company register if there is a doubt about the good repute and financial standing of the company being checked.

### 7.2.4.3 Detection of an infringement and possible consequences

If the inspectors detect a possible violation or irregularity during a roadside check, they first verify, after accessing GRECO, if the infringement detected committed by the company (established in the EU) corresponds to the ERRU operational rules defined in the application (i.e. if the infringement is part of the ERRU infringement repository). This is because the ERRU repository on serious infringements is a closed list and other (minor or different types of) infringements may exist under French law. When the infringement corresponds to one of the serious ERRU infringements, the inspector communicates the violation to the French ERRU contact person, who can then use the Infringement Notification Function (INF) to send the necessary information (as soon as it is known and available) to the Member State where the undertaking is established. However, as mentioned above, the notification is immediate **only once a conviction or sanction is irrevocable**. This is the case when a fixed (administrative) fine is imposed for which there is no appeal possible. If, on the other hand, the French authorities merely draw up a '*procès-verbal*' of the offence during a roadside check, there is no notification at all in ERRU until a court has issued the final conviction/judgment.

As a consequence, there are three possible scenarios when an infringement is detected in France during a roadside check, depending on the type and the gravity of the infringement.

- (1) **The infringement is subject to a flat-rate fine** (with no possibility of appeal), which is imposed on the spot by the inspector and which needs to be paid immediately by the driver (or the

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<sup>207</sup> P. 13, Services chargés de la régulation des transports routiers 2017,2018,2019, available at: <https://www.ecologie.gouv.fr/sites/default/files/bilancontrole201720182019.pdf>.



company). In such cases, the inspector gives the ERRU contact person a mandate to notify the sanction to the Member State of establishment through ERRU.

- (2) **The infringement is subject to further administrative or judicial proceedings** in France. No immediate sanction or penalty is imposed during the roadside check, but the inspector will draw up an inspection report. In such cases, the notification of the infringement detected and the related sanction/penalty are not uploaded through ERRU until the final ruling or judgment has been issued.
- (3) **The infringement is considered a French national infringement but does not qualify as an infringement in the ERRU infringement repository.** In such cases, it can happen that the French inspector informally notifies the competent inspector in the other Member State, and they then decide how to proceed with the infringement. This is often the case in France-Spain and France-Belgium bilateral cooperation.

#### 7.2.4.4 Notification of other Member States of the detected infringement and/or sanction

When an infringement is detected and the corresponding French sanction agreed (whether a flat-rate fine or another sanction issued after judicial proceedings) the ERRU contact person uploads the infringement i on the ERRU central hub through GRECO. Usually, the ERRU contact person verifies the status of the notified infringement once a month. However, according to the inspector interviewed, it is not standard practice for the Member State of establishment to confirm that the notification has been taken into consideration. On the contrary, Member States of establishment usually do not react or provide further or additional feedback on the follow-up of the sanctions notified. The only replies that France have thus far received when they notified the sanctions imposed to other Member States concern 'refusals' of or 'objections' to notifications of sanctions as they are often considered to be too severe by the counterparts from other Member States. Additional interviews with enforcement agencies from other Member States confirmed that there is no functionality and/or obligation in the current ERRU (Version 2.5) for notified Member States to report back on the follow-up actions. In the new Version 3 of ERRU a new notification functionality has been included to notify the results of checks conducted (NCR), including in cases of clean checks or checks during which only minor infringements were detected.

The visual below is an extract from GRECO's interface showing the notification form connected to ERRU. The case concerns an infringement committed on the French territory and detected during a roadside check on 11 October 2018 of a truck that was owned by a transport company established in another Member State. The truck did not have a valid Community licence. The infringement is a violation of Article 3 and 8(1) of Regulation (EC) No 1072/2009 and listed among the serious infringements contained in the list of Regulation (EU) 2022/694. The case was brought before the French court of first instance which ruled in April 2019. The company was order to pay a fine and this was notified in the ERRU system. The visual furthermore shows that on 21 December 2022 (two years after the infringement was detected) the French authorities requested their counterparts in the Member State of establishment to impose an additional sanction, i.e. the withdrawal of all or part of the certified copies of the Community licence while it also indicated that the recipient had received the notification.

Figure 1: Extract from the French GRECO – notification of infringement and sanctions

ERRU - Gestion des notifications - Liste des notifications des entreprises non résidentes

Contrôle - Ctrl route: [REDACTED] - Veh avec infr: [REDACTED] (10:42) - Régl. ctrl. des transports publics ro - Notification ERRU

Réglementation PV Infractions Suites Notification

Investigation auprès de la justice

Date de la demande: 01/07/2022  
Nom du demandeur: [REDACTED]  
Recours:

Infractions

AF	Code NATINF	Nature ERRU	Code et libellé ERRU	Date infr.	Date const.	Montant
	22102	MSI	504 - Transport de marchandises sans licence communautaire en cours de validité.	11/10/2018	11/10/2018	

Sanctions infligées par l'administration

Code ERRU Infraction	N°	Type de jugement	Date de jugement	Date décision finale	Sanction infligée	Début	Fin	Exécutée
504	1	1ère instance	17/04/2019	28/04/2019	Amende			<input checked="" type="checkbox"/>

Sanctions demandées

Code ERRU Infraction	N°	Sanctions demandées	Durée de la sanction (en jour)
504	1	Retrait permanent de tout ou partie des copies certifiées conformes de la licence communautaire	

Entreprise notifiée

Raison sociale: [REDACTED]  
N° de licence communautaire: Inconnue  
Etat membre: [REDACTED]  
N° d'immatriculation: [REDACTED]  
Pays d'immatriculation: [REDACTED]  
N° de dossier: [REDACTED]

Informations sur la notification

Numéro de la notification: [REDACTED]  
Date d'envoi de la notification: 21/12/2022 14:07:31  
Nom de l'utilisateur qui a transmis la notification: [REDACTED]

Accusé de réception: Reçu  
Date réception de l'accusé: 21/12/2022 14:07:36

Annuler Supprimer

### 7.2.4.5 Notification of France of an infringement detected and/or sanction

When a notification of an infringement and/or sanction is received from another Member State through ERRU, the following procedure is followed by the French inspection services before any sanction is imposed:

- **The notification of the sanction is forwarded to the land transport control officer responsible for the area where the company is established.** They assess the nature and seriousness of the infringement notified, the company's history and the relevance of carrying out an inspection at the premises of the company.
- **The company is inspected at its business premises and a report is drawn up.** In addition, the inspectors may refer the matter to the Administrative Sanctions Committee if they consider that the sanction may be insufficient in the light of the infringements detected. The Administrative Sanctions Committee generally imposes economic sanctions, including the immobilisation of vehicles. Otherwise, only the original sanction imposed by the other Member State is enforced.
- **Once the sanction is imposed** in France, it is systematically notified via ERRU to the Member States that had established the infringement in the first place.

When the final sanction is validated and notified, the information is relayed from the ERRU central hub to GRECO, which automatically integrates it into the national risk rating system. The inspector interviewed confirmed in this respect that the current system of points being used in France has not yet been fully aligned with the new formula adopted with the implementing Regulation (EU) 2022/695<sup>208</sup> and that the functionalities for access to the risk assessment data of transport undertakings in the national registers for roadside checks have still to be implemented.

<sup>208</sup> Commission Implementing Regulation (EU) 2022/695 of 2 May 2022 laying down rules for the application of Directive 2006/22/EC of the European Parliament and of the Council as regards the common formula for calculating the risk rating of transport undertakings.

The additional interviews with enforcement agencies from other Member States confirmed very similar procedures to that applied in France in terms of follow-up actions on notifications of infringements and sanctions received from other Member States. **Sanctions imposed abroad are not automatically enforced, but the transport operator is checked at its premises and a (new) assessment is carried out**, which may lead to a confirmation and review of the sanction imposed and/or to additional sanctions. The additional interviews also confirmed that the integration of the national risk rating registers is on hold pending the adoption of the new ERRU Implementing Regulation and the accompanying technical specifications.

## 7.2.5 Concluding observations

The French case study on the use of ERRU and more in particular on the use of the infringement and sanction notification (INF) functionality in the context of roadside checks brought forth some interesting learnings. Some of these confirm the more general results obtained through the national research and replies to the questionnaire undertaken as part of the main study. However, the case study sheds some further light on enforcement practices and information exchanges between Member States at operational level. These findings have been cross-checked by means of additional informal interviews with enforcement agencies from three other Member States in order to verify whether they are of wider relevance.

- ***The case study demonstrates that in the case of France, the information exchange and communication with enforcement agencies in other Member States by means of ERRU functions rather well in terms of sending and receiving notifications, and the incorporation of the data into the national register through ERRU.*** The reasons seem to relate to (1) an adequate interconnection with the national register GRECO and (2) established procedures between the inspectors on site during roadside checks and those who are authorised to insert/upload data into the ERRU system (the ERRU contact persons). Infringements detected and sanctions imposed in France are systematically notified through ERRU to the Member States of establishment when these infringements appear on the ERRU repository of infringements. Conversely, infringements and sanctions imposed abroad automatically appear on GRECO after being processed through ERRU, and they can be consulted the inspectors during inspections and investigations. ***The additional interviews with enforcement agencies from other Member States confirmed these findings but pointed at the same time to some evidence that not all infringements that have been detected in Member States (including also some serious infringements) are actually reported through ERRU and are also not shared by means of informal exchanges between enforcement agencies from different Member States.*** Authorities interviewed from Spain, where only there are only financial penalties, confirmed that infringements and related sanctions are only notified through ERRU by the competent ERRU officer if the offence and the subsequent sanction appear on the system. If they are not part of the ERRU repository, the infringement and the sanction will not be notified. In other words, it appears that ERRU 2.5 is at present not yet used to its full extent. It is however difficult to assess the scope of this particular challenge as at present no statistical evidence is available on the number of detected (serious) infringements that have not been reported through ERRU and on their share in the overall number of (serious) infringements (both reported and unreported). However, the planned new functionalities of ERRU 3 are aimed specifically at widening the scope of infringements and sanctions that can be communicated through the digital message exchange system.

- **The case study furthermore revealed that the newly established common formula for the risk rating of companies (Regulation (EU) 2022/695) and the (technical) integration of the national risk (rating) registers into the ERRU system have not yet been implemented.** Member States have 12 months counted from the date of the entry into force (23.05.2022) of the Commission's Implementing Regulation (EU) 2022/695 to implement it, but in practice this is dependent on the adoption of the new Implementing Regulation on the interconnection of the national electronic registers. Adoption of this is expected in the summer of 2023.
- **The inspectors involved during roadside checks in checking the truck or bus and the drivers are not those who directly upload the data (infringements or sanctions) into the ERRU system.** In France this is done by ERRU contact persons, who ensure that the data contained in ERRU are also included in the national GRECO system and vice versa. This implies the need to have proper and effective transfer of data/information from the inspector during the roadside check to the ERRU contact person. Inspectors do, however, have access during roadside checks to the data in GRECO/ERRU and they can consult these data for verification purposes.

The additional interviews indicated similar practices in other Member States where road transport inspectors at operational level (in charge of roadside checks and/or checks of premises) do not directly fill out the ERRU modules, but transmit a report of the control carried out to the authorities designated for that purpose. The latter is sometimes the licensing authority in charge of the issuance of Community licences and of the maintenance of the national electronic registers and not the typical enforcement agencies. **Wider access to ERRU and the corresponding IMI modules could be considered when implementing the upcoming review and new Implementing Regulation on the interconnection of the national electronic registers. This could include both the licensing authorities and the different enforcement agencies.**

The information above points to the interlinkage between the national electronic registers of transport operators and the national registers/databases of risk (ratings), their respective purposes and main users. Risk rating registers have a direct link with the operational inspections and checks, and are ideally being fed directly by operational inspectors, whereas national electronic registers are primarily meant to centralise all the data on the transport operators and hence are connected with the process of licence applications, renewals and withdrawals, which are the responsibility of the licensing authority.

- **The case study further reveals that there appears to be a considerable time lapse between the moment an infringement is detected (during a roadside check) and (possibly) notified through ERRU, and the moment the possible sanction is uploaded into and notified through ERRU.** This is due to the peculiarities of the sanctioning regimes and possible sanctions that can be imposed for the various infringements in Member States and whether these sanctions can be appealed or not. The main study and the additional research already revealed that some countries (e.g. Spain) impose only administrative financial penalties, while in other countries (e.g. Ireland) there is no system of purely 'administrative' penalties and sanctions can only be imposed by virtue of court rulings. As court proceedings take time and are subject to appeal, the sanctions only become established after a considerable period of time. This has some interesting repercussions for the practical use of ERRU. The French case demonstrates that sanctions for possibly less serious infringements (such as administrative fines imposed during roadside checks), which cannot be disputed will appear faster in the ERRU system than other fines or sanctions which can only be established after judicial proceedings.

The latter are typically heavier sanctions for more serious infringements. Sanction regimes, the type of sanctions and sanctioning procedures are different between Member States. For instance, in Latvia, in cases where the state police detect an infringement during a roadside inspection, an inspection report, a protocol of the infringement and a decision on the imposition of a penalty are drawn up, regardless of the severity of the sanction. Nonetheless, just as in France, only when the sanction can no longer be contested will it be notified through ERRU to the Member State where the company is established. Consequently, *it is reasonable to assume that a 'milder' sanction will be notified earlier, whereas a stronger sanction (and one thus giving rise to greater dispute) will be notified after a longer period of time.*

- ***In addition, the case study reveals that the sanctions imposed by a Member State are not necessarily or automatically implemented in the notified Member State. The follow-up of sanctions imposed in France and notified through ERRU to other Member States seems not automatically to be guaranteed by the Member States of establishment.*** ERRU for the moment does not contain a confirmation functionality when a sanction has been notified, while inspection agencies in the countries of establishment may conduct an investigation and their own assessment of the validity and the proportionality of the sanction imposed from abroad (as France is doing with sanctions imposed in other Member States and notified to France through ERRU). Sanctions imposed by France and notified to other Member States are often dispute by the counterparts and not immediately enforced. It seems furthermore that the Member State of establishment can impose additional sanctions on top of those imposed in another Member State. The additional informal interviews with enforcement agencies in other Member States confirmed similar approaches when they are notified of sanctions imposed by other Member States. The notification received will lead to a check at the premises and an assessment, and result in a (reviewed or additional) sanction imposed by the Member State of establishment. **This yet again points to the different approaches Member States have in terms of sanctioning the infringements related to the road transport sector and seems to confirm that currently the extra-territoriality principle of sanctions is not being automatically applied.** For instance, in Latvia, a sanction notified from abroad triggers additional checks and investigations and can, as a consequence, lead to the withdrawal of the Community licence and the other relevant documents every time the additional checks performed reveal that the company does not meet the requirement of good repute. These kinds of initiatives, which are a consequence of genuine cooperation between Member States, can be seen as positive effects of the functioning of ERRU and the added value it gives to enforcement on European territory.
- ***In spite of ERRU's usefulness for exchanging information on transport operators, national enforcement agencies are still using informal channels of information exchange in order to convey or obtain certain information, such as information infringements and/or sanctions which are not part of the ERRU repository.*** The informal cross-border contacts between enforcement agencies from Member States remain an important channel in support of the enforcement of the EU transport rules. To give an example, the Road Transport Administration in Latvia reported that the exchange of information with Italy on violations and fines still takes place by email in certain cases. France reported that there are informal exchanges with Poland and Spain which do not go through ERRU. Although, on the one hand, the presence of informal exchanges between the various European competent authorities is a sign of positive and effective cooperation, it makes it difficult on the other to trace the information (alerts, notifications of minor infringements, etc.) which pass through these informal channels. Whereas ERRU 3 is expected to tackle this by enlarging the possibilities to communicate on infringements and sanctions of all types and hence increase the potential use of ERRU

notifications and exchanges, informal exchanges should ideally remain a complementary means of communication between the national enforcement agencies while ERRU is the primary means. In order to achieve this, it seems that further steps could be considered to encourage Member States to effectively and systematically use ERRU for a maximum possible number of exchanges on infringements and sanctions relating to the international road transport sector.

## 7.3 Case study 3: Enhanced cooperation between Member States beyond the EU framework

### 7.3.1 Introduction

The highly mobile nature of international road transport warrants a high degree of cooperation between Member States. For that reason, EU legislation on road transport lays down a comprehensive set of cross-border cooperation obligations for Member States. Amongst others and depending on the legal instrument, these obligations range from setting up an institutional and operational framework in support of the cross-border information exchange; a minimum quota for national mandatory checks/investigations/inspections; exchange of information and data with other Member States generally and upon request from other Member States; conduct checks/investigations/inspections generally and upon request from other Member States; the setting up of joint training and staff exchanges.

At the same time, it does not seem to be common practice in the EU-27 Member States to conclude bilateral or multilateral inter-country cooperation agreements outside the EU legal framework in the application of social legislation in the field of road transport. This largely stems from the conclusion in the general report that the legal framework for social legislation on road transport within the EU is harmonised and thus based on common rules, unlike the situation of road transport between the EU and third countries, where cooperation is still largely based on bilateral agreements between individual Member States and third countries.<sup>209</sup>

This case study looks at where bilateral agreements do exist, and then looks in-depth at an example of multilateral cooperation, the Benelux Treaty, and at the role of networks, with an in-depth look at CORTE, the Confederation of Organisations in Road Transport Enforcement. Both of these entities responded to questionnaires as part of this study. The intent of these questionnaires was to gather more information on whether and how these organisations could bring added value to cross-border cooperation in the field of road transport in addition to the comprehensive set of cooperation obligations laid down in the sector-specific European legislative framework on road transport. A particular focus was put on the operational output these organisations provide, amongst others the provision of guidelines, joint training and the exchange of information.

