

MoveS seminar Italy

*Social security and labour law challenges
posed by road transport in the European
Union*

21 April 2023

Collegio Carlo Alberto, Torino

Languages: Italian/English

Seminario MoveS Italia

Le sfide della sicurezza sociale e del diritto del lavoro poste dal trasporto stradale all'interno dell'Unione Europea

21 Aprile 2023

Collegio Carlo Alberto, Torino

Lingue: Italiano/Inglese

MoveS

project presentation

PRESENTED BY:

FRANCESCO COSTAMAGNA

UNIVERSITY OF TURIN

MoveS

EU-wide network of independent legal experts in the fields of
free movement of workers (FMW)
social security coordination (SSC)
Posting

- Funded by the European Commission (DG EMPL units E1 'FMW' and E2 'SSC')
- 32 countries covered (EU/EEA/CH/UK)
- Implemented by Eftheia, Deloitte Advisory & Consulting, University of Ljubljana, University of Poitiers
- Four-year project (2022-2025)

Objectives n. 1

To provide legal expertise in the areas of FMW, SSC and Posting

- **Legal Reports**
- Bimonthly **Monitoring Reports**
- **Ad hoc requests** and **comparative assessments**

MoveS Legal Reports

2023	<i>'The relationship between the Regulations on the coordination of social security systems and the Directive on the application of patients' rights in cross-border healthcare'</i>
2022	<i>'Social security and tax law in cross-border cases'</i>
2020	<i>'The legal status and rights of the family members of EU mobile workers'</i>
2019	<i>'The application of the social security coordination rules on modern forms of family'</i>
2019	<i>'The application of free movement of workers and social security coordination rules by national courts' (2020)</i>
2018	<i>'Social security coordination and non-standard forms of employment and self-employment: Interrelations, challenges and prospects'</i>
2018	<i>'Consequences and possible solutions in case of lump sum payment of pensions, reimbursement of contributions and waiver of pensions in cross-border situations'</i>

Objectives n. 2

Disseminate expertise and increase experts' and practitioners' knowledge by means of:

- **National seminars**
- **Webinars**
- **Information tools & communication**
- **Training for EC staff**

Seminars & webinars

- 8 one-day seminars a year
- 3 webinars
- Audience: Representatives of competent authorities and institutions, social partners, NGOs, judges, lawyers and academics

	Date (2023)	Country (City)
1.	February	Poland (Warsaw)
2.	April	Italy (Turin)
3.	May	Switzerland (Lausanne)
4.	June	Estonia (Tallin)
5.	June	Austria (Salzburg)
6.	September	United Kingdom (Nottingham)
7.	October	Romania (Bucharest)
8.	October	Bulgaria (Sofia)

Information tools & Communication

- [A-Z on social security coordination](#)
- [Social Security Coordination Regulations database](#)

A-Z Information tool

Moving & working in Europe

Working in another EU country ▾

EU social security coordination ▾

Network of legal experts (MoveS) ▲

Case law

A-Z on social security coordination (FAQs)

Social Security Coordination Regulations database

Network of experts on statistics

A-Z on social security coordination (FAQs)

The 'A-Z of social security coordination (FAQs)' is a facility setting out the basic principles and frequently raised issues in field of social security coordination.

You are invited to first read the [introduction](#) into the theory of social security coordination and the coordination instruments of the European Union.

You will then find more in-depth information structured in 70 keywords. Each keyword provides answers to specific questions and includes plenty of practical examples and links to further information sources to guide you through this complex topic.

Some keywords provide you with specific definitions (e.g. self-employed person, frontier worker), while others explain the legislative aspects of certain procedures (e.g. cross-border medical care, posting of workers).

You can use this tool to expand your own knowledge or to find the answer to practical questions. All you have to do is click on the relevant keywords below in order to see more detailed information.

A

[Access to social assistance and other benefits not covered by the material scope of Regulation 883/2004](#)

H

[Harmonisation of social security](#)

P

[Paternity benefits](#)

[Pensions](#)

[Personal scope](#)

Social Security Coordination Regulations database

(EC) Regulation No 883/2004	(EC) Regulation No 987/2009	(EC) Regulation No 1408/71	(EC) Regulation No 574/72				
<p>(EC) Regulation 883/2004</p> <p>TITLE 1: GENERAL PROVISIONS</p> <p>Art. 1: Definitions</p> <p>Art. 2: Persons covered</p> <p>Art. 3: Matters covered</p> <p>Art. 4: Equality of treatment</p> <p>Art. 5: Equal treatment of benefits, income, facts or events</p> <p>Art. 6: Aggregation of periods</p> <p>Art. 7: Waiving of residence rules</p> <p>Art. 8: Relations between this Regulation and other coordination instruments</p> <p>Art. 9: Declarations by the Member States on the scope of this Regulation</p> <p>Art. 10: Prevention of overlapping of benefits</p> <p>TITLE 2: DETERMINATION OF THE LEGISLATION APPLICABLE</p>	<p>(EC) Regulation 883/2004: Art. 1</p> <p>For the purposes of this Regulation:</p> <ol style="list-style-type: none"> 'activity as an employed person' means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists; 'activity as a self-employed person' means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists; 'insured person', in relation to the social security branches covered by Title III, Chapters 1 and 3, means any person satisfying the conditions required under the legislation of the Member State competent under Title II to have the right to 	<table border="1"> <tr> <td data-bbox="749 1072 1000 1146">Implementing Articles of Reg. 987/2009</td> <td data-bbox="1000 1072 1242 1146">Corresponding Articles of Reg. 1408/71</td> <td data-bbox="1242 1072 1483 1146">Administrative Commission Decisions</td> <td data-bbox="1483 1072 1727 1146">Corresponding CJEU Case Law</td> </tr> </table> <p>Implementing articles (EC) Regulation 987/2009 Articles</p> <p>Art. 1</p>	Implementing Articles of Reg. 987/2009	Corresponding Articles of Reg. 1408/71	Administrative Commission Decisions	Corresponding CJEU Case Law	
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Cooperation and networking

- **MoveS webpage (EUROPA)**

<https://ec.europa.eu/social/main.jsp?catId=1098&langId=en>

MoveS LinkedIn group:

MoveS – free movement and social security coordination

<https://www.linkedin.com/groups/4291726>

Thank you for your attention!