### 7.3.2 Examples of enhanced bilateral cooperation

The findings from the national research confirm that bilateral cooperation agreements between Member States on the sector-specific topic of road transport are very rare. If cooperation agreements exist, they are not tailored specifically to the area of road transport (i.e. BE, BG, CY, DE, DK, ES, FI, FR, HR, HU, IT, LV, NL, PT, RO, SI, SK). This is quite an important observation, as the analysis from the comparative report also suggested that there is a higher level of cooperation with those Member States with which sector-specific bilateral agreements are in place. For instance, Portugal reported close cooperation with

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<sup>209</sup> One noteworthy exception in this regard is the recent adoption of the Agreement between the EU and Ukraine on the carriage of freight by road, which temporarily facilitates road freight transport between and through the territory of the European Union and Ukraine by granting additional rights of transit and carriage of goods. The Agreement also effectively replaces existing bilateral transport agreements between Member States and Ukraine. The European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR) will remain applicable, thereby ensuring that the transport operations under this Agreement respect drivers' working conditions, fair competition and guarantee road safety.

Spain pursuant to a Protocol on mutual cooperation. Likewise, the respondents from Italy mentioned a high level of collaboration with France and Spain in part because of specific bilateral agreements. Austria also reported that Germany is the main country with which they cooperate, in part due to the existence of an agreement in the field of road transport. The national reports also mentioned the agreement put in place between Czechia and Estonia which aims at reinforcing cooperation and improving the working conditions of drivers in international road transport. The agreement specifically mentions mutual cooperation and exchange of information. The Swedish national report also mentions that a cooperation agreement on driving times and rest periods exists among the Nordic countries.

The findings in the main report make it possible to identify a set of factors that enable and/or hinder efficient and effective cross-border cooperation between Member States. There was repeatedly an implication that more cooperation take place between Member States interpreting EU law in a similar manner, between those with the same working practices and methodologies when conducting inspections in the area of road transport, or with which (general) bilateral agreements or protocols are in place (often with countries with which there is a shared land border as pointed out above). Personal contacts with the competent authority of other Member States are also an enabling factor in strengthening cross-border cooperation. The lack of resources and willingness to cooperate were identified as a major hindrance to more cooperation in several replies from Member States.

### 7.3.2.1 An example of multilateral cooperation, the Benelux Treaty

In Belgium, the Netherlands and Luxembourg, the Benelux Treaty<sup>210</sup> (Liege Treaty) allows for cross-border cooperation on road transport inspections. The Benelux countries use this Convention to intensify cooperation by achieving far-reaching harmonisation of inspections, exchanging information and joint training of personnel in order to save costs and making it possible for inspectors from one country to participate with full authority in inspections in another Benelux country.

#### General history and organisation

Benelux is an acronym for the geographical region comprised of the countries of *Belgium*, the *Netherlands* and *Luxembourg*. It's history dates back to 1 January 1944, when the three countries formed a customs union, abolishing intra-Community custom duties and establishing a common external tariff. In 1958, cooperation was extended to an economic union. Because the duration of this treaty was limited to 50 years, a new Treaty was signed on 17 June 2008. The current Treaty takes account of the development of the Benelux Union from being based largely on economic cooperation to a include more comprehensive political cooperation. From that point, cooperation started to focus on three core topics:

- Internal market and economic union
- Sustainable development
- Security (justice and home affairs).

The goals and objectives of Benelux cooperation were also confirmed and clarified:

1. Pursue and deepen Benelux cooperation as a laboratory within the EU;
2. Expand cross-border cooperation (between Benelux and other States and entities).

The first objective is taken up in Article 350 TFEU as well. The article provides that the Treaties will not preclude the existence or completion of regional unions [...] between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of

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<sup>210</sup> See: <https://wetten.overheid.nl/BWBV0006431/2017-06-01>



the Treaties.<sup>211</sup> Within the EU, the Benelux countries are in that way able to cooperate in an intensified way, allowing them to operate as an incubator for further EU integration.

#### Organisation

- **The highest body of the Benelux Union is the Committee of Ministers, with each Member State represented by three members of its government. The Committee adopts measures to implement the treaties and protocols of the Benelux Union. The Committee of Ministers acts through binding decisions and non-binding recommendations, which have to be taken unanimously.**
- **The Committee of Ministers is supported by the Benelux Council. The Council prepares the meetings and deliberations of the Committee of Ministers and may set up working groups and committees of experts. The Council consists of high-ranking officials of the ministries of the Member States.**
- **In addition to the Benelux Council, the Treaty provides for an Interparliamentary Consultative Council. Its function is a purely advisory one.**
- **The central administrative body of the Benelux Union is the General Secretariat. It coordinates the work of the different institutions and is responsible for administrative implementation.**
- **The uniform interpretation of the rules taken within the framework of the Benelux is guaranteed by the Benelux Court of Justice.**

### The Treaty of Liege

The Benelux countries in 2014 adopted the Treaty of Liege on deepened cooperation between the **three Benelux countries** in the development of the single EU road transport market in particular. This came into effect in 2017. The Treaty of Liege sets out to address many of the issues that are described in the main report, i.e. as monitoring and enforcement remain a national matter, EU road transport legislation is enforced by a wide variety of supervisory agencies, often involving several services with different competencies at national level. The pluralism within the implementation between Member States compounds complex and unequal cross-border enforcement of EU road transport rules as a result of:

- Different interpretation of EU road transport legislation;
- Language and translation problems;
- Diversity in monitoring and enforcement strategies, as well as in implementation;
- Variety of entities and authorities competent for supervision and enforcement.

This is exactly what the Treaty of Liege tries to counter. It explicitly mentions as its objective the need for a *common EU monitoring and enforcement approach*. The Treaty, which in principle applies only between the Benelux countries, was seen as a stepping-stone to that broader European cooperation. The Treaty contains the explicit possibility for other countries to join in its Article 35. That stepping-stone role had to some extent already been achieved through Euro Contrôle Route, a network set up in

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<sup>211</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E350>

1994 as a Benelux intergovernmental initiative and which has expanded its membership since then, as described in the next section. As stated in the Recitals of the Treaty<sup>212</sup>, one of the motivations of the deepened Benelux cooperation in road transport inspections was to take the cooperation that existed within Euro Contrôle Route into account.

Governance of the intensified cooperation between the Benelux countries in monitoring and enforcement of EU road transport legislation is provided by the **steering group**, which is composed of representatives of the three countries involved.<sup>213</sup> This steering group prepares action plans, which set out specific actions for each period on the various substantive aspects of cooperation. Additionally, several provisions of the Convention provide for the conclusion of so-called **implementation agreements**, which are the main tools for the more concrete implementation of the provisions of the Treaty (Article 26).

## Purposes of the Treaty

The Treaty has three core objectives, each of which will be dealt with in greater detail below:

- Further harmonisation of monitoring and enforcement of EU road transport legislation;
- Exploitation of economies of scale;
- Cross-border mutual assistance with inspections.

### The further harmonisation of monitoring and enforcement of EU road transport legislation

Article 4 sets out the Parties' intention to work towards further progressive harmonisation of the monitoring and enforcement of European regulation on road transport. Mutual alignment of risk classification systems as referred to in Article 9 of Directive 2006/22/EC is intended to make an important contribution to increasing the efficiency of these systems as an enforcement tool (Article 5). However, it is important to note that Commission Implementing Regulation (EU) 2022/695, which entered into force on 22 May 2022, has now established a risk rating methodology that is calculated on the basis of the number and severity of infringements of the EU road transport rules committed by road transport operators and their drivers.<sup>214</sup>

Moreover, as input received from the Benelux confirmed, in practice, additional harmonisation only happens for the time being through joint inspections, where people learn from each other and afterwards also exchange information on the rationale and background of a certain approach. However, it was also highlighted that the transport sector itself is a large proponent of taking this aspect of the Liege Treaty to the next level. The stakeholder interviewed stressed that they are aiming to go further in the near future. This can be done through the existing Benelux legal instruments, i.e. through binding agreements by means of decisions of the Benelux Committee of Ministers.<sup>215</sup>

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<sup>212</sup> [https://www.fdfa.be/sites/default/files/2022-01/1106\\_Ondertekende%20akte%20in%20het%20Frans.pdf](https://www.fdfa.be/sites/default/files/2022-01/1106_Ondertekende%20akte%20in%20het%20Frans.pdf)

<sup>213</sup> As long as only the Benelux countries are involved in this treaty, the steering group could overlap with the existing Benelux Management Committee for Traffic and Transport.

<sup>214</sup> The risk ratings of transport undertakings are recorded in national risk rating systems established under enforcement Directive 2006/22/EC.

<sup>215</sup> The drafting of such decisions can be decided by the Benelux Management Committee Traffic & Transport (which included the DGs/SGs of Mobility and Transport of the member countries).

### **Exploitation of economies of scale in terms of capacity (personnel, resources and equipment), expertise, experience and training**

Articles 6, 7 and 8 deal with the cooperation between the Benelux countries in the areas of information exchange, technical facilitation, the development and exchange of good practices and the exchange of equipment. These can be seen as means of achieving efficiency and economies of scale through cooperation. It is envisaged that an electronic platform could be set up to exchange good practices.

The input received from the Benelux on the exchange of information on (implementation of) regulations and enforcement and coordination of training confirmed that this takes place within the 'Inspection Services' Working Group of the Dutch, Luxembourg and Belgian Regional and Federal inspection services. During these meetings, agreements are also reached, for example, on exchanging inspection results (both positive and negative) with a view to risk-rating. Agreements on cooperation in the field of training are also made via this working group.

Where appropriate, a legal basis is created so that a cross-border official may have access to the data contained in the national **electronic registers** provided for in Regulation (EC) No 1071/2009 during a cross-border check (but not outside that operation) and provided that adequate protection of personal data is ensured. This is also true of other relevant registers to be designated by the parties in an implementing arrangement. For the practical modalities of this cooperation, Article 7 refers to implementing measures to be adopted jointly by the competent authorities of the Contracting Parties. In order to maintain flexibility in this regard, it was chosen not to include these modalities in the Treaty itself. When it comes the **exchange of equipment**, not only officials of the sending state but also those of the receiving state may use or operate the equipment supplied. In the latter case, the sending state provides training.

### **Cross-border mutual assistance between road transport inspection services**

Articles 9 to 21 (Chapters IV and V of the Treaty) contain provisions on cross-border inspections. Article 9 provides for the possibility of organising cross-border checks. In terms of the practical modalities, Article 10 provides that these will be regulated by means of implementing agreements. This provides the necessary flexibility, including in the light of possible differences in the competencies of officials participating in a specific action.

Article 11 sets out the **procedure** to be followed for requests for cross-border checks, and for responding to such requests. Before cross-border checks can be operationalised, Benelux countries need to send a request to another Member State with a description of the nature of the cross-border check as well as the operational necessity.<sup>216</sup> The recipient Member State must then have legitimate reasons for not complying with the request (e.g. because the required capacity is not available at that time). The cross-border inspector exercises the relevant powers in accordance with the law of the host state. Cross-border action is carried out in accordance with the legal procedures of the host state (Article 15). For the duration of the cross-border action, the cross-border official is under the hierarchical authority of the host state (Article 16).

Although the legal infrastructure is seemingly in place to allow the participation of inspectors from each Benelux country to act with full competence in each other's country, the stakeholder interviewed revealed that several areas still need to be specified at national level to implement this fully. However, the increased number of joint and concerted inspections taking place within the framework of the Treaty

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<sup>216</sup> In general, operational necessity can be said to exist when the intended result cannot be achieved without the deployment of the foreign officials.

of Liege does demonstrate the heightened level of cooperation between these three countries in the area of road transport.<sup>217</sup>

#### **Joint and concerted inspection** <sup>218 219</sup>

During checks in March 2023 in Belgium, Luxembourg and the Netherlands, the three countries' traffic inspection agencies found that almost half the trucks checked were in violation. 60 trucks were checked of which 26 were found to be in breach; a total of 41 offences was detected.

The Federal Public Service Mobility and Transport in Belgium, the Inspectorate for Environment and Transport (ILT) in the Netherlands and the Customs and Excise Administration in Luxembourg carried out checks in Kruibeke and Lamain in Belgium, Venlo in the Netherlands and Sterpenich in Luxembourg. Inspectors from the other Benelux countries were present at these inspection sites. This joint inspection focused mainly on **compliance with driving and rest periods and correct use of the tachograph**.

In September 2018, the inspectorates of Belgium and the Netherlands carried out joint inspections. Inspectors from the Federal Public Service Mobility and Transport in Belgium and the Inspectorate for the Environment and Transport (ILT) in the Netherlands carried out checks on trucks and coaches in Belgium and in the Netherlands. Luxembourg inspectors (Administration of Customs) were present as observers at the inspection location and inspectors from the Belgian Federal Public Service Mobility and Transport participated in the action in the Netherlands. During the inspections, trucks and coaches were inspected in Belgium and coaches were inspected in the Netherlands **checked for tachograph fraud and manipulation, compliance with driving and rest periods and on-board documents**. The inspectors checked a total of 50 vehicles in the Benelux (20 in Belgium and 30 in the Netherlands) of which 8 were found to be in breach (3 in Belgium and 5 in the Netherlands).

### **7.3.2.2 Interim conclusions**

This analysis of the Treaty of Liege is not intended to represent a holy grail in terms of effective and efficient cross-border enforcement of EU road transport legislation. The unique historical and geographical position of the Benelux countries does not lend itself easily to transposition to other Member States' systems. The findings in the main report have already demonstrated that geographical proximity is one of the determining factors of well-functioning cross-border cooperation between different national authorities. Nonetheless, the deepened cooperation between these three countries in the enforcement of the EU road transport acquis does provide practical lessons and good case practices which may be useful for other Member States.

At the same time, the unique cooperation arrangements between these three countries do seem to address some of the most pressing challenges identified in the main report. First, the **permanent framework** under the Treaty of Liege is pivotal since the countries involved are making an active effort to ensure that they interpret EU road transport legislation in a similar manner. This is one of the key

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<sup>217</sup> Joint and concerted inspections mainly involve the area of driving and resting times as well as tachograph fraud and aspects such as overloading.

<sup>218</sup> <https://www.benelux.int/nl/post/bijna-helft-van-vrachtwagens-in-overtreding-bij-controleactie-in-de-benelux/>

<sup>219</sup> <https://vetron.org/benelux-wegcontrole-15-van-de-voertuigen-in-overtreding/>

elements in ensuring effective and efficient cooperation between countries in the application of the road transport legislation.

Second, one of the key challenges reported in instituting cross-border action lies in the fact that there are a wide variety of methodologies and practices in the countries involved in enforcing road transport legislation in practice. The Benelux countries are able largely to overcome these challenges by **institutionalising the exchange of information** on their enforcement structures and practices, and providing a **forum to exchange good practice** and experience.

Additionally, the Treaty also makes it possible to provide a permanent forum between these three countries. This is vital since as pointed out above and in the main report, personal contacts with the competent authorities of other Member States play a significant role in strengthening cross-border cooperation.

Finally, one of the challenges reported relates to the **inadequate resources** allocated by the Member States for the enforcement of road transport legislation. One of the problems encountered in relation to the roadside checks or inspections at the premises is that there are often not enough staff to conduct effective checks in due time while inspections are often time-consuming. Additionally, the national reports mentioned that inspectors in the field often face **language difficulties**. Country replies also mention also challenges with the (un)availability of the **necessary equipment, devices and/or software** to perform the checks. The Treaty of Liege responds to this challenge by providing a framework to exploit economies of scale in terms of capacity, in terms of allowing exchange of personnel, resources and equipment, as well as the mutual provision of technical and scientific support.

However, it must be emphasised that Benelux cooperation on road transport still has not reached its full potential. This is most noticeable in the fact that inspectors from other countries are still not able to participate with full competencies in each other's territory. However, the set-up of joint and coordinated inspections within the framework of the Treaty of Liege does show the increased level of cooperation that is currently happening within the countries involved.

### 7.3.3 The role of networks

Several country reports made reference to the direct and indirect value of different international **transport network groups** in which national implementing bodies and/or enforcement agencies participate with a view to promoting the exchange of information and experiences. The main networks are described in **Table 11**. This section then describes the work of CORTE in more detail as an example of good practice.