Recent developments in the field of social security coordination

PRESENTED BY:

BENOIT ABELOOS

EUROPEAN COMMISSION, DEPUTY HEAD OF UNIT E2, DG EMPL



Recent developments in the field of social security coordination

European Commission, DG EMPL
Unit E2 – social security coordination
Benoit Abeloos – Deputy Head of Unit

Overview

1. Social security coordination in the road transport sector
2. Digitalisation of social security coordination
3. COVID-19 and telework

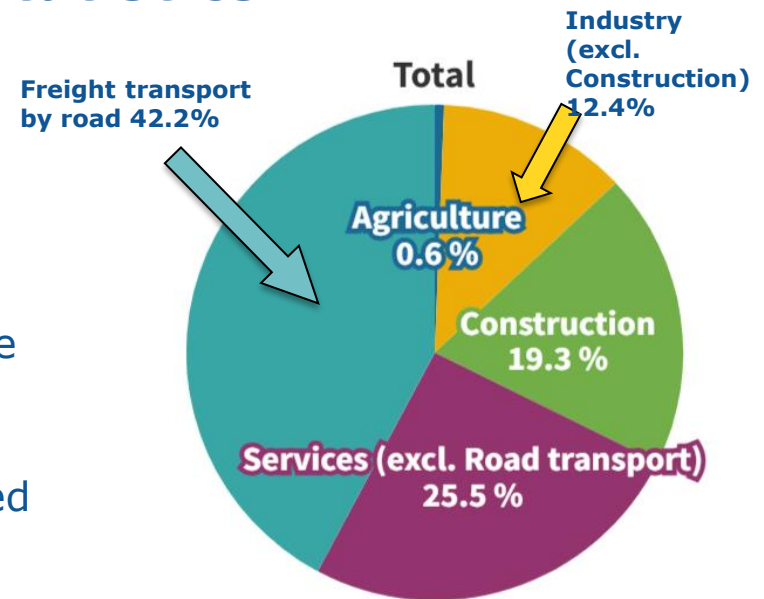


Social security coordination in the road transport sector

Road transport – Statistics

In 2021:

- PDs A1 issued for postings (Art. 12): only 2% concern the road transport sector
- PDs A1 issued for activities in two or more Member States (**Art. 13**): road transport is the most important sector at **42%**
- During the pandemic, the decrease in PDs A1 issued under Art. 13 was much less pronounced than under Art. 12: continuation of road transport activities as an explanatory factor



PDs A1 issued according to Art. 13, by sending Member State, 2021

Table 16 - Total number of PDs A1 issued for persons active in two or more Member States, breakdown by economic activity, from a sending perspective, 2021 (row %)

Sending MS	Agriculture, hunting and fishing NACE A	Industry NACE B to F		Services NACE G to T								
		Industry Total	Construction NACE F	Services Total	Wholesale and retail trade NACE G	Accommodation and food service activities NACE I	Transportation and storage; Information and communication NACE H and J	Freight transport by road NACE H - Group 49.4	Financial and insurance; Real estate; Professional, scientific and technical activities; Administrative and support service activities NACE K, L, M, and N	Temporary employment agency NACE N - Group 78.2	Education, health and social work, arts and other services NACE P, Q, R, and S	Human health and social work activities NACE Q
BE	0.6 %	32.7 %	14.5 %	66.6 %	8.9 %	0.1 %	36.6 %	25.5 %	21.4 %	10.0 %	8.0 %	0.5 %
BG												
CZ												
DK												
DE												
EE	5.5 %	79.8 %	54.4 %	14.7 %	0.5 %	0.2 %	8.2 %	7.4 %	4.4 %	1.3 %	1.6 %	0.8 %
IE												
EL												
ES												
FR	0.0 %	40.0 %	7.3 %	60.0 %	5.7 %	3.7 %	30.2 %	26.1 %	15.5 %	2.0 %	4.9 %	2.4 %
HR	0.6 %	36.3 %	15.3 %	63.0 %	2.8 %	0.1 %	52.2 %	42.1 %	3.5 %	1.8 %	4.4 %	1.1 %
IT												
CY	0.0 %	46.1 %	6.5 %	53.9 %	0.6 %	10.2 %	40.0 %	4.4 %	2.8 %	1.5 %	0.3 %	0.0 %
LV	0.5 %	40.8 %	30.4 %	58.8 %	6.7 %	0.2 %	40.3 %	37.8 %	10.3 %	1.5 %	1.2 %	0.1 %
LT	0.6 %	18.5 %	17.7 %	80.9 %	0.0 %	6.7 %	57.4 %	57.4 %	0.3 %	0.0 %	16.5 %	0.0 %
LU	1.6 %	22.1 %	12.5 %	76.3 %	4.7 %	0.4 %	63.1 %	46.2 %	7.0 %	0.0 %	1.0 %	0.2 %
HU												
MT	0.1 %	0.0 %	0.0 %	99.9 %	0.0 %	4.8 %	1.8 %	92.3 %	1.0 %	0.0 %	0.0 %	0.0 %
NL												
AT*	0.1 %	12.8 %	3.6 %	16.1 %	2.7 %	0.1 %	3.1 %	0.0 %	0.6 %	0.0 %	9.6 %	0.0 %
PL	0.5 %	27.4 %	22.4 %	72.1 %	1.5 %	0.1 %	50.7 %	50.5 %	2.6 %	1.9 %	17.0 %	12.8 %
PT												
RO												
SI	0.2 %	61.8 %	0.5 %	38.0 %	0.1 %	0.0 %	37.9 %	n.a.	0.0 %	n.a.	0.0 %	0.0 %
SK	0.1 %	20.2 %	15.3 %	79.7 %	0.5 %	0.1 %	52.8 %	52.4 %	0.7 %	0.0 %	25.6 %	0.3 %
FI	0.3 %	64.6 %	15.7 %	35.1 %	1.4 %	0.0 %	15.0 %	13.8 %	7.8 %	0.4 %	10.9 %	1.1 %
SE	0.6 %	49.2 %	13.8 %	50.1 %	10.6 %	0.2 %	4.8 %	1.1 %	14.8 %	0.8 %	19.4 %	11.5 %
IS												
LI	0.0 %	28.0 %	2.2 %	72.0 %	0.2 %	0.8 %	56.8 %	45.5 %	10.2 %	1.0 %	4.0 %	0.0 %
NO												
CH												
UK												
Total	0.6 %	31.7 %	19.3 %	67.7 %	2.1 %	0.8 %	47.1 %	42.2 %	3.8 %	1.9 %	14.2 %	7.6 %