**Table 11: Examples of transport networks/organisations within the EU**

Transport networks/organisations	Description
<b>Confederation of Organisations in Road Transport Enforcement (CORTE)</b>	The Confederation of Organisations in Road Transport Enforcement (CORTE) is a non-profit organisation established to bring together <b>national transport authorities</b> with a responsibility in the field of road transport, road security and road safety. Enforcement authorities in CORTE cooperate with <b>transport associations</b> and <b>the transport</b>

Transport networks/organisations	Description
	<p><b>industry.</b> The aim is to encourage, promote and assist the development and implementation of policies for road transport, road safety and road security in Europe and at international level, with a specific focus on the enforceability of the road transport acquis.</p>
<p><b>Euro Contrôle Route (ECR)</b></p>	<p>Euro Contrôle Route is a network of European Road Transport Enforcement Agencies. It was first established in 1994 as a BENELUX intergovernmental initiative and expanded its membership gradually. ECR members are <b>road transport inspection services</b> from 13 EU Member States (AT, BE, DE, FR, ES, HR, HU, IE, LU, NL, PL, RO, SI) and the UK. The inspection services of three other Member States (CZ, PT, SI) participate as observers. The ECR's aim is to promote coordinated cross-border checks, exchange information, organise training and develop policy papers on issues of common interest.</p>
<p><b>European Roads Policing Network (ROADPOL)</b></p>	<p>ROADPOL is a network <b>road traffic police forces</b> from all Member States, Norway, Serbia, Switzerland and Turkey. Its main goal is to strive for safer roads. It runs working groups on operational matters, technology and on tachographs. ROADPOL promotes and assists the organisation of cross-border roadside checks.</p>
<p><b>International Road Transport Union (IRU)</b></p>	<p>IRU is a network which represents national passengers and goods transport associations (associations of truck, bus, coach and taxi operators) at international level and has members in more than seventy countries around the world. IRU was the forefather of the international TIR Convention facilitating the transit of goods across borders and of the Convention on the Contract for the International Carriage of Goods by Road (CMR). The CMR defines the responsibilities and liabilities of private parties involved in the transport of goods and its documents are used for shipments between senders, recipients and transporters. It provides a record of the transport operation and contains essential information about the load carried. The TIR and the e-CMR are the standard for digitalised custom transit procedures and road transport operations.</p>

### 7.3.3.1 CORTE

The Confederation of Organisations in Road Transport Enforcement (CORTE)<sup>220</sup> is one of the largest and international (non-profit) organisations on road transport. It is a platform for more than 70 national (enforcement) authorities, transport associations and transport companies. Member organisations are public authorities from 23 EU Member States (AT, BE, BG, CZ, CY, DK, FI, FR, ES, HU, HR, IE, LV, MT, NL, PL, PT, RO, SE, SK and SI) but also from CH, IL, KS, ME, MK, NO, RS and UK, transport

<sup>220</sup> See: <https://www.corte.be/>

associations (including the IRU) and companies that are active in the transport sector (such as tachograph producers and software developers).

### Operational output

CORTE is largely focused on the concrete implementation and enforceability of social legislation in the area of road transport laid down at European level. Working across Europe and beyond, CORTE fosters cooperation between its members, the European Institutions, and the United Nations. CORTE supports research, regulatory evolution and harmonisation of rules, and promotes smart enforcement practices to achieve safe, socially fair, and sustainable road mobility. This allows for a focused and in-depth approach to addressing enforcement challenges tailored to the specific needs of the road transport sector.

As stated above, the overall focus of CORTE is the enforceability of road transport legislation. To that end, CORTE provides a forum for a range of stakeholders to cooperate, develop knowledge and exchange best practices on specific provisions of social legislation in road transport. There are currently 10 Working Groups (WG) active:

1. **Enforcement WG:** driving and resting times for commercial transport and tachograph use;
2. **Posting of Drivers WG:** enforcement of posting rules, harmonisation and challenges;
3. **Digital Tachograph Replacement WG:** enforcing the correct version of the tachograph;
4. **Calculation Rules WG:** methodology for calculating driving and resting times;
5. **Card WG:** digital tachograph cards and driving licence issuing;
6. **Card Merger WG:** merging the driving licence with the digital tachograph card (research);
7. **Innovation WG:** smart enforcement practices and new technologies;
8. **Access to Market WG:** cabotage, combined transport and posting of workers;
9. **CORTE-CITA Road Worthiness WG:** roadworthiness of vehicles;
10. **Road Cargo Theft WG:** quality incident reporting;

The most important output is the production of **enforcement guidelines and solutions**. These guidelines have a double function. First, they are aimed at **providing a common understanding** on specific articles and issues related to social legislation in road transport, for instance, as it relates to the specific rules on the posting of workers in the road sector. The working groups on "Enforcement", "Calculation Rules" and "Posting of Drivers" work on this topic by evaluating the enforceability of the *lex specialis* and identifying the main challenges that arise in this process.

Within a broader context, CORTE is currently implementing the TRACE 2 project<sup>221</sup> on the efficient and harmonised implementation of the new rules and changes introduced by the 2020 Mobility package I. The project has three main strands corresponding to the three main areas in which changes have been introduced: (1) the rules on driving/resting times and tachographs, (2) the '*lex specialis*' on the posting of drivers and (3) the rules relating to access to the market and to the profession. Transposition and implementation of the *lex specialis* on posting of drivers is not yet complete in several member countries according to the interview with CORTE. According to CORTE, many countries are still struggling with the administrative set-up and (new) collaboration arrangements of the various enforcement authorities, especially transport entities and labour entities.

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<sup>221</sup> <https://www.corte.be/corte-activities/992-trace-2>

In addition to reaching a common understanding of the sector-specific rules, CORTE also intends (together with its members) to **ensure harmonised enforcement of EU road transport legislation**. The basic idea is to develop methodologies and practices that aim to ensure consistency and uniformity in enforcement practices among member countries. In that way, CORTE also functions as a capacity-building initiative to enhance the skills and knowledge of enforcement personnel. One example mentioned related to the development of concrete steps on how to proceed in practice when enforcing the posting provisions during roadside checks. Overall, these guidelines should result in a reduced administrative burden, and increased efficiency in enforcement procedures. Additionally, these guidelines serve to identify emerging trends and challenges, which in turn should clear the way for proactive measures to address these potential issues. During the interview with CORTE, it was mentioned that these guidelines seem to be used frequently in practice. This may be in large part due to the fact that the participants in these working groups are real-life practitioners who are effectively enforcing the rules on the ground in their daily operations. In the estimation of CORTE, the open debate culture allows enforcement authorities to share their thoughts without having to take an official position.

CORTE also serves as a platform for coordination and cooperation among the different stakeholders involved in road transport enforcement. In other words, CORTE performs an important **bridging function** between a wide range of stakeholders. In that way, it is essentially building a form of *community of enforcers*.

- First, CORTE bridges the gap **between enforcement authorities in different Member States** by reaching a **common understanding of the substantive rules** at a play as well as trying to reach a harmonised enforcement of EU road transport legislation. Added to that, CORTE provides an excellent forum for establishing **personal contacts** with people operating in other Member States. This remains an essential prerequisite of effective cross-border enforcement of the rules in road transport, notwithstanding the obvious value of online tools such as the IMI and ERRU.
- In addition, although unintended during its inception, CORTE provides opportunities to create synergies **between enforcement authorities within Member States themselves**. This is essential as the complex and technical nature of road transport legislation warrants optimal coordination between the wide variety of enforcement authorities within Member States responsible for the application of road transport legislation. Although the administrative set-up differs from country to country, CORTE mentioned that **labour authorities are currently less represented in their organisation**. However, CORTE is actively attempting to resolve this issue. This is vital, as one of the challenges that CORTE mentioned is that much discussion is focused on the fact that countries are still struggling with effective collaboration within their national systems. However, the adoption of the 'lex specialis' on posting of drivers has accelerated this transition, with more labour authorities taking part in the discussions now.
- Furthermore, CORTE is uniquely positioned to **foster collaboration between the private sector and enforcement authorities**. In other words, CORTE attempts to bridge the gap between the enforcers and those who are enforced. By bringing together public and private entities, CORTE facilitates the identification of critical road transport issues, provides its members with a mutually beneficial way of addressing, discussing and solving these issues, and creates synergies through networking and by combining capacities to better address common challenges. In addition to the representation of transport associations in CORTE, producers of the technology necessary for the enforcement of road transport legislation are also represented. For instance, tachograph manufacturers and software developers are part of the discussion as well (thus bridging the gap between the raw data and whether rules are abided by).



- Finally, CORTE also promote **dialogue and cooperation between its members and the EU institutions**, most notably DG MOVE and ELA.
  - CORTE participates actively in expert groups set up by the European Commission and works closely with DG MOVE on some crucial issues such as driving and resting times, and the smart digital tachograph, by providing assessments of the main enforcement questions linked to EU legislation on road transport.
  - CORTE also highlighted explicitly the added value ELA brings to the table in terms of enforcement in this sector-specific field. It was suggested that a **continuation of further synergies** between these two organisations would be beneficial, with CORTE being able to bring relevant expertise in the field and assisting cooperation between national practitioners and ELA. As ELA and CORTE both have a specific mandate to support cross-border administrative cooperation on the social aspects of international road transport sector legislation<sup>222</sup>, a deepening of the exchange and extensive involvement of CORTE in ELA's existing initiatives would avoid potential duplication and should result in more effective action in the field of road transport enforcement. This is certainly true since the adoption of Mobility Package I which introduced significant changes to the sector-specific legislation and given that both ELA and CORTE are playing a pro-active role in supporting the Member States' authorities in the cross-border enforcement issues arising out of these rules by promoting a common understanding of the applicable rules by the competent Member States' authorities.<sup>223</sup>
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At the same time, it must be recognised that CORTE also faces important limitations. First, in terms of membership, only 23 EU Member State authorities are currently active in CORTE, with Germany, Greece, Italy, and Luxembourg as the exceptions. Added to that, it became clear from the interview –as mentioned above – that labour authorities are underrepresented at the moment in CORTE. This is a major obstacle as labour authorities are key players in the effective enforcement of road transport legislation, not in the least because of the newly implemented posting rules for drivers. These authorities often play a central role in their respective national systems in applying these.

Finally, CORTE's mandate in the area of road transport is not limited to the EU social rules in road transport, but extends to a wider range of issues related, amongst others those related to the emergence of new mobility services (such as bike-sharing, e-scooters, car-sharing and ride-hailing) and transport infrastructure. Combined with the fact that CORTE only has limited resources, this wider mandate might have repercussions for the effectiveness of its regulatory impact on the areas related to the social aspects of the road transport sector which fall under ELA's mandate. In fact, , it must also be recognised that the regulatory impact of CORTE may be limited. As an organisation which predominantly relies on the goodwill of its members to be effective, CORTE lacks the power to enforce its decisions or to impose penalties on non-compliant entities. This raises the question of the concrete impact of its guidelines in practice. The interview with CORTE confirmed that there is a lack of robust evidence of this.

### 7.3.3.2 Interim conclusions

**CORTE complements the cooperation obligations of the European Union (EU) in the area of road transport in several ways.** Amongst others, it does this by producing guidelines aimed at providing a

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<sup>222</sup> Article 1(4) of Regulation (EU) 2019/1149.

<sup>223</sup> See also: <https://www.ela.europa.eu/sites/default/files/2022-03/ela-framework-action-road-transport-2022.pdf>

common understanding of specific articles and issues, and developing concrete methodologies on how to enforce EU road transport legislation in practice. Furthermore, CORTE offers valuable opportunities not only for connecting relevant stakeholders across Member States in the area of road transport, but also across enforcement authorities functioning within a single Member State (especially transport and labour authorities).

In this role, CORTE is an answer to some of the most pressing challenges revealed in the main report. First, the country reports showed that there are different interpretations of the EU rules across Member States but also within Member States. CORTE's activities try to combat exactly that by producing guidelines aimed at providing a common understanding on specific articles and issues. Second, the country reports repeatedly flagged the complexities enforcement agencies are confronted with when enforcing the (new) EU rules. CORTE aims to ensure harmonised enforcement by developing concrete methodologies on how to enforce EU road transport legislation in practice.

Moreover, the national research also showed that national enforcement agencies are often unaware who their counterparts are in other Member States and that Member States experience difficulties in identifying the direct counterparts with whom they need to engage for information exchanges. CORTE's platform offers valuable opportunities in this regard by connecting relevant people working in different Member States, but also those working in enforcement authorities within one Member State (especially transport and labour authorities).

CORTE mentioned repeatedly that one of their main aims is to build 'a community of enforcers'. The association between enforcement authorities and transport operators within the framework of CORTE is exactly that. The cooperation and collaboration between the enforcers and those who are enforced can only strengthen potential compliance with road transport legislation by improving common understanding and awareness on the EU rules.

That is not say that CORTE does not suffer from several important limitations, which mainly relate to a lack of representativeness and a restricted regulatory impact.

### 7.3.4 Concluding observations

Despite the far-reaching harmonisation of EU road transport legislation, enforcement practices still vary among the Member States due to differences in administrative organisation. Given the highly mobile nature of road transport operations, this poses challenges in the achievement of consistent and uniform cross-border enforcement across Europe, which results in inconsistencies and gaps in enforcement effectiveness. **Enhanced multi-lateral cooperation arrangements between Member States should aim at improving in these areas, most notably through the exchange of information and effective cross-border enforcement practices.** CORTE and Benelux were presented in this case-study as long-standing good practices which are now complemented by the role of the European Labour Authority. These two cooperation arrangements are intended to serve as examples of good practices for other Member States to demonstrate the potential advantages of increased and targeted multi- and bilateral cooperation arrangements which complement the existing EU institutional framework in the field of cross-border road transport, including the central role of ELA in this area.

Both the cooperation between the BENELUX countries and CORTE are prime examples of target cooperation arrangements between Member States in the field of road transport outside the EU legal

framework. Although CORTE and the BENELUX share the same goals, namely improving the effective and efficient enforcement of road transport legislation, the path to reaching that goal is slightly different. Whilst CORTE is mainly focused on the (theoretical) harmonised understanding of the underlying enforcement and cooperation obligations in this field by providing an (informal) forum where a wide range of stakeholders in the field of road can discuss their views openly, the BENELUX's main focus is more directly operationally oriented through the exploitation of economies of scale and the organisation of joint and concerted inspections.

Although it is obvious from this case study that both the BENELUX and CORTE suffer from important limitations, they do illustrate the added value of bilateral agreements between Member States in the field of road transport, including sustained cooperation within the existing transport network groups (i.e., CORTE in this particular case study). It is essential to further explore and support the possibilities of specific and tailor-made cooperation arrangements which do not counter but complement the EU institutional cooperation framework in the area of road transport, and assists in overcoming some of the most persistent challenges in (cross-border) enforcement practices. In that respect, ELA could continue to support the involvement of a lively community of organisations active in supporting the provision of information, cooperation and enforcement of rules on different aspects of the relevant legislation. The cooperation between ELA and other stakeholder communities for that matter is an essential method for effective and result-oriented action, thereby also avoiding duplications. In line with what has been set out in the Framework for Action on Road Transport, ELA should continue to mobilise its resources to support stakeholder communities, feeding in and where relevant reinforcing these networks of cooperation.

## 8.0 Operational conclusions

One of the main objectives of this report is to develop and formulate **operational conclusions** with a view to **improving the cooperation** between national enforcement authorities from Member States and hence to contribute to **more effective enforcement** of the relevant EU legislation. When such recommendations are related to the tasks outlined in Article 4 of Regulation (EU) 2019/1149<sup>224</sup>, ELA could play a role in the follow-up of these recommendations taking into account its different tasks:

- the facilitation of *access to information*;
- the facilitation of *cooperation and the exchange of information* between Member States with a view to the consistent, efficient and effective application and enforcement of relevant Union law;
- the coordination and support of *concerted and joint inspections*;
- carrying out *analyses* and *risk assessment* on issues of cross-border labour;
- support to Member States with *capacity building* regarding the effective application and enforcement of relevant Union law.

The operational conclusions presented here are based on the cooperation challenges identified during the research conducted for the present study. The research consisted of desk research performed by the central study team, questionnaires and interviews with stakeholders conducted by independent experts in the Member States in the third quarter of 2022, and additional research and interviews with national enforcement agencies as input to three case studies.

The **operational conclusions are grouped in the following two clusters**:

1. Actions to support national authorities and enforcement agencies in Member States;
2. Actions to support cross-border cooperation between Member States.

To the extent possible, each cluster is developed in accordance with the following structure:

1. Needs/challenges identified during the research;
2. Existing EU or national (legal) instruments that are available and/or could be further complemented or improved;
3. Operational conclusions on the previous points.

### 8.1 Conclusions on support to national authorities

The operational conclusions aimed at **actions to support national authorities can be further structured in two main categories**:

1. Ensuring increased and more effective coordination between different national competent authorities;
2. Continuing to build the capacities of national competent authorities.

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<sup>224</sup> Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1149>.

### 8.1.1 Ensuring increased and more effective coordination and cooperation between different competent authorities

The national research revealed that the implementation and enforcement of the EU rules on international road transport operations within Member States requires the involvement of **numerous public bodies and agencies at national, regional and local level**: whereas the **licensing** of transport operators and **certification** of transport managers has been entrusted to specific national authorities, transport ministries/authorities, traffic/road transport police, labour ministries/inspection services and social security institutions play a role in the daily **enforcement** of the different dimensions and provisions of EU road transport legislation. Besides these various enforcement agencies that are concerned with road transport rules, national tax authorities and inspection services are also often involved and/or in the lead when undertakings are not complying with national company or tax legislation, such as in the detection and prosecution of letterbox companies.

**Responsibilities are spread and sometimes fragmented**, while some country replies also mentioned **some degree of overlap of competencies and responsibilities** between the different agencies. Country replies (e.g. Latvia) emphasised the need for detailed national rules on the competences and cooperation of the different competent national bodies. French stakeholders reported that a major challenge lies in the fact that there is a lack of knowledge of the respective competences among the different national actors. Other country replies, such as Austria's, mentioned that some degree of overlap is almost unavoidable, given the complexity of the rules and the need to involve different agencies if enforcement is to be adequate.

The findings from the national reports revealed the following **cooperation practices** within Member States' systems which have **a clear positive effect on the cooperation and flow of information** between the different national enforcement agencies:

- (1) One single coordinating body and/or permanent coordination/working groups;
- (2) Inter-institutional cooperation agreements and protocols;
- (3) 'Shared'<sup>225</sup> inspections;
- (4) Interconnection between national databases.

### 8.1.2 The role of one coordinating enforcement body and of permanent coordinating meetings/working groups/panels of the various enforcement authorities

While the **duty of each Member State to set up a body to coordinate the national enforcement strategy** for the entire legislative package relating to international road transport is already part of Directive 2006/22/EC, as amended by Directive 2020/1057/EU, the research findings demonstrate that this is a pressing need which is felt in many Member States. It follows from the national reports that apart from the authorities entrusted with the **licensing of transport operators**, a multitude of **enforcement agencies** in Member States have been made competent to check and enforce different parts of the prevailing rules. Due to the complex nature of EU international road transport legislation, labour mobility in cross-border transport is at the crossroads of many different policy areas, such as

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<sup>225</sup> The term 'shared' inspection is used in the national context in order to distinguish these from the concept of 'concerted and joint' cross-border inspections.

transport, road safety, taxation, employment and social security. For this reason, it is difficult to embed the wide array of enforcement responsibilities in international road transport in the national administrative institutional set-up of Member States. Whereas different pieces of EU legislation require Member States to set up specific national liaison offices or contact points, the national research shows that these responsibilities are spread over different national ministries and enforcement bodies in the Member States. The national contact points or liaison bodies designated by Member States in relation to the EU rules dealing with the access to the occupation of road transport operators are usually different from those under the new EU legislation on the posting of drivers, while rules on driving times and rest periods seem most often to be entrusted to the national contact points of the former. In addition, national liaison functions concerned with EU social security coordination are assigned to other ministries and/or (social security) institutions. Finally in all Member States, the national (road traffic) police also have competences, specifically in relation to roadside checks on trucks and buses.

Some country replies reported on the existence and effective functioning of one **single coordinating body** (e.g. the Road Traffic Authority in Denmark and the Transport Safety Administration in Lithuania) and on established cooperation agreements with labour inspectorates (e.g. Lithuania). Other reports mentioned the establishment of **(quasi-) permanent coordinating meetings/working groups/panels** (e.g. CY, DE, ES, NL, PT, SI, RO).

**A valuable avenue could be to strengthen the role of a/the single coordinating body** in each Member State dealing with international road transport legislation as the single body assigned with the task of coordinating the drafting and monitoring of the national enforcement strategy and operational plans. Equally, this body could be entrusted with the responsibility of ensuring an unambiguous understanding of the EU rules on international commercial road transport among the national actors while it could also play a role in ensuring a clear division of competences and operational responsibilities between national agencies.

Effective and efficient internal cooperation in the area of road transport also presupposes **coordination and cooperation arrangements as well as coordinated planning of inspections between the national, regional and local levels** in the Member States as several countries replies mentioned. For instance, in Portugal, inspection bodies from different areas meet every last week of the month in Lisbon to prepare their inspection actions for the following month. In Spain, coordination with the Regional Departments of Transport is achieved through the General Commission of the Regional Directors General of Transport, which holds coordination meetings at least every quarter to provide guidelines for action and to establish common criteria. In Belgium, 'district cells' are led by the labour auditor and composed of representatives of the various inspection services, the police, a magistrate from the public prosecutor's office and a representative of the Bureau of the Social Intelligence and Investigation Service. The labour auditor is in charge of monitoring whether the inspection targets are met and making adjustments where necessary.

Additionally, many country replies made reference to the adoption of **mandatory national enforcement strategies** (e.g. BE, ES, FI, FR, HU, IT, PL, PT) and operational plans, in line with the requirements set out in the prevailing EU legislation. However, the national replies contained very little information as to **how the national enforcement strategies are developed and implemented**, and which enforcement agencies are involved and to what extent.

The new provisions introduced by Regulation (EU) 2020/1055 amending Regulation (EC) 1072/2009 stipulate in Article 10a and Article 17 an obligation to have *coherent* national enforcement strategies, to implement *concerted checks on cabotage operations* at least twice a year, and to *report* to the Commission on the number of Community Licences, Certified True Copies and driver attestations that

have been issued and are in circulation as well as on the enforcement operations performed in line with the national strategies. These new cooperation obligations add to the existing cooperation obligations, such as the minimum quota for inspections, the obligation to conduct concerted inspections at least six times a year and the reporting obligations described in the previous chapters of this report.

***Conclusion No 1: Horizontal and vertical inter-institutional coordination between the different competent national authorities and enforcement agencies across the different policy domains could be further developed, for example through an integrated national enforcement strategy and operational plans.***

### 8.1.2.1 Inter-institutional cooperation agreements

Some replies from Member States mentioned the **lack of standardisation of the information and data (exchange)** between the different competent authorities in Member States (e.g. IT, LV, NL, SI). For instance, in Italy, the traffic police (*Polizia Stradale*) mentioned the lack of standardisation of information as an obstacle to their cooperation with other competent authorities. This is in practice often left to good practices and relationships established at the local level between the territorial inspectorates and the traffic police sections at provincial level. In the Netherlands, the Environment and Transport Directorate explained that they have been given guidelines on how to investigate but not on how to exchange information, which is considered one of the critical challenges.

The spread and overlap of competences in the field of road transport indicate the need to develop **cooperation arrangements and smooth information exchange procedures** between relevant authorities to effectively and efficiently enforce the rules laid out in European legislation. Belgium, Bulgaria, Italy, Spain, France, Ireland, Portugal and Sweden all reported that they have information exchange agreements or protocols concluded with different enforcement agencies. While country replies reported the need for such cooperation arrangements at **national level**, they equally referred to the importance of having such agreements at **lower (regional or local) levels** of the administration. Indeed, special emphasis must also be given to the interdependencies between the local, regional and national level. Examples of inter-institutional protocols from Member States could be examined and experiences shared between the Member States, while it is worth considering developing some guidance on the design of such protocols.

Some country reports (e.g. DE, IE, PT, SE, SI) also mentioned that **GDPR rules** sometimes restrict information and data exchanges between the institutions while it is not always clear if these restrictions are in fact in line with EU GDPR rules. This points to the need to clarify GDPR limitations and rules vis-à-vis the enforcement of EU commercial road transport provisions.

***Conclusion No 2: Formal cooperation arrangements (protocols, data exchange agreements, inter-institutional working groups, etc.) between all national authorities concerned and enforcement agencies within Member States could be further developed (which could also include the road transport/traffic police and/or the tax authorities), while extending them to local operational levels.***

### 8.1.2.2 Shared inspections involving various enforcement authorities within Member States

Whereas roadside checks in the Member States always involve the police, country replies (e.g. BE, FI, IT, NL) often indicated the usefulness of **'shared' checks and inspections** in which several national enforcement agencies are involved. In some countries, e.g. Belgium and the Netherlands, guidelines and/or checklists have been adopted for such inspections. Other country reports (e.g. FR, HR) mentioned the practical challenges shared inspections pose in terms of availability and planning of staff and resources.

**Conclusion No 3: 'Shared' inspections between the various enforcement agencies in Member States could be intensified. An ex-post evaluation of each shared inspection could help detect any shortcomings in the procedure, which could be rectified or improved in future investigations. Furthermore, consideration could be given to sharing the experiences of national 'shared' inspections between Member States or developing good practices.**

### 8.1.2.3 Interconnection between the national databases and other technicalities

Another challenge mentioned in the country reports related to the use and interconnection of the different databases in the Member States. This **hinders effective cooperation and information flows** between the various enforcement authorities **because of the technical obstacles related to the exchange of data**. For example, in France, the reply highlighted how the regional nature of transport company registers and differences in their technical design constitute a problem and that companies which have been fined for various offences in one region simply changed their region of establishment. The information on infringements in one regional register is not automatically entered into other regional registers. The reply from Lithuania also mentioned technical and interconnection difficulties between the different national databases. Other country reports emphasised the importance of these national electronic databases and the inter-register exchange of data between the different databases (e.g. BG, IT, PL).

**Conclusion No 4: The interconnection of the different national databases used by the respective national enforcement agencies should be improved, in line with the legal framework and taking into account the limitations imposed by the GDPR.**

## 8.1.3 Continuing to build the capacities of national competent authorities

The national research identified several challenges concerning the human, institutional and technical capacities of the enforcement agencies in international road transport. They can be classified in three main categories:

- (1) Fragmented and partial knowledge of all dimensions of the relevant EU legislation among the different enforcement agencies;
- (2) Complexities specific to the enforcement of the EU road transport rules and differences in interpretation;
- (3) Resource-specific challenges including technical constraints.



### 8.1.3.1 **Fragmented and partial awareness among national enforcement agencies and knowledge of all dimensions of the relevant EU legislation in international road transport**

The EU rules on international road transport in combination with EU labour mobility and social security coordination legislation affect road transport companies and their highly mobile drivers in many ways. The relevant EU legislation constitutes **a set of inter-related provisions of varying and an often highly technical nature, which are difficult to enforce in individual situations** of EU cross-border transport operations. The national research revealed that many national enforcement bodies are involved in Member States with different, complementary but sometimes also overlapping responsibilities. This points to the need for an adequate knowledge and understanding of (1) the legislative framework in all its dimensions and (2) the mutual responsibilities of all enforcement agencies involved.

The country research and case studies undertaken under the present assignment revealed that **only a very few officials** in Member States **have an in-depth knowledge of all the different dimensions and provisions of the EU legislation** concerned with international road transport, including **of the most recent changes** adopted as part of Mobility Package I. The same can be said of **the cooperation measures and obligations that the EU provisions entail**. While this may be due to the fact that responsibilities for enforcement are divided among several public bodies and inspection services in Member States, differences can also be detected between the national and more local levels of the administrative organisation of these national enforcement agencies.

It is clear that more advanced **knowledge on the prevailing EU rules and cooperation obligations is primarily concentrated at the central levels of those authorities that have been assigned with the licensing requirements and enforcement of the EU legislation on access to the occupation of road transport operator**. These are usually the Ministries of Transport or related inspection agencies. In most Member States these authorities and enforcement agencies are also responsible for monitoring the implementation of EU legislation on driving times and rest breaks. However, the EU posting and social security coordination rules applicable to international transport drivers are often not within their mandate as these responsibilities are usually assigned to Ministries of Labour and to the Social Ministries (and/or their related inspection services) respectively. While national police (road transport/traffic police), which in all Member States are involved in the roadside checks, generally perform part of the inspection actions during these roadside checks, their focus is generally not on matters such as compliance with the posting rules and social security affiliation but rather on the road safety dimension, technical compliance of the freight and vehicles, and in some instances also on the compliance with driving and rest times. This seems to indicate that the **knowledge of and hence experience with the different pieces of EU legislation applicable to international road transport is spread among different enforcement bodies**. Staff members from the different implementing bodies and national enforcement agencies in general have a good knowledge of their own responsibilities and areas of work but less of those of the other enforcement agencies. The operational inspection services at more regional/local levels seem to be more affected by this than the central levels.

Whereas country replies and interviews demonstrated that the EU provisions on road transport are not yet fully known by all inspection agencies at all levels of their respective organisational structures, some country replies mentioned at the time of writing of this report the existence of **enforcement practices that are still adapting to EU rules**, such as the example of the verification of employment contracts and pay slips during roadside checks in the case of posted drivers or the (risk of) potential preferential

treatment of transport companies established in third countries<sup>226</sup> reported in some instances. These findings demonstrate that the (newest) EU provisions have not yet been fully applied in enforcement practices at the operational level. Whereas the former example is likely to be resolved once the new provisions have been fully incorporated into the enforcement practices of the inspection services concerned, the latter may in some Member States be a larger challenge as these countries often do not have alternative systems for registering posting declarations for companies established outside the EU. **Monitoring the access of third country operators to the EU market** remains a particular challenge that requires specific cooperation and action from Member States. Finally, the country replies and case studies revealed that the **cross-border enforcement of penalties and sanctions** constitutes a major challenge and that enforcement bodies are uncertain about the correct interpretation of the EU legal provisions on cross-border enforcement of the sanctions and on the consequences of recent CJEU case law.

The fragmented knowledge of all dimensions of EU rules on international road transport across all enforcement agencies and the reporting of operational practices that are not in accordance with EU law seem to justify the need for more **(targeted) information provision** to and **training** of all the implementing bodies and enforcement agencies involved in the enforcement of the different rules in Member States.

In terms of **information provision**, mention should be made of **several official websites and online documents** which contain useful guidance and explanations on the application of the relevant (new) EU legislation on international road transport, e.g. the transport pages of the Europa site which contains FAQ sections on various topics, such as the rules on driving and rest times<sup>227</sup>, the rule regarding the return of the vehicle<sup>228</sup>, the rules on cabotage operations<sup>229</sup> and the rules governing the posting of drivers in the international transport of goods and passengers.<sup>230</sup> Guidance notes and clarification notes provide further detailed information on the application of the rules on driving and rest times.<sup>231</sup> This guidance is at present mainly drafted in English (but automated online translation is available). Equally, the ELA website contains some useful information on the enforcement of the EU road transport rules including some presentations on the introduction of the three new IMI Road Transport modules and some summaries/press releases on joint and concerted inspections in the road transport sector.<sup>232</sup> Other reference platforms are maintained by organisations running international transport networks, such as CORTE but the information is generally only accessible for the member organisations and not for the general public. Whereas the information provided is very useful with a view to better understanding the prevailing legislation, **additional and complementary information initiatives** could be considered targeting the operational needs of the various national enforcement agencies concerned, such as training manuals, analytical reports, directories with contact details of competent authorities, toolkits, information campaigns and the like.

Some country replies (e.g. ES, FI) made reference to **training activities** that are organised for different implementing bodies and enforcement agencies on the practical implementation of the EU rules in international road transport and their contribution to more effective results in the operational enforcement

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<sup>226</sup> Article 1 (10) of the Directive 2020/1057/EU lays down that transport companies based outside the European Union must not be given preferential treatment compared to transport companies based in the European Union.

<sup>227</sup> [https://transport.ec.europa.eu/transport-modes/road/mobility-package-i/driving-rest-times\\_en](https://transport.ec.europa.eu/transport-modes/road/mobility-package-i/driving-rest-times_en)

<sup>228</sup> [https://transport.ec.europa.eu/transport-modes/road/mobility-package-i/market-rules/rule-return-vehicle-applicable-21-february-2022\\_en](https://transport.ec.europa.eu/transport-modes/road/mobility-package-i/market-rules/rule-return-vehicle-applicable-21-february-2022_en)

<sup>229</sup> [https://transport.ec.europa.eu/transport-modes/road/mobility-package-i/market-rules/rules-cabotage-applicable-21-february-2022\\_en](https://transport.ec.europa.eu/transport-modes/road/mobility-package-i/market-rules/rules-cabotage-applicable-21-february-2022_en)

<sup>230</sup> [https://transport.ec.europa.eu/transport-modes/road/mobility-package-i/posting-rules\\_en](https://transport.ec.europa.eu/transport-modes/road/mobility-package-i/posting-rules_en)

<sup>231</sup> [https://transport.ec.europa.eu/transport-modes/road/social-provisions/driving-time-and-rest-periods/guidance-notes-implementation-community-rules-driving-times-and-rest-periods-professional-drivers\\_en](https://transport.ec.europa.eu/transport-modes/road/social-provisions/driving-time-and-rest-periods/guidance-notes-implementation-community-rules-driving-times-and-rest-periods-professional-drivers_en)

<sup>232</sup> <https://www.ela.europa.eu/en/road-transport>

practices. However, the organisation of training in which several enforcement agencies are involved is not systematically mentioned throughout all national replies and the information provided remains rather limited. The case study on bilateral and multilateral cooperation revealed that it is only recently that labour inspectorates have become more and more involved in the activities and working groups of the international transport networks as previously only the transport enforcement agencies took part<sup>233</sup>.

Training on the EU legislation and enforcement practices has been offered and several initiatives have been taken by the European Commission, ELA and the transport networks, and within Member States, it is clear from the research that more is needed. (Further) **training in Member States and joint training** on the enforcement of the EU rules on road transport involving not only the transport inspectorates but also the labour and social ministries (or inspection agencies), the police and perhaps also the tax inspectorates at the different levels of their respective structures (national vs local) would undoubtedly not only increase the knowledge of the individuals concerned, but also be likely to contribute to improved cooperation due to the informal contacts created. In accordance with the findings from the national replies, **regional or bilateral training** or training for authorities from Member States which have already established more enhanced cooperation could be considered.

ELA could play a vital role here in continuing its work to further promote and organise training and networking events in which the relevant authorities can meet and network, including social partners at national and EU level. This could be in the form of digital or live events on location. A specific example of ELA's work in this area are the thematic workshops organised as part of the Undeclared Work Platform<sup>234</sup> and the annual training events on labour mobility for young practitioners from the national enforcement agencies.<sup>235</sup>

Depending on the target groups, the training subjects could be customised: informative (e.g. explaining legislation, case law) or more practice-oriented (e.g. how to identify cabotage operations using tachograph records, how to organise roadside checks, etc.) Various training formats could be thought of: in person/online, thematic workshops, peer-learning, training events and staff exchanges.