In 2021:

- Share of road transport sector in PDs A1 issued under Art. 13 particularly important for HR, LV, LT, LU, MT, PL, SK, LI
- Percentage highest for **Malta: 92.3%**
- Absolute number highest for **Poland: ~ 224,000**

Case law: C-610/18 AFMB (1)

- AFMB, established in CY, managed vehicles on behalf of transport undertakings established in NL and concluded employment contracts with long-distance drivers
- The drivers never lived or worked in CY, they lived in NL and worked in various Member States (not carrying out a substantial part of their activities in NL); some had been employed by the NL transport undertakings before
- Art. 13(1)(b)(i): the **Member State in which the employer is situated is competent** in such situations
- AFMB argued CY social security legislation should apply, while the NL social security institution considered NL legislation should apply

→ **Question: Who is the employer for the purposes of Art. 13?**

Case law: C-610/18 AFMB (2)

Court ruling:

- Concept of “employer” must be given an autonomous and uniform EU-wide interpretation → ensuring that **only one Member State is competent**
 - The concept implies the existence of a **hierarchical relationship** / authority
 - Not only the employment contract matters, but **the objective situation / its performance in practice** → **employers cannot choose** applicable legislation, otherwise risk of exploitation of EU legislation and “race to the bottom”
 - AFMB has formally concluded employment contracts, but NL undertakings have authority over drivers, actually bear cost of wages and have power of dismissal
- **NL undertakings are employers for SSC-purposes / NL legislation applies**

Case law: C-410/21 DRV & C-661/21 Verbraeken (1)

- Two transport companies established in BE, whose directors owned companies in SK / LT, holding Community licenses for road transport issued by SK / LT
- These companies employed drivers that were posted to BE with SK / LT PDs A1
- Criminal proceedings against both BE companies for social security fraud
- **Q1: Does a license for road transport constitute irrefutable proof of the company's establishment, for the purposes of Art. 13, in the issuing MS?**
- C-410/21: Following a request for retroactive withdrawal of PDs A1, SK only provisionally suspended their binding force, pending the outcome of proceedings, the drivers remained subject to SK legislation
- **Q2: Does "provisional withdrawal" of a PD A1 remove its binding force?**

Case law: C-410/21 DRV & C-661/21 Verbraeken (2)

Court ruling:

- **Q1:** to assess the location of the employer for the purposes of Art. 13(1)(b)(i), it matters **from where an undertaking is in fact managed and organised**
- Criteria for obtaining a **license for road transport** are different → it is **not irrefutable proof** of the company's location for the purposes of Art. 13
- **Q2:** PD A1 is binding, including on Court's of the receiving MS, until withdrawn / declared invalid by the issuing MS → **provisional "suspension" does not remove its binding effect** (otherwise: risk of double affiliation of the worker)
- Yet, since SK institution deferred its decision / did not review the validity of the PDs A1 within a reasonable time, BE court may make a finding of fraud and disregard the PDs A1 for the purposes of the proceedings

Digitalisation of Social Security Coordination

Electronic Exchange of Social Security Information (EESSI) – European Social Security Pass (ESSPASS)



What is EESSI?

EESSI connects electronically around 3.500 social security institutions across Europe, allowing for faster and secure exchanges of information, as required by EU social security coordination rules.

Benefits of EESSI

- Faster and secure information exchange → quicker and more efficient handling of social security coordination cases.
- Facilitating the implementation of social security coordination rules
- More accurate exchange and secure handling of data

EESSI: State of Play

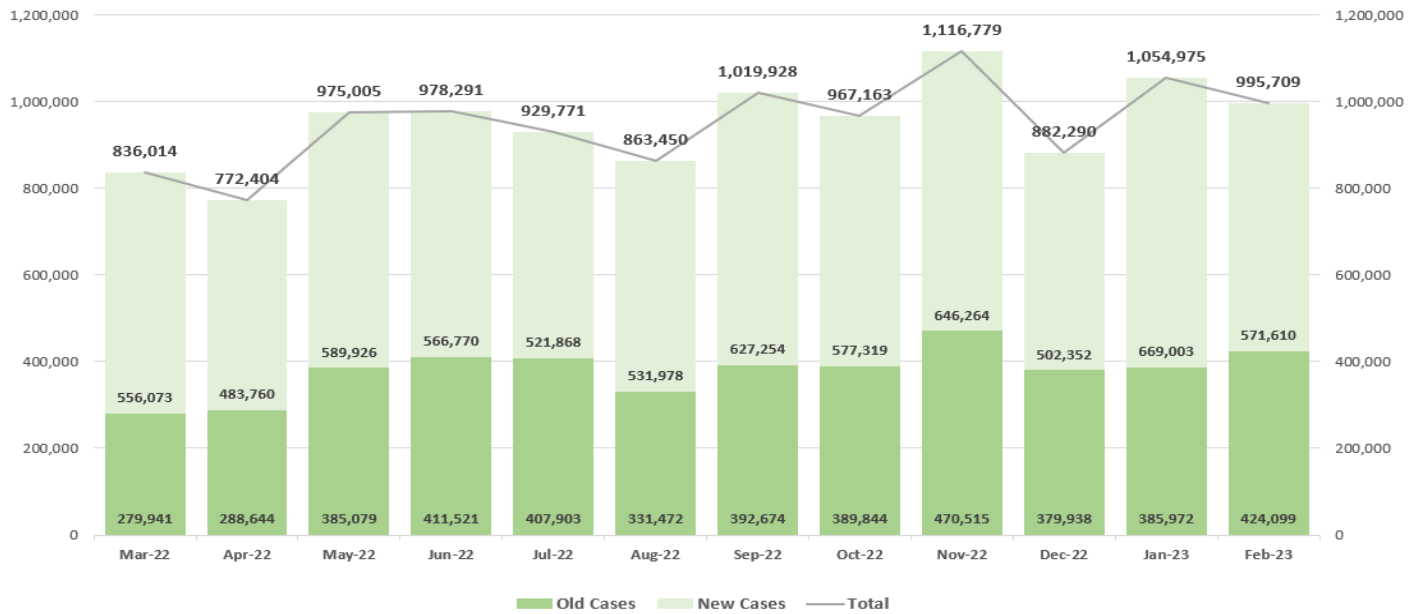
- *All 32 countries (27 EU Member States + IS, LI, NO, CH and UK) connected to the system;*
- *13 countries fully in production (with all Business Use Cases);*
- *Since 2019, more than 42 million messages exchanged and 14 million cases handled*
- *Family benefits and Legislation Applicable sectors deployed by all countries*
- *Full implementation expected by end of 2024*

EESSI Production Volume

Since EESSI start
(april-19)

46,927,710 SEDs
13,729,113
Cases

Monthly Active* Cases Last 12 Months



Active* cases are those cases that exchanged SEDs during a specific month

Sources: CSN Logs 01.04.2019 – 28.02.2023. Please notice that these reports now include all the data that was missing in previous reports because of the AP log issue.

Legislation Applicable

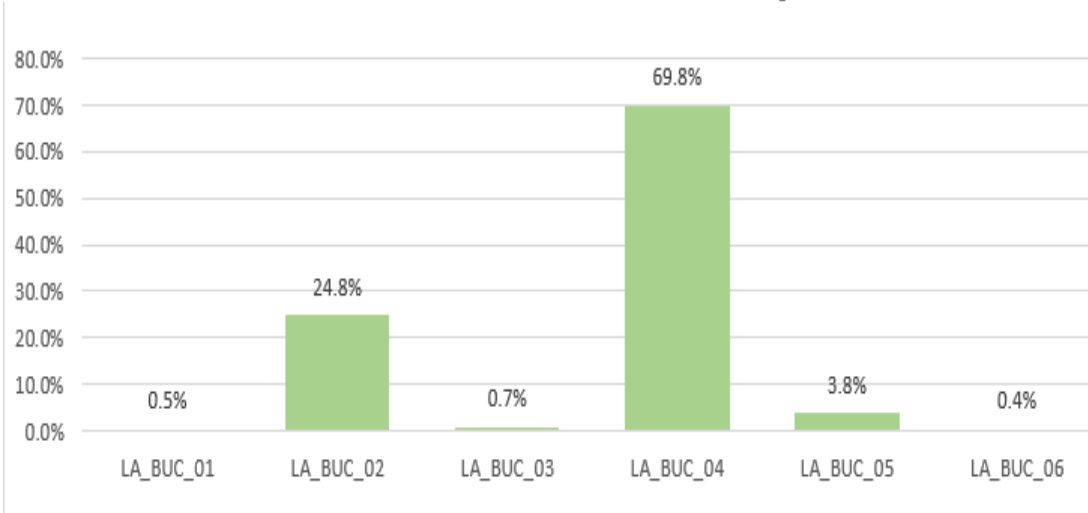
- *The purpose of the BUCs in Legislation Applicable (LA) is to facilitate the information exchange related to the legislation that should apply in given circumstances for a citizen (e.g. posted worker) in accordance with European social security coordination rules.*
- *The rules for determining which legislation is to apply are set out in:*
 - **Articles 11 - 16 of Regulation (EC) no 883/2004**
 - **Articles 14 - 21 of Regulation (EC) no 987/2009.**

Legislation Applicable BUCs

BUC	Name	Description
LA_BUC_01	Request for Exceptions	Request for exception sent by a competent authority
LA_BUC_02	Determine Legislation Applicable	Exchange information and agree about the provisional determination of legislation applicable for a person
LA_BUC_03	Notification of relevant information	Notify the need to revise a previous decision
LA_BUC_04	Notification of Posting	An institution from one Member State inform the Competent Institutions in another Member State that a person was posted
LA_BUC_05	Notification of applicable legislation	An institution inform another institution from another state that the person is subject to the legislation of the informing Member State
LA_BUC_06	Request for more information	A Member State ask for more information from other Member State(s), in order to determine the legislation applicable.