***Conclusion No 5: There should be a continuous and sustained effort to offer training and mutual learning on (the application of) EU legislation in the international road transport sector to all national enforcement authorities, notably including the labour and social inspection agencies, road transport/traffic police and tax inspectors while also addressing the needs of the more local operational inspectors.<sup>236</sup> Additional targeted information and existing guidance on the application of the relevant EU legislation in all EU languages should be promoted.***

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<sup>233</sup> One of the main reasons seems to be the recent adoption of the 'lex specialis' on the posting of international transport drivers, the enforcement of which is often entrusted to the labour inspectorates in Member States. The enforcement of EU road transport legislation is typically entrusted to ministries of transport or affiliated agencies in Member States while the enforcement of EU posting rules is often entrusted to ministries of labour and related inspectorates. The new 'lex specialis' seems to have contributed to more enhanced cooperation between these two types of enforcement bodies, which makes it specific to the enforcement of the EU international road transport rules.

<sup>234</sup> <https://www.ela.europa.eu/en/undeclared-work>

<sup>235</sup> ELA training on labour mobility for young practitioners, 4-6 July 2022, Brussels, Belgium and 10-12 May 2023, Valletta, Malta.

<sup>236</sup> The national research and interviews did not specifically target the transport companies or the drivers' representative organisations since the focus was mainly on the (public) implementing bodies and enforcement agencies in the Member States. Further research may be needed in order to assess if and to what extent the (new) EU provisions on international road transport are sufficiently known in the transport sector, including among national social partners.

### 8.1.3.2 Complexities with enforcement and differences in the interpretation of EU legislation

With regard to the needs/challenges described in the main report, the national research and additional bilateral contacts with enforcement officers as part of the research for the case studies demonstrated that the EU legislation **is not always effectively and/or adequately applied/enforced** in practice and that enforcement practices differ across Member States.

Country reports and case studies often flagged the **complexities** enforcement agencies are confronted with when enforcing the (new) EU rules in practice. Areas observed as particularly complex were the **classification of transport operations** (i.e. bilateral, cabotage, cross-trade and transit operations) and the **calculation of the wages and social security contributions of posted drivers** and of **drivers to whom different national legislations apply** in terms of their labour conditions and social security affiliation. For example, the checking of compliance with the terms and conditions of employment on the basis of tachograph records during checks at the premises of undertakings in the case of posted workers was mentioned as particularly difficult and time-consuming in the Belgian country reply.

Secondly, country reports also revealed that **interpretations of the EU rules differ across Member States** and also **between Member States**. Several country replies (e.g. PL, PT, RO) revealed differences in the interpretation of EU provisions by national enforcement agencies. This was mentioned in general terms (PT) and in relation to specific EU provisions, such as those concerning the working time of drivers (PL) and the provisions on the posting of drivers (RO). The reply from Portugal mentioned the creation of an inter-institutional working group in charge of adopting interpretative guidelines as a possible solution to tackling the differences in interpretation of EU rules by national enforcement agencies. Other country replies mentioned that interpretative guidelines had already been adopted, such as on the posting rules (e.g. CZ, ES). The Latvian country reply confirmed that they have better cooperation with the other Baltic States (EE, LT) than with the Nordic countries because of differences in the interpretation of certain rules and obligations. The Dutch reply mentioned the same reasons for closer cooperation with Belgium as opposed to France. The country replies generally confirmed that a **uniform interpretation of EU law** between Member States can be considered as one of the determining factors for enhanced cooperation between Member States.

Whereas some EU and national guidance has been developed on specific topics and areas, some **additional or complementary guidance** may be needed at EU level and in Member States. EU guidance could be customised into national guidance notes for enforcement operations, taking into account the local actors and national distribution of competences. Possible subjects for such guidelines could be the social security affiliation of international transport drivers when being posted or when professionally active in several Member States, the checking of cabotage operations, the checking of wages by means of tachograph records at the premises of the transport operator or cross-border enforcement of sanctions.

**Conclusion No 6: Additional guidelines for enforcement agencies on specific thematic areas, such as the social security affiliation of international transport drivers, checks on cabotage operations or the checking of wage calculations on the basis of tachograph records, could be considered.**

### 8.1.3.3 Resource-effectiveness of inspections

The various competent authorities face a set of different challenges that impact the volume and effectiveness of their inspection duties. One of the problems encountered in relation to the roadside checks or inspections at the premises is that there are often **not enough staff** to conduct effective

checks in due time while **inspections are often time-consuming**. Additionally, the national reports mentioned that inspectors in the field often experienced **language difficulties**. Country replies also mentioned some challenges with the **availability of the necessary equipment**, devices and/or software to perform the checks.

For example, the Dutch report highlighted the fact that all inspectorates in the Netherlands face capacity challenges and that in their estimation, the number of inspectors is not in line with the volume of tasks they need to perform. This inevitably leads to situations where the two main inspectorates involved need to agree to which case they will give priority, and which cases won't be checked due to human resource constraints. In Portugal, it was also generally pointed out that human and technical reinforcement is needed at the enforcement agencies in order to keep up with the changes in the new IT tools and the newly introduced rules in the area of road transport. In Belgium, inspectors interviewed mentioned that, while the detection of driving and rest period infringements is reasonably smooth and partly automated, the wage calculation based on tachograph data in company checks remains a mainly manual and particularly labour-intensive task. It was reported in the different national replies that not all inspection agencies have the necessary **devices and/or software available to read the data from the tachographs** and that inspection agencies often depend on other agencies to read the data during the checks. In the Netherlands, the Environment and Transport Inspectorate has the necessary software to read the tachographs and shares its findings with the Labour Inspectorates. Whereas the unavailability of the necessary equipment for effective inspection purposes was mentioned, some country replies referred to the sharing of equipment and devices between national enforcement agencies as a possible (necessary) solution. The case study focusing on Benelux cooperation did reveal a practice of cross-border sharing of equipment among inspectors from different Member States.

Ensuring **sufficient (qualified) staff and resources** in Member States dedicated to the application and enforcement of the legislation is essential in the area of international road transport. Development of **guidelines/checklists** with the different tasks to be performed by those involved in the checks, the timeframes to aspire to and the way the data/information collected will need to be exchanged with other bodies could contribute to resolving potential obstacles. This should assist authorities in organising checks more effectively and in allocating their available resources more efficiently. Of equal importance is the availability of the necessary equipment, devices and software for inspectors in the different enforcement agencies, which presupposes investment and continuous updating of the available checking devices and software.

In order to tackle the **language issues** which occur during road side checks, or when downloading information from the IMI or ERRU, several initiatives could be considered which all might contribute to more effective inspections: the availability of interpreters during inspections, operational checklists and questionnaires translated in different languages, translation of the information on national databases and websites<sup>237</sup>, staff exchanges, and joint and concerted inspections are examples of measures that already exist, but which could be further developed and extended.

***Conclusion No 7: Guidelines and checklists for inspections and ensure sufficient and adequate equipment, control devices and software for the different enforcement agencies during the roadside checks and checks at the premises could be developed in order to ensure the resource-effectiveness of inspections.***

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<sup>237</sup> ELA, through its translation facility offers Member States translation services for information on the national websites on the terms and conditions of employment that need to be respected in posting situations. ELA has also launched a project that aims to translate the key terms in labour mobility in all 24 EU languages.

**Good practice – The multilingual lexicon**

A good solution for the language barrier could be the translation system (e.g. a multilingual lexicon as in Poland) that is configured to translate the technical terms of this subject matter into all 24 official languages of the Member States, in the national database. It is noteworthy in this connection that ELA is currently developing a lexicon on the terminology applied in labour mobility.

## 8.2 Operational conclusions for cross-border cooperation between Member States

Chapter 3 of this Report listed and described the **various cooperation measures and obligations** to be found in the relevant EU legislation concerned with the labour and social dimension of international road transport. Amongst others, Member States are required to:

- set up an *operational framework* and designate one or more liaison bodies or contact points for exchanges of information with other Member States or in relation to the European Commission;
- set up the *cross-border exchange of information and data* with a view to the enforcement of the EU legislation, implying the involvement of different national authorities and enforcement agencies depending on the type of information and data that need to be exchanged;
- *make information available* to the European Commission, to other Member States or generally to the wider public and/or to transport operators and drivers. Member States must notify the European Commission of the rules on penalties for infringements; they have to ensure that the national rules on the terms and conditions of employment in the case of posting are available and accessible on single national websites;
- *report* to the European Commission in various ways, including on mandatory checks and inspections conducted and on the number of Community licences and certificates of professional competence issued but also on the number of information exchanges that have taken place. Member States also have to provide statistics on the inspections executed and on the Community licences and certificates issued.

The national research and additional case studies revealed a number of issues and challenges in the cooperation and information exchange between Member States in the area of international road transport. They are presented here and form the basis of some specific operational recommendations and suggestions for action with a view to enhancing and improving cross-border enforcement.

The operational conclusions aimed at **actions to support cross-border cooperation can be further structured into three main categories:**

1. Promoting awareness and understanding of other Member States' systems and practices;
2. Improving and expanding the use of electronic systems for the exchange of information between Member States' enforcement agencies;
3. Supporting enhanced bilateral and multilateral cooperation actions and mutual learning in the field of international road transport.

## 8.2.1 Promoting awareness and understanding of other Member States' systems and practices

The national research disclosed some challenges impeding effective cross-border cooperation between national enforcement authorities from different Member States, which can be addressed by means of adequate information provision on the competent authorities and their specific responsibilities in other Member States, informal cross-border networking, joint training and mutual learning initiatives with a view to improving the mutual understanding of each other's national systems and enforcement practices.

### 8.2.1.1 Increase identification of and (informal) networking with competent authorities in other Member States

Different **national liaison bodies or contact points** have been designated in Member States for the different subsets of the relevant EU legislation on international road transport. The desk research revealed that lists of national bodies are published but on different pages of the Europa website (by virtue of the fact that they concern different underlying policies). The information is sometimes not easy to find. From an enforcement perspective as well as from the perspective of the transport operators and drivers, consideration could be given to **improving the availability and/or accessibility of the information published by the Commission on these different national contact bodies** in Member States (e.g. integrated list of all liaison bodies, cross-referencing, etc).

Moreover, the national research also showed that national enforcement agencies often **do not know who their counterparts are** in other Member States and that Member States experience difficulties in identifying their direct counterparts **with whom they need to engage for the information exchanges**. Country replies also indicated that similar road safety infringements are sometimes checked by very different enforcement agencies in Member States and these responsibilities may change over time. In the Netherlands reported that despite IMI, it is not always clear which authority needs to be contacted and often the case or question keeps on shifting to various authorities. In many countries, requests for information have so far been handled on a case-by-case basis while in others there is well-established national coordination of the requests from other Member States. For example, in some countries (e.g. DK, LV) this has proven to be a sufficiently effective strategy to prosecute violations with cross-border implications. However, as road transport and related regulations become more intertwined and complex internationally, cross-border cooperation between authorities needs standardised and replicable procedures.

Country replies also indicated some **challenges with the response times to requests for information or notification of sanctions**. One of the reasons mentioned related to the fact that the sanctions imposed are often reviewed and/or contested by the receiving Member State. However, there can be different reasons for the absence of replies, as the notifications may not have been duly processed and/or not have reached the final enforcement agency that is competent to reply. Country reports mentioned examples of enforcement agencies that are competent to address the questions but that these agencies have no direct access the IMI modules for their reply. **The access and administration rights in Member States related to the different IMI Road Transport Modules may hence also play a role** as the IMI access appears often to be limited to one or a limited number of authorities per IMI Module in spite of the fact the information itself has relevance for a larger number of enforcement agencies. Whereas access to the Road Transport IMI modules is a decision for the Member States, further consideration could be given to broadening the access, with different levels of administration and/or user rights for the various national enforcement agencies and competent bodies. Sharing the information on the user and administration rights of the different national enforcement agencies for the

three IMI Road Transport Modules among Member States could increase the effective use of the information exchange system and reduce response times.

***Conclusion No 8: An integrated overview of all different liaison bodies and contact points for the respective subdomains of EU road transport rules could be promoted, e.g by further developing a directory/inventory of all national competent authorities and enforcement agencies (and their responsibilities) in the area of EU international road transport and sharing an overview of the users (and their administration rights) of the three IMI Road Transport Modules among all national enforcement agencies.***

The country replies referred consistently to the importance of the **informal contacts** enforcement officers have with (some) colleagues from other Member States. The existence of such informal contacts is one of the factors determining more effective cross-border cooperation, which is grounded in timely and adequate information exchanges, and an understanding of the mutual obligations and respective systems. Informal contacts can also help address low response rates to requests. Informal exchanges, outside the established IMI and ERRU communication systems were reported for the notification of infringements that were detected and sanctioned in a Member State for infringements that are not part of the EU catalogue of serious infringements but also for tachograph infringements that were detected in one Member State but committed in another and for which the detecting Member State cannot impose a sanction in accordance with the recent CJEU case law. Whereas there is no indication of systematic cross-border notifications in this way between all Member States, there is evidence that some enforcement agencies do notify each other through other means such as calls or email messages. These notifications are not formally traceable in ERRU/IMI, but can be considered important in enforcing EU and national international road transport legislation as the companies would otherwise remain unsanctioned.

***Conclusion No 9: There should be continuous efforts to promote the building, maintenance and enhancement of a community of practitioners composed of national authorities and enforcement officers from different Member States.***

### **8.2.1.2 Increase awareness and knowledge of national legislation and practices of other Member States through training and mutual learning**

**Member States are obliged to publish information on their national legislation or to notify the European Commission of their national (implementing) rules.** Reference has already been made to the obligation for Member States to make the information on the mandatory terms and conditions of employment available in an accessible way on single national websites in their own official and in other relevant languages. Additionally, Member States must notify their national rules on the penalties for all infringements of EU rules on commercial road transport and of any changes to them. The Commission ensures that this information is publicly available on its website. The **available and published information**, while essential with a view to improving the enforcement of EU legislation, **remains rather limited as it only covers specific aspects of the implementing rules** in Member States. In the area of social security coordination, the obligation goes further: Member States must also inform each other of changes to their national social security legislation which may affect the implementation of the EU social security coordination rules.

National labour legislation (including rules on the wage composition/calculation and working conditions), social security rules and the sanctioning regimes for infringements (including types of penalties and fines as well as administrative and judicial proceedings) differ to a large extent between Member States.



In addition, national enforcement agencies and practices vary considerably. This may **impede the cross-border understanding and knowledge of the respective systems and operational practices**. This sometimes affects the cross-border cooperation and exchange of information as mentioned in country replies (e.g. NL). Mutual understanding and experience with systems and practices from other Member States can contribute to more effective enforcement of the EU rules.

National replies and interviews raised the problem of the **wage and social security contribution calculation** for international transport service drivers. This applies in cases of posting but also in other instances, especially when the driver's social security affiliation is not straightforward because the driver is not providing substantial transport services in the country where the transport company is established or in their country of residence. The same applies in cases of specific bilateral social security agreements between Member States. The combined application of the posting and social security coordination rules to international commercial transport service drivers is particularly complex in terms of establishing the exact wage and social security contributions and social security affiliation of the driver concerned.

Member States must notify the European Commission of **national rules on penalties for road safety infringements**. Most Member States<sup>238</sup> do this by means of lists in table form, which have been published on the European Commission's website<sup>239</sup> insofar as they concern penalties for infringements of the provisions of Regulation (EC) 561/2006 (social rules) and Regulation (EU) 165/2014 (tachographs). However, the national lists **require an update** following adoption of the integrated classification of serious infringements adopted by Regulation (EU) 2022/694. The tables list the different infringements, classify them by level of seriousness and mention for each infringement the exact penalty that is applied, indicating whether the penalty is administrative, financial or a criminal type of sanction.

In connection with the Member States' **different sanctioning regimes**, several country replies (e.g. BG, IE, LV) raised the issue of the time between the detection of violations and the enforcement of the related sanctions, and of the corresponding exchange of information between the enforcement agencies on the infringements and sanctions. In some countries enforcement agencies cannot impose (administrative) sanctions (e.g. IE) or only restrictively and sanctions can (only/mainly) be imposed by court decisions. In most Member States there are local administrative and judicial review and appeal procedures transport companies can rely on. These appeal procedures often require re-checks and additional inspections. As a consequence the processing time for infringements and the related penalties and fines is often very long, which has **repercussions for the exchange of information between the different enforcement agencies** involved in the Member States but also between the Member States. As the national research, and in particular the case study for France, revealed, sanctions are notified through IMI once they are irrevocable. For more serious infringements, this is likely to be long after the infringement has been detected. Conversely, sanctions for 'lighter' infringements, such as administrative fines imposed on the spot during roadside checks for immediate payment, are in principle more likely to be reported (faster) into the ERRU electronic exchange system. The learnings from the country replies and the case study in France also pointed to the lack of follow-up and/or reviews in the countries of establishment of fines and penalties imposed or announced in the host Member States. The sanctions imposed are often contested, reviewed or not enforced.

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<sup>238</sup> The national lists from Belgium, Ireland, Italy, Malta and Romania have not been published as no data have been received.

<sup>239</sup> Available at this link: [https://transport.ec.europa.eu/transport-modes/road/social-provisions/enforcement\\_en](https://transport.ec.europa.eu/transport-modes/road/social-provisions/enforcement_en)

The findings above may point to a **need for an increased (level of) understanding of the legislation and (operational) practices in a comparative context** in order to facilitate more effective cooperation and information exchange between enforcement agencies from different Member States.

According to Directive 2006/22/EC Member States are **obliged to establish joint training programmes on best practices and to facilitate staff exchanges** of their respective bodies for intra-Community liaison at least once a year. However, it seems that not all Member States are implementing this requirement. ELA plays a vital role here in continuing its work to further promote and organise training and networking events in which the relevant authorities can meet and network, including social partners at national and EU level. This could be in the form of digital or live events on location. A specific example of ELA's work in this area is the organisation of events and workshops. ELA is also planning a mutual learning programme dedicated to the international road transport sector. These aspects could be taken into consideration when organising mutual learning activities under the programme.

**Four different thematic areas for mutual learning** and training are suggested below. The mutual learning could be complemented by further comparative analysis and the development of targeted information materials.

***Thematic area No 1: Mandatory terms and conditions of employment and social security affiliation at national level***

The findings from the comparative analysis demonstrated that issues persist around information related to the employment status of posted and mobile drivers in the international transport sector. Under Directive 96/71/EC, Member States are obliged to make all information relevant to the terms and conditions of employment easily available, but these apply only to workers in an employment relationship and not to self-employed drivers. Nevertheless, it emerged from the country reports that it is often a challenge to find information on the terms of employment in other countries, especially when it comes to wages and the way they are constituted and calculated. Country replies also referred to the difficulty in determining the social security affiliation of highly mobile drivers and the calculation of the social security contributions and taxes when different countries are involved. Some further **mutual learning and comparative research could be undertaken which might result in the presentation of comparative tables or information leaflets on these mandatory rules or take the form of an electronic database.**

***Thematic area No 2: Third country transport operators in the context of the posting of international drivers***

From the country findings, it is not clear for all Member States how Member States deal with transport undertakings established in third countries in cases where they post drivers to the EU or their drivers operate commercial transport services on EU territory. Some countries (e.g. BE, FR) have national systems that require the third country operators to submit posting declarations while other countries have no such systems. Several country replies indicated that there are differences in treatment between EU-based and third country operators (e.g. requirement to have employment contracts available during roadside checks in the case of third country operators), while other country replies are silent on what documents are required from these third-country operators before and during the posting, and during roadside checks. Additionally, it is not always clear whether the requirement to have a driver attestation for third country nationals is always consistently applied in practice. **Some further mutual learning and comparative research may be needed on the specific topic of third country operators** (to be distinguished from third country nationals).

ELA could also play a role here by providing the forum for Member States to exchange their experiences on the requirements of article 1 (10) of the Directive (i.e. informing and facilitating Member States in establishing alternative (national) systems for registering posting declarations for third country transport operators). Such a forum could take the shape of a thematic workshop.

### ***Thematic area No 3: Cross-border enforcement of sanctions***

The research findings and case studies confirmed that one of the main challenges in view of effective enforcement of EU road transport rules concerns the cross-border enforcement of sanctions. Penalties and fines imposed in Member States where infringements are detected and established are not systematically enforced in the Member States of establishment. Notifications are often not responded to (e.g. case study in France), whereas at least some Member States of establishment seem to review the sanction imposed in accordance with their own national legislation and sanctioning regime. This implies **de facto that these established infringements are subject to a double assessment** (in both the Member State where the infringement was detected and established, and in the Member State of establishment). This has serious implications for the timeframe and period between the infringement first being established and the final execution of the sanction. It also may lead to variant final outcomes as it seems that the Member States of establishment have the last say and will ultimately decide on the sanction to be applied and enforced.

It also appears from the country replies and the case study on France that Member States' sanctioning regimes also have 'national' infringements or sanctions for infringements which are not listed in the catalogue of serious infringements under EU legislation. As the communication of these infringements is not run through ERRU but often communicated informally between the enforcement agencies of different Member States, it is not clear how these sanctions are in fact enforced across borders.

As pointed out, **sanctions and sanction regimes differ** between Member States. Most (but not all) lists of sanctions for serious infringements have been published on the Europa website,<sup>240</sup> but these lists need to be updated in order to bring them in line with the most recent EU classification adopted under Regulation (EU) 2022/694.

**Mutual learning initiatives could be launched with a specific focus on the sanctions, sanctioning regimes and cross-border enforcement with the immediate objective of improving the mutual knowledge of Member States** of their respective systems as this would undoubtedly impact the effectiveness of the cross-border enforcement.

### ***Thematic area No 4: National enforcement strategies and operational plans***

National enforcement strategies are the main instruments at Member State level for planning enforcement action. These strategies need to be communicated to the European Commission and form the basis for the reporting cycles required by EU road transport legislation. The mandatory reporting covers a wide range of areas and topics, such as, among others, the number of (roadside and at-premises) checks, number of infringements established, etc, but also on the number of Community licences or certificates of professional competence in circulation. Member States also have to produce statistics at regular times on the implementation of the EU international road transport rules.

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<sup>240</sup> Available at this link: [https://transport.ec.europa.eu/transport-modes/road/social-provisions/enforcement\\_en](https://transport.ec.europa.eu/transport-modes/road/social-provisions/enforcement_en).

National enforcement strategies are, moreover, in many Member States the reference framework for the adoption of (regional) operational plans in which the various inspection services and territorial levels are involved.

From the research it was not possible to deduce how the national enforcement strategies are designed and what experience has been with the design, implementation and reporting on these national enforcement strategies in Member States.

**Mutual learning could be considered in order to compare the development, implementation and reporting of the national enforcement strategies in Member States.**

***Conclusion No 10: A mutual learning strategy should be strengthened with the identification of appropriate tools (e.g. joint trainings, exchange of practices and staff exchanges) and relevant thematic fields. The latter could include (1) mandatory terms and conditions of employment at national level and the determination of the social security affiliation of international transport drivers, (2) third country transport operators, (3) national penalties and sanctioning regimes and cross-border enforcement of sanctions, (4) national enforcement strategies and operational plans***

### 8.2.1.3 Improve and expand the use of electronic systems for the exchange of information (ERRU and IMI)

Cross-border data and information exchanges on the market access for transport operators, posting rules and driving times rely on the **ERRU**, which connects the national registers of transport operators, and on **IMI**. Under Mobility Package I, IMI introduced three new Road Transport Modules, one for the data on stable and effective establishment, one on the posting of drivers and one on legislation on driving and rest times. The new IMI modules have been operational since spring 2022. The use of ERRU as the EU messaging system interconnecting national databases on transport operators, their compliance with the legislative requirements and their risk rating has also been reinforced. The Commission is currently preparing a new Implementing Regulation on the interconnection of ERRU (Version 3). This will introduce several new functionalities that will improve information exchanges between the national enforcement agencies on the Conditions of Establishment, such as the 'Check Result Notification', allowing for the reporting of clean checks and on less severe infringements. Once adopted, Member States will need to align the technical environment of their national registers and of their risk-rating databases with the new set-up. For social security coordination purposes, national social security institutions are entrusted with the administration of the different branches of social security and the information exchange takes place through the **EESSI** system.

The **usage of the three new IMI modules** by national enforcement agencies as a means to exchange information with the competent authorities of other Member States is **at present relatively low**. This is especially true of the 'Conditions of Establishment' module. This is, evidently, mainly due to the fact that the IMI modules only became operational in early 2022 and/or that not all Member States have fully incorporated use of the new modules in their operational practices.

Nevertheless, country replies and interviews undertaken in late 2022 (e.g. DK, FI, HU, IT, LV, LT, PL and PT) mentioned **some challenges** when sharing their experiences with the usage of ERRU and the IMI modules on road transport. Some of these issues related to the **technical environment** (such as the 'time-out status' / different alphabets); others related to the **type of data/information and functionalities** of ERRU/IMI. These included the absence of a uniform character string for Community licences and certified true copies, a possible additional functionality with additional information about

transport managers of dangerous cargoes or for sharing information on infringements that are not part of the ERRU catalogue or which are established during checks at the premises, and the requirement to link the registration number of new vehicles with individual drivers as large companies employ drivers that drive different vehicles. Some suggestions were also made in the country replies on improving the IMI posting module: limiting the possibility of changing data during the posting; an additional functionality to view posting declarations for outgoing flows and not only incoming flows of posted workers; a search function by registration number or by posting declaration number or by the start or end date of a posting; possibility of distinguishing the type of tachograph data being requested and that the data stem from both the driver and the vehicle; possibility of uploading additional documents such as decisions by enforcement agencies; de-activating notification email messages; selection of transport companies by Member State of establishment; exportability of the information from IMI into other stand-alone files, such as Excel files.

The new proposal for an Implementing Regulation on the interconnection of the national registers through ERRU (Version 3) **addresses some of the reported areas for improvement**, especially those relating to ERRU and the IMI 'Conditions of Establishment' Module. It will introduce new functionalities and aim to integrate the (new) national risk rating registers with the entire digital information exchange system connecting the national registers on transport undertakings. Member States will need to adapt the technical architecture of national databases and registers, and prepare for the interoperability of these databases and for the accompanying information exchange protocols. This may require a revision or adaptation of the existing dataflows between the different national licensing and enforcement bodies involved in the implementation of the EU road transport rules. The implementation of the new ERRU version and related cooperation between the Commission, ELA and Member States in view of its operationalisation is likely to uncover possible new technical improvements and learnings from a user's perspective.

National research further revealed that **not all national enforcement bodies involved in international road transport have access to all three IMI modules** to the same extent or the access levels may be different for the various enforcement agencies concerned. The case study on France also illustrated the differing needs of licensing authorities and operational enforcement bodies. Differences between viewing options (consulting the data in the national registers through ERRU) and access in order to enter data and/or to actually exchange the information/data with competent authorities from other Member States were reported in several national replies. Data detected during (roadside) checks often need to be transmitted by the inspection officers involved to those employed at other structures who have been granted the rights to enter the information into the IMI modules or national registers. Similar experiences exist at the receiving end, e.g. officers who have access to the IMI modules and ERRU and receive notifications from competent authorities from other Member States are not necessarily in the right enforcement agencies to respond to these notifications or conduct the inspections. Some country replies indicated different levels of access between the more centralised as opposed to the more local departments of the inspection services. This sometimes seems to hinder effective enforcement at operational level. The information obtained through the national replies and interviews does not allow for an in-depth comparison between the Member States on which/how national enforcement agencies have access to the different IMI modules and to ERRU, but what is clear is that Member States are **implementing varying approaches**, which may in some instances affect the effectiveness or efficiency of the data exchanges in Member States but also across borders.

The information above points to a need to **ensure the right levels of access and establish proper dataflows** between the different enforcement agencies from both perspectives, in Member States that are sending requests or notifications to other Member States and in the receiving Member States which often have to follow up on and reply to the notifications. Given the interrelationship of all the different

dimensions of road transport rules and the relevance of the information/data that are exchanged, it might also be worth considering **extending access to the different IMI 'Road Transport' modules** and ERRU to a wider number of national enforcement agencies than is currently the case. This would serve the purpose of coordinated and effective enforcement (e.g. tax authorities having access to the IMI 'Conditions of Establishment' module) both horizontally (i.e. across different enforcement authorities) and vertically (i.e. local versus national level). Together with the new functionalities being prepared under ERRU (Version 3), which will make it possible to report on the outcomes of checks in the case of 'clean' checks or minor infringements as well, wider access to and use of the IMI "Road Transport" modules would be likely to lead to more effective cross-border enforcement.

**Training on the use of the IMI Road Transport Modules** has already been initiated under the auspices of the European Commission and ELA. Several training events specifically dedicated to cross-border cooperation through the IMI road transport modules have been organised under the joint IMI-PROVE programme. These events bring together Member States' experts and/or IMI users who actively use these road transport modules with the aim of exchanging experiences and building a community of practitioners.

**IMI-PROVE** is a programme under the European Labour Authority (ELA)'s Mutual Learning and Understanding Framework (MLUF), which encompasses various capacity building activities offered by ELA to the posting of workers stakeholders in the EU. IMI-PROVE<sup>241</sup> was established in close cooperation with the European Commission with a view to reinforcing cooperation and mutual assistance between Member States by stimulating a more robust and effective use of the Internal Market Information (IMI) System modules for posting of workers and road transport. The programme taps into the expertise and practical knowledge of the network of national IMI users to a) establish a forum where Member States can share information, good practices, and experience to develop joint solutions to improve the take-up of the IMI modules on the posting of workers and road transport; b) propose solutions to practical obstacles in the use of these modules, and build the capacity and skills of national IMI users to utilise the IMI modules' capabilities related to the posting of workers and road transport thoroughly with the support of peers from other countries.

The IMI-PROVE initiative, and several others, are part of ELA's coordination and support to national authorities in a continuous effort to increase cross-border cooperation between national authorities with a view to more effective enforcement. In view of the new changes that will apply in ERRU in the course of 2023, **additional training events on ERRU/IMI could be organised** for the national enforcement agencies. Exchanges of experiences from Member States on the technical design of their national risk rating registers and on the technical design and dataflows would contribute to a faster deployment.

It follows from the national reports that there are differences between Member States in the institutional set-up, on working practices and hierarchy. It is recommended that these be further identified and mapped to be able to provide the needed information and to facilitate cooperation practices. An **IMI Road Transport Module user analysis** of the different national enforcement authorities (including on their user rights) and on the data and workflows between the different enforcement agencies in and across Member States could also be considered in order to better streamline the information exchanges and increase the targeting of requests and reply notifications. This might eventually lead to extending the access and use of the different IMI modules and ERRU to a larger number of enforcement agencies and hence contribute to more effective cross-border enforcement. It should also improve the mutual

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<sup>241</sup> See: <https://www.ela.europa.eu/en/news/european-labour-authority-ela-together-european-commission-launched-imi-prove-programme>

understanding of the respective enforcement practices in the Member States. In that connection, it is also suggested that the potential of **creating workflows or templates of internal and cross-border workflows be explored and good case/practice examples of cooperation in the area of road transport** be identified. These could in turn be disseminated to the relevant authorities at Member State level.

***Conclusion No 11: Activities at EU level to improve the understanding and usage of the IMI Road Transport modules and ERRU within Member States among all enforcement agencies should be continued, including through considering the opportunity for reporting about the exchanges taking place through IMI.***

## 8.2.2 Enhanced cross-border cooperation actions in the field of international road transport

The national research revealed the importance of bilateral agreements between Member States and of multilateral cooperation through established international road transport networks. The ELA mediation procedure could represent a possible pathway to more effective cross-border enforcement if used to resolve disagreements on the implementation and enforcement of EU road transport legislation. While not in the scope of this report, ELA's role in facilitating cross-border and joint inspections provides a very useful exercise with a view to more effective cross-border enforcement.

### 8.2.2.1 Further explore the potential of bilateral and multilateral cooperation agreements

Bilateral/multilateral agreements are an interesting form of formal cooperation found in the country replies and analysis. These are particularly relevant as a closer relationship between two (or more) Member States implies more efficient cooperation and an easier exchange of information, which in turn amplifies the effectiveness of investigations. This assessment is also suggested in Chapter 3, where it appeared that Member States cooperate more with each other where **(general) bilateral agreements or protocols are in place** (e.g. AT, IT, PT). For example, Italy reported a high level of collaboration with France and Spain by virtue of specific bilateral agreements. Likewise, Austria reported that Germany is the main country with which they cooperate by virtue of an agreement. Finally, Portugal has close cooperation with Spain pursuant to a Protocol on mutual cooperation. At the same time, it follows from the analysis that it is not common practice for Member States to engage in bilateral or multilateral agreements/protocols/treaties in order to facilitate cross-border control and enforcement of EU transport legislation.

Apart from the bilateral agreements focusing on cooperation between enforcement agencies from different Member States, **social security bilateral agreements** may also be of relevance for the enforcement of road transport rules, e.g. when they have provisions that deviate from the basic Regulation (EC) 883/2004. Bilateral agreements between Luxembourg and Belgium/France establish different social security affiliation rules that may be of relevance when drivers reside in the latter but work for a transport operator established in Luxembourg. As a consequence, the driver's wage and social security contributions, and also the income tax calculations may have to be calculated on the basis of legislation from two different Member States. This poses particular challenges for inspection agencies but also for the transport operators.

National replies also demonstrated the importance of transport networks within the EU as a way of cooperating in the field of road transport, such as CORTE, ECR and ROADPOL. ELA could play a role here by:

- Assisting and/or facilitating an exchange of experiences between Member States on the added value of sector-specific bilateral and/or multilateral agreements;
- Developing database(s) of the existing bilateral agreements (1) on the cooperation between enforcement agencies in road transport enforcement and (2) on social security, which contain data on their main key features.
- Complementing and supporting cooperation with different transport network groups via jointly organised training and events, interpretation support to the meetings etc.

### **Good practice – CORTE**

The Confederation of Organisations in Road Transport Enforcement (CORTE) is one of the largest and international (non-profit) organisations on road transport. The organisation is largely focused on the concrete implementation and **enforceability of social legislation** in the area of road transport laid down at European level. It is a platform for more than 70 **national (enforcement) authorities, transport associations and transport companies**.

Despite the far-reaching harmonisation of EU road transport legislation, enforcement practices still vary among the Member States due to differences in administrative organisation. Given the highly mobile nature of road transport operations, this poses challenges in the achievement of consistent and uniform cross-border enforcement across Europe, which results in inconsistencies and gaps in enforcement effectiveness. CORTE offers unique opportunities to counter some of the most pressing challenges in the (cross-border) enforcement of road transport legislation. Its main focus on the **practical enforceability** of the *acquis* helps to ensure consistent enforcement practices and a level playing field for all stakeholders in the road transport sector.