EESSI LA BUCs Analysis

Year 2022 % New Cases LA BUC / All LA



Year-2022	
6,470,219 New Cases	
Sector	% BUCs
Legislation Applicable	57%
Sickness	22%
Pension	10%
Family Benefits	6%
Unemployment	2%
Horizontal	2%
Accident at Work	1%
Others (R,M)	1%

3,697,833 LA new Cases during 2022.

MT complained about the perceived excess of notifications coming from the transport sector

Implementation of the SDG Regulation?

Country	Request PDA1 online	Format	Request EHIC online	Format	Request PDP1 online	Format	Other information
Austria	●	Paper	●	E-card	●	Electronic	
Belgium	●	Electronic	●	EHIC	●	Electronic	
Croatia*	●	Paper	●	EHIC	●	Electronic	
Czechia	●	Paper	●	EHIC	●	Paper	
Denmark	●	Electronic	●	EHIC	●	Electronic	
Estonia*	●	Electronic	●	EHIC	●	Electronic	
Finland*	●	Electronic	●	EHIC	●	Paper	
France*	●	Electronic	●	EHIC	●	Paper	EHIC via mobilephone available
Germany*	●	Electronic					
Hungary	●	Electronic	●	EHIC	●	Paper	
Ireland	●	Electronic	●	EHIC	!	?	
Latvia*	●	Electronic	●	EHIC	●	Electronic	
Luxembourg*	●	Electronic	●	EHIC	●	Paper	
Malta*	●	Electronic	●	EHIC	●	Paper	
Netherlands*	●	Electronic	●	EHIC			
Norway	●	Electronic	●	EHIC	●	Electronic	
Poland	●	Electronic	●	EHIC	●	?	
Portugal*	●	Electronic	●	EHIC	●	Electronic	
Romania	●	Electronic	●	EHIC	●	Electronic	
Slovak Republic*	●	Electronic	●		●	Paper	
Slovenia*	●	Electronic	●	EHIC	●	Electronic	
Spain*	●	Electronic	●	EHIC	●	Electronic	
Sweden	●	Paper	●	EHIC	●	?	
Switzerland	●	Electronic				paper	
UK	●	Electronic					

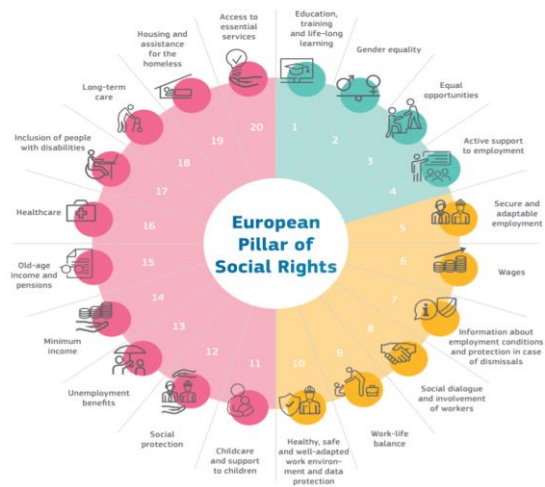
Legend:

- = Online service
- = Non-online service
- ! = No information provided, non-online service in SDG survey 2020

* = Some of the information from the survey 2020 which was launched by EC related to the SDGR compliance

Please note: Electronic covers initiation of the document in the pdf format or sending the pdf via email.
EHIC means plastic card.

What is the ESSPASS?



ESSPASS pilot project to explore a digital solution to facilitate the exercise of citizens social security rights across borders and help reduce the risk of errors and fraud.



ESSPASS pilot project

WHAT?

- Exploring an EU wide, standardized, citizen centric digital solution for the cross-border verification of social security entitlements.
- Digitalising procedures related to the Portable Documents and the European Health Insurance Card (EHIC)
- Vision to spread to all portable documents later on

WHY DO WE NEED A PILOT?

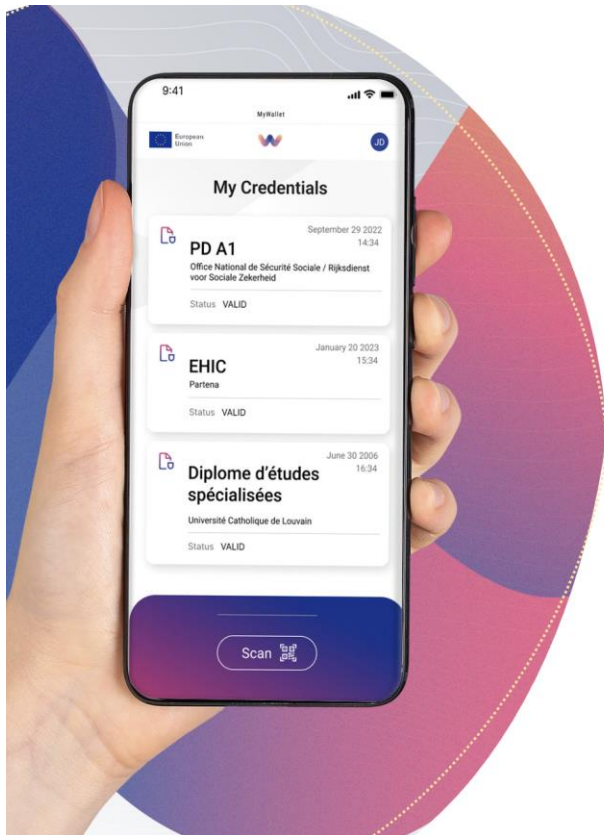
- Prove technical feasibility
- Early identify legal and organisational constraints
- Assess costs, benefits and risks
- Verify and gain countries' true commitment
- Build ownership