First, country reports did reveal that different interpretations of the EU rules exist within Member States but also between Member States. The activities of CORTE try to combat exactly that by producing guidelines aimed at providing a common understanding on specific articles and issues. Second, country reports repeatedly flagged the complexities enforcement agencies are confronted with when enforcing the (new) EU rules in practice. CORTE addresses that by aiming to ensure harmonised enforcement by developing concrete methodologies on how to enforce EU road transport legislation in practice.

CORTE's key objective is to build 'a community of enforcement authorities and transport operators within its framework of work. The cooperation and collaboration between the enforcers and those who are enforced can only strengthen potential compliance with road transport legislation by improving common understanding and awareness on the EU rules.

***Conclusion No 12: The potential of bilateral agreements between Member States, and possible EU-level support to enhanced cross-border cooperation, should be further explored, including sustained cooperation with existing transport network groups.***



### 8.2.2.2 Encourage the use of the ELA mediation mechanism with a view to resolving disagreements and disputes in the implementation and enforcement of the EU road transport rules

It is clear from the national findings and country replies that there is at the moment **no uniform application of EU road transport rules** and that the interpretation of some provisions varies across the Member States. At the same time, it is equally clear that where Member States have imposed sanctions on transport operators established in another Member States, these **sanctions are not automatically enforced. Differences in viewpoints and in enforcement practices between Member States' enforcement agencies persist** and it can take a long time before solutions are found through bilateral contacts and dialogue. Notwithstanding the role of the European Commission in this regard and of the CJEU as the body ultimately in charge of interpreting EU legislation, ELA could also play a role through its mediation function as established in its founding regulation<sup>242</sup>. Under Articles 2 (c) and 4 (g) establishing ELA's objectives and tasks, ELA is assigned the role of mediating and facilitating a solution in the event of cross-border disputes between Member States on the implementation and enforcement of EU labour mobility and social security coordination legislation, including on the EU rules governing commercial international road transport for passengers and road haulage. Member States with disagreements that remain unresolved can under certain conditions request that ELA launch a mediation procedure. The mediation before ELA is a newly established conflict resolution mechanism in the area of EU labour mobility that has been fully operational since September 2022.

***Conclusion No 13: The use of the ELA mediation mechanism could be further fostered with a view to resolving disagreements and disputes in individual cases of application of the EU road transport rules.***

### 8.2.2.3 Additional comparative analysis

Apart from the operational conclusions presented above and the different thematic areas for mutual learning and comparative analysis identified under section 8.2.1.2), there are some additional potential **avenues for further analysis and research** which have not been (sufficiently) covered in this study because of its time frame and available resources or because they concern adjacent thematic or technical areas and were not part of the immediate scope of the study.

ELA is mandated to conduct analysis and research in line with the tasks defined in its founding Regulation. Some analytical studies and thematic papers have already been produced and published, and new initiatives could be considered in areas covered by this study. Two thematic areas are suggested below in addition to those mentioned under section 8.2.1.2.

***Thematic area No 1: Bilateral agreements on double taxation and social security and their possible impact on the international road transport sector in the EU***

The findings from the national replies confirmed that there are few bilateral agreements and protocols concluded between Member States which envisage cross-border cooperation on international road transport. Of a distinct nature are bilateral agreements between Member States that govern the income tax and social security affiliation of those who work in one country but are resident in another, and who

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<sup>242</sup> Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344); <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1149>

are often considered frontier workers. In the context of international transport, the country of work may (or not) be the Member State of establishment of the transport operator. A recent CJEU ruling (C-410/21<sup>243</sup>) confirmed that the country where the Community licence was issued may not automatically be considered as the country where substantial activities are being performed by the employed drivers, implying in practice that the determination of the social security affiliation may even be more complicated for inspection agencies to apply in individual situations.

There would be merit in **exploring some practical cases confronting transport companies and their drivers when they are in the situation described above** and analysing how bilateral agreements could contribute to a clearer operational framework for the cross-border enforcement agencies from the two Member States concerned. A look could be cast at two cases of bilateral agreements and involve transport companies based in the countries concerned.

### **Thematic area No 2: GDPR rules and the enforcement of EU road transport legislation**

It follows from the national replies that **uncertainty about GDPR requirements** is felt to be a pressing challenge when exchanging information and data between enforcement agencies in Member States but also across borders between Member States. Country replies (e.g. SE) indicated that the GDPR rules, as they are perceived, are hindering the effective exchange of information and data between enforcement agencies. Further analysis seems to be needed which might eventually lead to **specific guidelines** on the **inter-relationship between GDPR requirements and the enforcement of EU commercial road transport rules** in Member States and across borders. In addition, (joint) training should be organised on the GDPR in relation to the new EU transport legislation.

**Conclusion No 14: Further analysis could be considered in some adjacent or complementary thematic areas such as (1) bilateral agreements on double taxation and social security and (2) the GDPR and the enforcement of EU international road transport legislation.**

Table 12: Summary of the operational conclusions

Summary of the operational conclusions	
<b>1</b>	<b>Actions to support national authorities and enforcement agencies in Member States</b>
<b>1.1</b>	<b>Ensuring increased and more effective coordination and cooperation between different competent authorities in Member States</b>
	<p><b>Conclusion No 1:</b> <i>Horizontal and vertical inter-institutional coordination between the different competent national authorities and enforcement agencies across the different policy domains could be further developed, for example through an integrated national enforcement strategy and operational plans.</i></p> <p><b>Conclusion No 2:</b> <i>Formal cooperation arrangements (protocols, data exchange agreements, inter-institutional working groups, etc.) between all national authorities concerned and enforcement agencies within Member States could be further developed (which could also include the road transport/traffic police and/or the tax authorities), while extending them to local operational levels.</i></p> <p><b>Conclusion No 3:</b> <i>'Shared' inspections between the various enforcement agencies in Member States could be intensified. An ex-post evaluation of each shared inspection could help detect any shortcomings in the procedure, which could be rectified or improved in future investigations.</i></p>

<sup>243</sup> Case C-410/21, Judgment of the European Court of Justice (Second Chamber), 2 March 2023, DRV Intertrans/ Verbraeken; <https://curia.europa.eu/juris/liste.jsf?num=C-410/21&language=en>.

Summary of the operational conclusions	
	<p>Furthermore, consideration could be given to sharing the experiences of national 'shared' inspections between Member States or developing good practices.</p> <p><b>Conclusion No 4:</b> The interconnection of the different national databases used by the respective national enforcement agencies should be improved, in line with the legal framework and taking into account the limitations imposed by the GDPR.</p>
<b>1.2</b>	<b>Continuing to build the capacities of national competent authorities and enforcement agencies in Member States</b>
	<p><b>Conclusion No 5:</b> There should be a continuous and sustained effort to offer training and mutual learning on (the application of) EU legislation in the international road transport sector to all national enforcement authorities, notably including the labour and social inspection agencies, road transport/traffic police and tax inspectors while also addressing the needs of the more local operational inspectors. Additional targeted information and existing guidance on the application of the relevant EU legislation in all EU languages should be promoted.</p> <p><b>Conclusion No 6:</b> Additional guidelines for enforcement agencies on specific thematic areas such as the social security affiliation of international transport drivers, checks on cabotage operations or the checking of wage calculations on the basis of tachograph records could be considered.</p> <p><b>Conclusion No 7:</b> Guidelines and checklists for inspections and ensure sufficient and adequate equipment, control devices and software for the different enforcement agencies during the roadside checks and checks at the premises could be developed in order to ensure the resource-effectiveness of inspections.</p>
<b>2</b>	<b>Actions to support cross-border cooperation between Member States</b>
<b>2.1</b>	<b>Promoting awareness and understanding of other Member States' practices</b>
	<p><b>Conclusion No 8:</b> An integrated overview of all different liaison bodies and contact points for the respective subdomains of EU road transport rules could be promoted, e.g. by further developing a directory/inventory of all national competent authorities and enforcement agencies (and their responsibilities) in the area of EU international road transport and sharing an overview of the users (and their administration rights) of the three IMI Road Transport Modules among all national enforcement agencies.</p> <p><b>Conclusion No 9:</b> There should be continuous efforts to promote the building, maintenance and enhancement of a community of practitioners composed of national authorities and enforcement officers from different Member States.</p> <p><b>Conclusion No 10:</b> A mutual learning strategy should be strengthened with the identification of appropriate tools (e.g. joint trainings, exchange of practices and staff exchanges) and relevant thematic fields. The latter could include (1) mandatory terms and conditions of employment at national level and the determination of the social security affiliation of international transport drivers, (2) third country transport operators, (3) national penalties and sanctioning regimes and cross-border enforcement of sanctions, (4) national enforcement strategies and operational plans.</p>
<b>2.2</b>	<b>Improve and expand the use of electronic systems for the exchange of information</b>
	<p><b>Conclusion No 11:</b> Activities at EU level to improve the understanding and usage of the IMI Road Transport modules and ERRU within Member States among all enforcement agencies should be</p>

### Summary of the operational conclusions

	<i>continued, including through considering the opportunity for reporting about the exchanges taking place through IMI.</i>
<b>2.3</b>	<b>Enhanced cross-border cooperation actions in the field of international road transport</b>
	<p><b>Conclusion No 12:</b> <i>The potential of bilateral agreements between Member States, and possible EU-level support to enhanced cross-border cooperation, should be further explored, including sustained cooperation with existing transport network groups.</i></p> <p><b>Conclusion No 13:</b> <i>The use of the ELA mediation mechanism could be further fostered with a view to resolving disagreements and disputes in individual cases of application of the EU road transport rules.</i></p> <p><b>Conclusion No 14:</b> <i>Further analysis could be considered in some adjacent or complementary thematic areas such as (1) bilateral agreements on double taxation and social security and (2) the GDPR and the enforcement of EU international road transport legislation.</i></p>

## Annex 1: National research template

### Cooperation obligations, practices and challenges in

### international Road Transport within the EU

### National research template

#### OBJECTIVE

In the context of the 'Framework for Action on Road Transport'<sup>244</sup>, ELA has committed itself to carry out analytical reports on cooperation practices and challenges between Member States regarding EU social rules in the road transport sector.<sup>245</sup>

The overall objective of this analytical report is to contribute to **ELA's tasks in the area of international road transport** by identifying, analysing and reporting on specific cooperation challenges and providing recommendations to overcome these challenges. Ultimately, improved cooperation and exchange of information between Member States should ensure fair, simple and effective application and enforcement of the EU legislation on road transport under ELA's remit, thereby improving protection for drivers while also contributing to a level playing field for road transport undertakings.

The present analytical report is intended to provide clear and practical information to support Member States to effectively apply these EU social rules in the field of road transport. This research template should feed the analytical report which is part of the Framework for Action on Road Transport.

#### SCOPE

The scope of the research template follows the **scope of ELA's competences**. According to article 1 (4) of ELA's Founding Regulation, the scope of activities of the European Labour Authority (ELA) shall (only) cover the EU-legislation listed in that paragraph, including future amendments.

Social aspects of the road transport sector that are within ELA's mandate include (next to the general labour mobility legislation):

- [Regulation \(EC\) No 561/2006](#) on **maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods** in road transport as amended by [Regulation \(EU\) 2020/1054](#)
- [Directive 2006/22/EC](#) on rules relating to **enforcement requirements concerning the social legislation** of the road transport activities as revised by [Directive \(EU\) 2020/1057](#);
- [Directive \(EU\) 2020/1057](#) on rules relating to **posting drivers in the road transport sector**;<sup>246</sup>
- [Regulation \(EC\) No 1071/2009](#) on rules concerning the conditions to be complied with to pursue the **occupation of road transport operator** as revised by [Regulation \(EU\) 2022/1055](#).

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<sup>244</sup> <https://www.ela.europa.eu/sites/default/files/2022-03/ela-framework-action-road-transport-2022.pdf>

<sup>245</sup> See for the specific mandate of ELA to support cross-border administrative cooperation on the social aspects of international road transport sector legislation: article 1(4) Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, OJ 11.7.2019, L 186/21 ('ELA-Regulation').

<sup>246</sup> Directive (EU) 2020/1057 is part of the wider EU legislation concerned with the posting of workers in the framework of the provision of services: Directive 96/71/EC; Directive 2014/67/EU on the enforcement of Directive 96/71/EC and Directive 2018/957/EU amending Directive 96/71/EC.

In 2020, **Mobility Package I** was adopted by the EU legislator which contains significant amendments to the above-listed instruments.<sup>247</sup> This package includes two Regulations, namely [Regulation \(EU\) 2020/1054](#) and [Regulation \(EU\) 2020/1055](#) and one Directive, namely [Directive \(EU\) 2020/1057](#). One of the main objectives of Mobility Package I is to enhance enforcement and cooperation practices of the above-listed instruments. The changed social legislation will receive due attention in the research template

As regards the type of road transport, the scope of the research template concerns mainly **international road freight transport (road haulage), and to a lesser extent international road passenger transport** in so far as the cooperation obligations of the Member States are similar as those that relate to road freight transport.<sup>248</sup>

## METHODOLOGY

The national experts are requested to execute an **analysis in their country** and to conduct **at least three interviews** with relevant national enforcement authorities. The relevant authorities may be, depending on the country's institutional framework:

- Ministry of Transport/Infrastructure or Road transport Agency
- Labour inspectorate/work environment authority (including road transport inspectorate)
- Social security inspectorate/treasury
- (Road) police, finance police/customs
- Social partners organisations when they are assigned by law, practice or collective agreement any inspection-related tasks.
- Others with direct experience / knowledge of the topic.

The national research template consists of the following two sections:

1. Cooperation obligations, practices and challenges (Questions 1-20)
  - 1.1 Legal transposition (Questions 1-4)
  - 1.2 Institutional framework (Question 5)
  - 1.3 Practical implementation/set up cooperation obligations (Questions 6-20)
2. Statistics (Question 21).

Please find the national research template below.

Prior to completing this national research template, **please carefully read the instructions provided in a separate document**. The instructions provide further guidance for the desk research and for the stakeholder interviews required to complete the information below. The deadline for providing the reply is Friday **30 September 2022**.

**Thank you in advance for your kind reply!**

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<sup>247</sup> For more information: [https://transport.ec.europa.eu/transport-modes/road/mobility-package-i\\_en](https://transport.ec.europa.eu/transport-modes/road/mobility-package-i_en).

<sup>248</sup> Regulation (EU) 2020/1054 introduced by means of its Article 1 (1) that as of July 2026 also carriage by road of goods by vehicles with a tonnage that exceeds 2,5 tonnes will fall within the scope of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport. In doing so, the scope of application will be extended and also vehicles with a tonnage between 2,5 and 3,5 tonnes will be covered. Experts are invited to take this dimension into account as the gradual extension of the social legislation requirements (driving times, rest periods, etc) including use of tachographs may be confronted with specific challenges.

## National research template

### 1 COOPERATION OBLIGATIONS, PRACTICES AND CHALLENGES

#### 1.1 Legal transposition

1. Please provide an overview of the **cooperation obligations and measures as they have been laid down in your national legal framework** (e.g., joint training programmes, standard equipment levels and the establishment of electronic information exchange systems, concerted/joint inspections, reporting obligations, ...) **implementing the EU rules on road transport**. The relevant EU legislation and corresponding articles to be assessed are listed in the table below.

Can you please list the national legislation and implementing rules which were adopted in your legal system with a view of transposing the corresponding EU legislation? *Please provide legal references and hyperlinks to the legislation published by your country, as well as the date of coming into force and end date (if applicable).*

	EU legislation	Relevant cooperation obligations	National implementation measures
<b><i>Driving times, breaks and rest periods;</i></b>	<b>Regulation (EC) 561/2006</b> on driving times and rest periods in road transport, as amended by <b>Regulation (EU) 2020/1054</b>	<ul style="list-style-type: none"> <li>• Article 22 (cooperation)</li> <li>• Including the enhanced cooperation obligations, in particular stemming from Article 1 (17) Regulation 2020/1054</li> </ul>	
<b><i>Enforcement social legislation road transport</i></b>	<b>Directive 2006/22/EC</b> on rules relating to enforcement requirements, as amended by <b>Directive (EU) 2020/1057</b>	<ul style="list-style-type: none"> <li>• Article 5 (concerted checks)</li> <li>• Article 7 (intra community liaison and designated liaison body)</li> <li>• Article 8 (exchange of information)</li> <li>• Article 9 (risk rating system)</li> <li>• Article 11 (2) (joint training programmes)</li> <li>• Including the enhanced cooperation obligations, stemming from Article 2 Directive 2020/1057</li> </ul>	

	EU legislation	Relevant cooperation obligations	National implementation measures
<b>Access to the Occupation of Road Transport Operator</b>	<b>Regulation (EC) No 1071/2009</b> establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC, as amended by <b>Regulation (EU) 2020/1055</b>	<ul style="list-style-type: none"> <li>• Article 16 (national electronic registers) including its amendment under Article 1(12) of Regulation (EU) 2020/1055</li> <li>• Article 18 (administrative cooperation)</li> <li>• Including the enhanced cooperation obligations, in particular stemming from Article 1(13) Regulation 2020/1055</li> <li>• Article 19-21 (mutual recognition of certificates and other documents)</li> <li>• Article 22 (penalties)</li> </ul>	
<b>Posting rules</b>	<b>Directive (EU) 2020/1057</b> on rules relating to posting of drivers in the road transport sector	<ul style="list-style-type: none"> <li>• Article 1 (11-15) (administrative requirements and control measures – IMI)</li> <li>• Article 1 (16) (close cooperation)</li> </ul>	
	<b>Directive (EU) 2018/957</b> amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services	<ul style="list-style-type: none"> <li>• Article 4 (cooperation on information)</li> </ul>	
	<b>Directive 2014/67/EU</b> 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	<ul style="list-style-type: none"> <li>• Article 3 (competent authorities and liaison offices)</li> <li>• Article 6-8 (administrative cooperation)</li> <li>• Article 10 (Inspections)</li> </ul>	



	EU legislation	Relevant cooperation obligations	National implementation measures
<b>Social security coordination</b>	<b>Regulation (EC) No 883/2004</b> on the coordination of social security systems	<ul style="list-style-type: none"> <li>Article 76 (cooperation)</li> </ul>	
	<b>Regulation (EC) No 987/2009</b> laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems	<ul style="list-style-type: none"> <li>Article 2-6 (cooperation and exchange of data)</li> <li>Article 20 (cooperation between institutions)</li> </ul>	

2. In addition, please also list here **any other (cooperation) measures/obligations in national law, applicable to the road transport sector** that relate to the legislation within ELA's mandate, even if they do not stem from EU legislation directly.

*Please provide legal references and hyperlinks to the legislation published by your country, as well as the date of coming into force and end date (if applicable).*

3. How the various cooperation mechanisms and obligations work in your Member State **before** the changes of Mobility Package I in 2020,? What were the main challenges? Could you give some concrete examples of positive and negative aspects?

4. Are the new cooperation and enforcement obligations under Mobility Package I already implemented in your Member State? If not, when are they expected to be implemented and what are the reasons for the delay? Do these new rules differ from the *acquis* already in force in your Member State? If so, how do they differ? Do the new rules fit in your Member State' legal system or would implementing legislation be required? Do you foresee any difficulties or new challenges in applying the new rules in your Member State?



## 1.2 Institutional framework

5. Please map **the relevant national competent authorities** responsible for the enforcement of the EU rules on the social aspects of road transport. Enforcement includes inspections on the road/at the premises of the road transport operator, verification of suspected infringements and formal complaints, information exchange, issuing of fines and penalties and the enforcement thereof, etc.

Please use the table below. Also describe **the exact (limits of their) competences** of these different national competent authorities (Column 2 of the table below).

The relevant authorities may be, depending on your country's institutional framework:

- Ministry of Transport/Infrastructure or Road transport Agency
- Labour inspectorate/work environment authority (including road transport inspectorate)
- Social security inspectorate/treasury
- (Road) police, finance police/customs
- Social partners organisations when they are assigned by law, practice or collective agreement any inspection-related tasks.
- Others with direct experience / knowledge of the topic.

<b>Type of authority</b>	<b>Competencies in enforcement of the EU rules on social aspects of road transport</b>	<b>Name (national language and English)</b>	<b>Contact information</b>
<i>E.g. Ministry of Employment</i>	<i>Please provide a detailed description of the responsibilities of the authority in relation to the enforcement of the EU rules on the social aspects of road transport</i>	<i>Please provide the name of the authority in your national language and in English</i>	<i>Address, general, public e-mail address, website</i>
<i>Add rows if necessary</i>			

1.3 Practical implementation/setup cooperation obligations

6. Please describe and analyse the **practical implementation/setup of concrete cooperation practices** between **national authorities and bodies at national level**.

Please distinguish between the following 'thematic' areas related to the different fields of road transport:

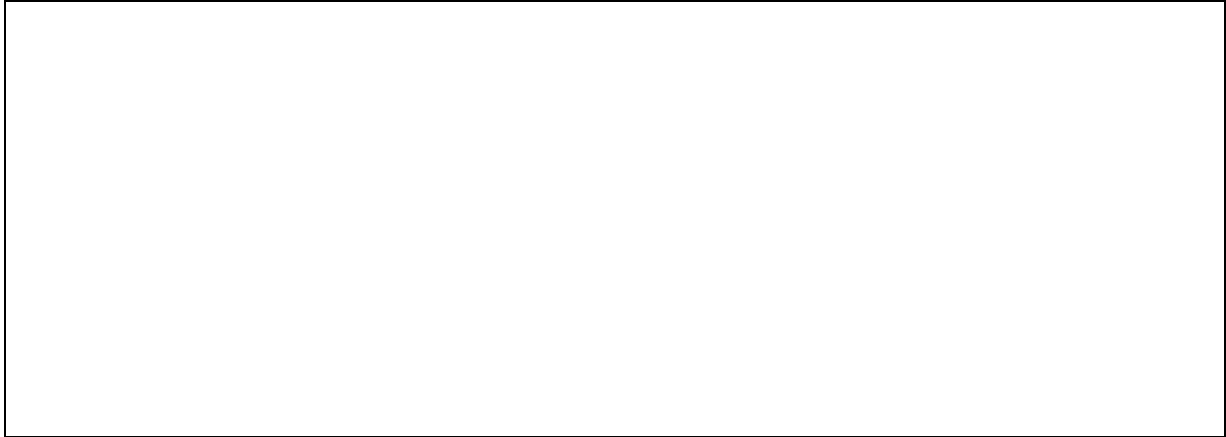
Thematic areas	National competent authorities responsible	Practical implementation of cooperation obligations
<p><i>Daily, weekly and fortnightly driving times, breaks, daily and weekly rest period;</i></p>		
<p><i>Enforcement of other social legislation, incl. chain liability, duty roster for drivers, payment of suitable accommodation by employer, return of driver every 4 weeks to place of</i></p>		



Thematic areas	National competent authorities responsible	Practical implementation of cooperation obligations
<i>residence etc.</i>		
<p><b><i>Compliance of road transport operators with requirements set out in Regulation (EC) No 1071/2009 as amended by Regulation (EU) 2020/1055: authorisation to pursue occupation of road transport operator. Art 5: conditions relating to the requirement of establishment (availability of core business documents at premises and requirement regarding return of vehicles every 8 weeks,.</i></b></p>		
<p><b><i>Enforcement of penalties and collection of fines (Directive 2014/67/EU)</i></b></p>		
<p><b><i>Posting of Drivers: posting declaration in accordance with Directive EU 2020/1057, prior notification arrangements in host Member State,</i></b></p>		

Thematic areas	National competent authorities responsible	Practical implementation of cooperation obligations
<i>determination of employment relationship and of employer; determination of applicable labour law; determination of genuine posting</i>		
<i>Social security (coordination)</i>  <i>Determination of applicable legislation and social security affiliation including competent state (PD A1)</i>		

7. How do the different enforcement agencies coordinate their (often complementary) responsibilities and enforcement actions in practice? How are inspections organised? Are there any differences between roadside checks and checks at the premises of the undertaking? Are the enforcement agencies sharing their information (i.e. before, during or after inspections? If so, how,)? Are there any limits to information-sharing?



8. Please also describe the main **challenges** encountered regarding **cooperation between the relevant authorities in your respective systems.**



9. Please describe and analyse the practical implementation/setup of concrete cooperation practices between national authorities and bodies in your respective country, **and the bodies and authorities of another Member State**. Please distinguish between the following thematic areas related to the different fields of road transport:

Thematic areas	National competent authorities responsible	Practical implementation of cooperation obligations
<i>Daily, weekly and fortnightly driving times, breaks, daily and weekly rest period;</i>		
<i>Enforcement of other social legislation, incl. chain liability, duty roster for drivers, payment of suitable accommodation by employer, return of driver every 4 weeks to place of residence etc.</i>		



Thematic areas	National competent authorities responsible	Practical implementation of cooperation obligations
<p><i>Compliance of road transport operators with requirements set out in Regulation (EC) No 1071/2009 as amended by Regulation (EU) 2020/1055: authorisation to pursue occupation of road transport operator. Art 5: conditions relating to the requirement of establishment (availability of core business documents at premises and requirement regarding return of vehicles every 8 weeks,.</i></p>		
<p><i>Enforcement of penalties and collection of fines (Directive 2014/67/EU)</i></p>		
<p><i>Posting of Drivers: posting declaration in accordance with Directive EU 2020/1057, prior</i></p>		

Thematic areas	National competent authorities responsible	Practical implementation of cooperation obligations
<i>notification arrangements in host Member State, determination of employment relationship and of employer; determination of applicable labour law; determination of genuine posting</i>		
<i>Social security (coordination)  Determination of applicable legislation and social security affiliation including competent state (PD A1)</i>		

10. Please identify and describe any existing relevant (bilateral and/or multilateral) **cooperation agreements with another Member State** that exist in the application of social legislation in the field of road transport (in addition to the EU legislative framework). Please also distinguish between the different thematic areas related to road transport (i.e., driving and rest times; enforcement of other social legislation; posting; and social security coordination).

11. Please describe the main **challenges** encountered regarding this cooperation **between the relevant authorities and bodies in your respective country, and the bodies and authorities of another Member State**. If relevant, feel free to offer suggestions on how this cooperation may be improved.

12. Could you identify with which Member State(s) a higher level of cooperation is established? Any relevant practices that may be identified in this regard? In addition, could you please identify with which Member State(s) your respective country faces more (practical) cooperation challenges compared to other Member States? Which cooperation challenges need to be addressed with these respective Member States?

13. What are the experiences (including difficulties and challenges) with respect to determining/assessing whether a driver who is involved in international road transport is a posted driver (in accordance with the provisions of the Posting of Workers Directives and of the Directive concerning the posting of drivers in the road transport sector) or working simultaneously in different countries?

What are the experiences with assessing whether a driver is involved in pure bilateral transport operations, cabotage or cross-trade transport operations? Are there in practice situations which pose particular challenges when determining whether it concerns bilateral transport operations, cabotage or cross-trade operations? How is the applicable labour and social security law determined? Are the results of these assessments (posted worker or not, determination of applicable labour and social security law)

communicated with other Member States or not? Are there any good practices regarding these assessments?

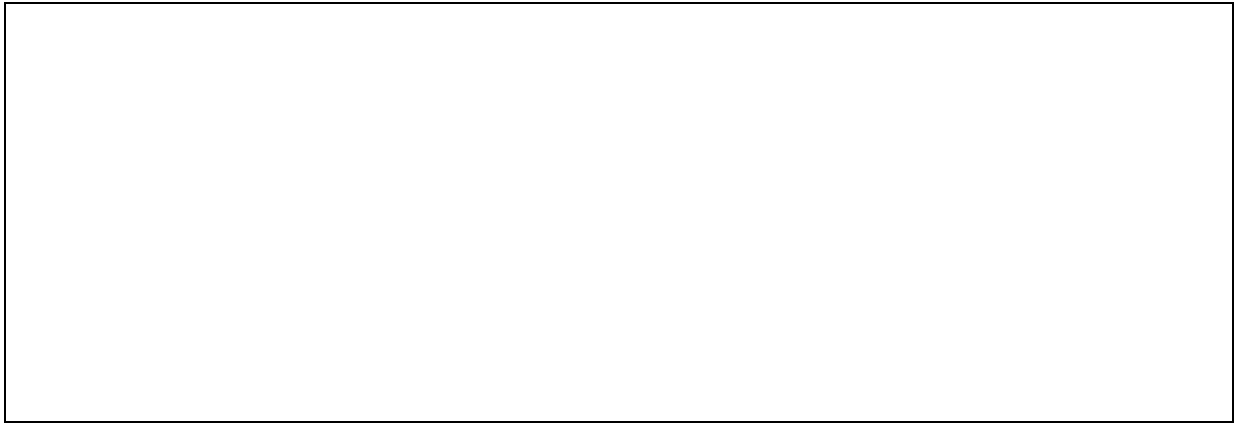
14. What are the experiences in your Member State with the posting declarations from transport operators (prior to the posting and after the posting) for the posting of road transport drivers as established by Directive EU 2020/1057? Please distinguish between undertakings established in your country which are posting drivers abroad (outgoing flows) and drivers who are posted from abroad to your Member State (incoming flows). Are there any challenges, room for improvement?

15. Are there in your Member State special rules or obligations for the other type of drivers which do not fall under the new posting rules established by Directive EU 2020/1057 (e.g. temporary work agency drivers, intra-group posted drivers, self-employed drivers)?

16. Please describe (and if possible provide a link to) the relevant **database(s)** used by the national authorities in your Member State in the enforcement of road transport obligations (databases/electronic registers for road transport undertakings/operators, risk rating registers, databases/statistics on infringements recorded during roadside checks and checks at the premises, ..), .

Are there any challenges or relevant practices experienced regarding their use in cooperation between Member States?





17. Please identify and describe the **challenges** for the usage of the following digital tools for information exchange or cooperation between Member States :

- **Internal Market Information (IMI)**<sup>249</sup> System for the exchange of information between national authorities. Please distinguish between a) **the posting of drivers module**<sup>250</sup>, b) the **conditions of establishment module**<sup>251</sup> and c) **driving times and rest periods module**<sup>252</sup>.
  - o Which national competent authorities or other stakeholders (such as transport operators) are using the above mentioned modules of IMI to share information or request information with national competent authorities from other Member States (please specify by module)?
  - o Are there any data on the number of requests or on the actual exchanges between Member states?
  - o What are the benefits/challenges of the IMI and do you have any observations or suggestions for improvements (e.g. timing of replies; accuracy; effectiveness; user-friendliness)?

*Note: please be informed and also inform the national authorities that you are interviewing that ELA is preparing a more in-depth review on the IMI system new modules for Road Transport that will be launched soon.*

- The use of **the European Register of Road Transport Undertakings (ERRU)**, for the interconnection of national electronic registers on road transport undertakings of the different Member States.
  - o What could be improved in your estimation?
  - o Does any exchange of information on convictions and penalties happen outside of ERRU?
  - o What are the practical challenges arising from Case C-906/19 which relates to the matter of extraterritoriality relating to tachograph infringements?
  - o How do you guarantee a proper enforcement of scenarios where sanctioning/imposition of a penalty for certain tachograph infringements is not permitted? Do you communicate

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249 For the Question sets, forms and lists used in IMI relating to road transport, see: [https://ec.europa.eu/internal\\_market/imi-net/library/question\\_sets\\_forms/index\\_en.htm](https://ec.europa.eu/internal_market/imi-net/library/question_sets_forms/index_en.htm); See also: <https://www.ela.europa.eu/sites/default/files/2022-01/Presentation%20ELA%20Workshop%20-%20Afternoon%20session%20-public.pdf>

<sup>250</sup> See: [https://ec.europa.eu/internal\\_market/imi-net/\\_docs/library/road-transport/posting-declarations\\_en.pdf](https://ec.europa.eu/internal_market/imi-net/_docs/library/road-transport/posting-declarations_en.pdf)

<sup>251</sup> See: [https://ec.europa.eu/internal\\_market/imi-net/\\_docs/library/road-transport/conditions-establishment\\_en.pdf](https://ec.europa.eu/internal_market/imi-net/_docs/library/road-transport/conditions-establishment_en.pdf)

<sup>252</sup> See: [https://ec.europa.eu/internal\\_market/imi-net/\\_docs/library/road-transport/social-rules\\_en.pdf](https://ec.europa.eu/internal_market/imi-net/_docs/library/road-transport/social-rules_en.pdf)


these infringements via ERRU to the national authority of the MS of establishment of the operator? If yes, please describe the national procedure. (e.g. by using INF functionality in ERRU?)

- Does your National Risk Rating System (set up under article 9 of Directive 2022/26 EC) include infringements/sanctions which are recorded in ERRU?
- If so, what systems have you in place in your MS to facilitate the transfer of this information from ERRU to the RRS

18. Pursuant to Article 1 (4) Directive 96/71/EC and Article 1(10) of Directive (EU) 2020/1057, **undertakings established in the third countries** must not be given more favourable treatment than undertakings established in a Member State. How are these provisions implemented in your country? Are separate systems kept for third-country operators (e.g. also regarding **posting declarations**)?

19. Please describe the main challenges encountered regarding the procedures of **cross-border enforcement of fines and penalties** in the area of road transport (e.g., timing, lack of information exchange, etc.). Please also describe, if any, good cooperation practices with regard to the procedures of **cross-border enforcement of fines and penalties**.





20. Can you report **any other challenges or relevant practices** in your country in the context of cross-border cooperation with other Member States which play a role in preventing or tackling potential fraud or circumvention of relevant legislation regarding the following three topics below. This may include an analysis of completed joint and/or concerted inspection initiatives for these matters.

- Use of **letterbox-companies** leading to abuse of posting rules and/or social security legislation
- **Abuse/circumvention of the EU driving and rest times** legislation in road transport.
- **Bogus self/employment to circumvent social legislation in road transport**





## 2 STATISTICS

21. If available, please provide any publicly available and official data on the enforcement of the social aspects of road transport, including, but not necessarily limited to the following aspects:

- The quantity and frequency of inspections/checks carried out (roadside checks and checks at the premises of the transport undertaking);
- Data on the risk assessments of transport undertakings;
- The quantity and type/classifications of infringements found;
- Number and nature of the penalties and fines imposed;
- Number of cross-border enforcement of penalties imposed;
- ...

Please include the source (hyperlink) and the date for which the data are provided.