STATE OF PLAY

- Project was launched with INPs and focused on PDA1
- Consortia of Member States piloting PD A1 and EHIC with the financial support of the Digital Europe programme (starting on May 2023) – DC4EU & Vector
- 2023 CWP: Communication on digitalisation in social security to support free movement and labour mobility

EU digital identity (EUDI) wallets

*Citizen centric
interoperable IT
solutions are
required at EU level*



High level conference and working party on digitalisation in social security coordination – March 2023

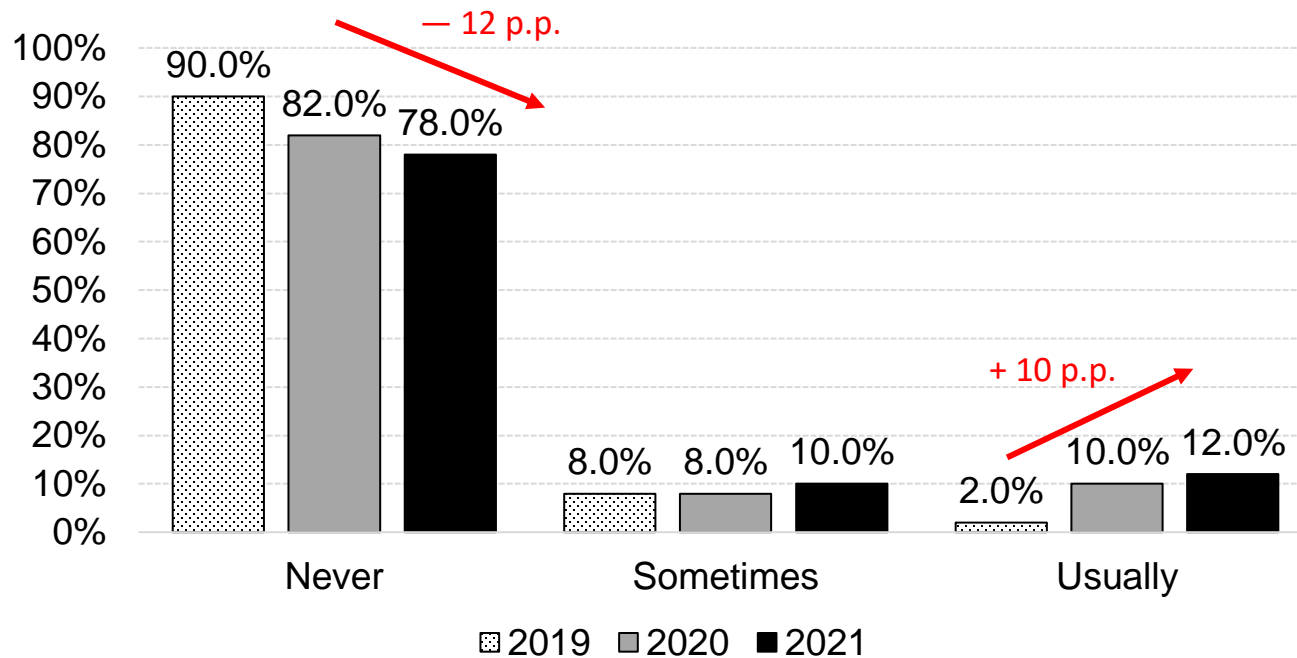
- Digitalisation *in this area* touches the functioning of the Single Market – free movement
- Progress made, but EU and national actions require scaling up
- *High level commitment of Member States is required*
- Piloting is crucial to
 - **confirm feasibility**
 - **assess cost/benefit of different technical solutions**
 - **build ownership**
- *Pilot projects DC4EU and Vector about to start*
- *Synergies and complementarities between initiatives should be further clarified and coordinated*
 - **EESSI, SDG, ESSPASS, EUDI eWallet, EBSI**
- *Long-term vision, concrete actions and clear milestones are needed*
- *Solutions should be driven by political and business requirements, developed jointly by policymakers and IT specialist*
- *Further convergence between labour and social security domains is required by stakeholders (e.g. eDeclaration, Labour card project)*



Covid-19 and Telework

Size and evolution of **teleworking cross-border workers** in the EU

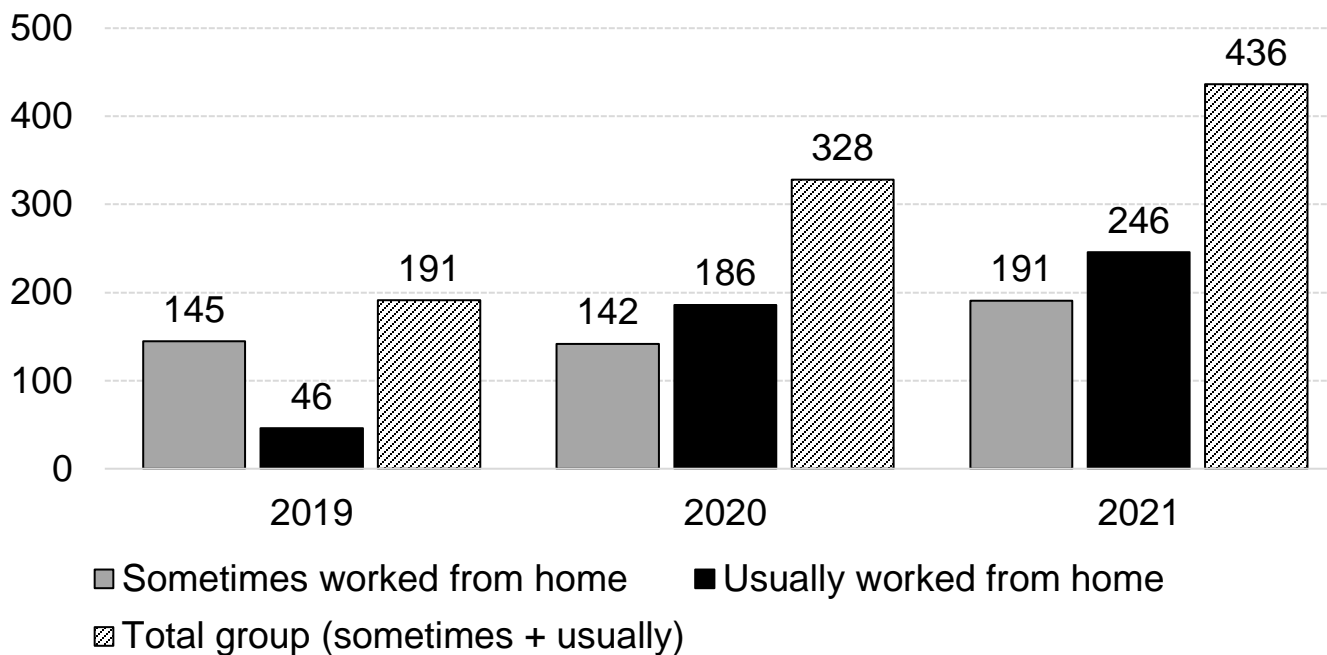
Cross-border workers in the EU working from home



Source: Eurostat EU-LFS data

Size of teleworking cross-border workers in the EU

Estimated number of cross-border workers in the EU working from home (in, 000)



Source: Eurostat EU-LFS data

Covid-19 and telework

- Telework was an important instrument to “flatten the curve” of COVID-19 infections.
- The Administrative Commission (AC) adopted a **Guidance Note** for competent institutions, which was valid until 30 June 2022.
- Key during COVID-19 pandemic, in a *force majeure* context → pragmatic solution: telework in a Member State other than the competent (“usual”) Member State of employment due to COVID-19 did not lead to a change of applicable legislation.

Telework beyond the pandemic (1)

- Advantages for employers and workers: large-scale telework is here to stay
 - In June 2022, the AC has endorsed a **new guidance note on telework**:
 - flexible interpretation of the applicable legislation rules (e.g. occasional telework can be considered as posting under Art.12 of Reg. 883/2004)
 - transitory period of 12 months (1 July 2022 - 30 June 2023);
 - no abrupt changes of applicable legislation during the transitory period
- to
- ensure a smooth transition;
 - full application of the guidance note as of 1 July 2023.

Telework beyond the pandemic (2)

- The Commission and Member States' representatives in the AC set up a dedicated **ad-hoc group** focused on cross-border telework.
- As a mid-term solution the group proposed that the interested countries conclude a **multilateral framework agreement** (based on Art. 16 of Regulation (EC) No 883/2004).
- Those countries that decide not to join in will be returning to the normal rules as of 1 July 2023.

Thank you for your attention!

Specific issues concerning posting of workers in road transport

PRESENTED BY:

SOPHIE ROBIN-OLIVIER

PROFESSOR AT THE SORBONNE SCHOOL OF LAW
UNIVERSITY PARIS 1 PANTHÉON SORBONNE

Posting in road transport & Mobility package I

Posting in the domain of road transport has been addressed in the mobility package I, together with “market rules” and “Driving and rest times”

⇒ **Directive 2020/1057, 15.07.2020**

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

Directive (EU) 2020/1057 is applicable since Feb. 2022

Structure of the presentation

I- The problem of identifying posting in road transport, before and after Directive 2020/1057

II- Social rights of posted workers in road transport: some progress towards limiting the race to the bottom in labour law and social security

I- The problem of identifying posting in road transport, before and after Directive 2020/1057

1) A criterion worked out by the ECJ case law: the notion of sufficient connection

2) Posting according to Directive 2020/1057

1) A criterion worked out by the ECJ case law: The notion of sufficient connection

Federatie Nederlandse Vakbeweging – FNV , C-815/18 (2020) - Grand Chamber

§ 45 « A worker cannot, in the light of Directive 96/71, be considered to be posted to the territory of a Member State unless the performance of his or her work has a **sufficient connection** with that territory

...

which presupposes that **an overall assessment of all the factors that characterise the activity of the worker** concerned is carried out. »

The notion of sufficient connection

The court refers to *Dobersberger*, C-16/18 (2019), concerning the specific situation of workers on board of trains

Solution confirmed in *Rapidsped*, C-428/19 (2021)

The notion of sufficient connection

Factors which should be taken into account

- The nature of the activities carried out by the worker concerned in that territory
- The degree of connection between the worker's activities and the territory of each Member State in which the worker operates
 - The proportion represented by those activities in the entire transport service

The notion of sufficient connection

A driver carrying out **cabotage operations** must, as a rule, be regarded as being posted to the territory of the host Member State

- **Cabotage operations take place entirely within the territory of the host Member State**, which permits the inference that the driver's performance of his or her work in the course of such operations has a sufficient connection with that territory
- The **duration of cabotage operations** is irrelevant when determining whether there has been such a posting, without prejudice to the possible application of Article 3(3) of that directive.

The notion of sufficient connection

A factor which is not sufficient in itself

The fact that a driver working in international road transport, who has been hired out by an undertaking established in one Member State to an undertaking established in another Member State, **receives the instructions related to his or her tasks, starts or finishes them at the place of business of that second undertaking**

The notion of sufficient connection

A factor which should not be taken into account

The existence of a group affiliation between undertakings that are parties to a contract for the hiring-out of workers...

« does not, as such, determine the degree of connection with the territory of a Member State to which the worker concerned is sent and, therefore, does not determine whether the connection between that worker's performance of his or her work and that territory is sufficient in order to establish whether there has been a posting under Directive 96/71 »

The notion of sufficient connection
... needs to be completed with the existence of
« a Member State in which the worker normally works »

FNV, § 65

« a worker working as a driver in the road transport sector, who, under a charter contract between the undertaking which employs that worker, established in one Member State, and an undertaking located in another Member State, carries out cabotage operations **in the territory of a Member State other than the Member State in which he or she normally works**, must, as a rule, be regarded as being posted to the territory of the Member State in which those operations are carried out »

2) Posting according to Directive 2020/1057

The Directive establishes specific rules for road transport without formally amending Directive 96/71

Justification for these specific rules

- « high degree of mobility of the workforce in the road transport »
- Addressing the issue of “letter-box” companies (frauds)

The Directive seeks to strike a balance between

« the freedom of operators to provide cross-border services,
free movement of goods,
adequate working conditions and social protection for drivers »

Recital n°1

Posting according to Directive 2020/1057

The condition of **“a sufficient link between the driver and the service provided in the territory of a host Member State”**

is enshrined in the Directive

The Directive adds formal distinctions between different types of operations according to the “degree of connection with the territory of the host Member State”

Posting according to Directive 2020/1057 Exclusion of “bilateral operations”

The Directive excludes from the notion of posting
**“bilateral operations
from or to the Member State of establishment”**

Art. 1(3) transport of good

Art. 1(4) transport of passengers

Because the application of the working conditions of the host State would
be “disproportionate to the freedom to provide cross-border road
transport services”

Posting according to Directive 2020/1057 Exclusion of transit

The Directive excludes **transit** from the notion of posting

« a driver shall not be considered to be posted for the purpose of Directive 96/71/EC when the driver transits through the territory of a Member State without loading or unloading freight and without picking up or setting down passengers »

Art. 1(5)

Posting according to Directive 2020/1057 Inclusion of cabotage

The Directive includes **cabotage** in the notion of posting

« A driver performing cabotage operations as defined in Regulations (EC) 1072/2009 and (EC) 1073/2009 shall be considered to be posted under Directive 96/71/EC »

Art. 1(7)

Conclusion on the problem of identifying posting in road transport

- Difficulties in the implementation of the formal distinctions included in the Directive can be expected (see the guides prepared by the EC with a series of scenarios and diagrams...)
- In the name of achieving a balance between market objectives and workers' protection, the risk of operations worked out to circumvent national legislations is not avoided (e.g. refusal of the ECJ to take into account the existence of group affiliation...)

II- Social rights of posted workers in road transport: some progress towards limiting the race to the bottom in labour law and social security

1) Clarification and harmonization in the domain of labour law

2) Combatting frauds in the domain of social security

1) Clarification and harmonization in the domain of labour law

- On rights: Applicability of Directive 96/71
- On enforcement: Harmonization of posting declaration

On rights: Applicability of Directive 96/71

FNV (2020)

A Union requests that workers benefit from a collective agreement applicable in the host state

Rapidsped (2021)

Drivers employed by a company established in Hungary bring an action before a Hungarian court, on the ground that their wages corresponding to the time worked in France did not reach the French minimum wage

On rights: Applicability of Directive 96/71

FNV (2020)

The notion of collective agreement « declared universally applicable » must be assessed by reference to the applicable national law

Rapidsped (2021)

« **a daily allowance**, the amount of which varies according to the duration of the worker's posting, constitutes an allowance specific to the posting and is part of the minimum wage, unless it is paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board or lodging, or unless it corresponds to an allowance which alters the relationship between the service provided by the worker, on the one hand, and the consideration which he or she receives in return, on the other »

On enforcement: Harmonization of posting declaration

Art 1 (11) of Directive 2020/1057

Member States may only impose the following administrative requirements

Before posting

Road transport posting declaration, at the latest at the beginning of the posting, using a European portal

During the posting

A copy of the posting declaration (electronic or paper version)

Evidence that transport operation takes place in host Member States (e.g. consignment note)
Tachograph records

After the posting

Authorities of the Member State where the posting took place can ask the operator to send:

Payslips and proof of payment

Tachograph records and time sheets

Evidence that transport operation has taken place in host Member States

Employment contract

2) Combatting frauds in the domain of social security

- *AFMB, C-610/18 (2020)*

Determination of the employer

Long distance lorry drivers

- *DRV Intertrans, C-410/21 (2023)*

Suspension of A1 certificates / suspected fraud / chain of contracts

AFMB

AFMB, a company formed in **Cyprus**, entered into fleet management agreements with transport undertakings established in the **Netherlands** whereby AFMB undertook, in consideration of a commission, to take charge of the management of the heavy goods vehicles operated by those undertakings as part of their businesses, on behalf of and at the risk of those undertakings

AFMB also entered into employment contracts, for variable periods, with international long-distance lorry drivers residing in the Netherlands

According to the terms of those work contracts, **AFMB was named as the employer of those workers and Cypriot employment law was declared to be applicable**

The international long-distance lorry drivers concerned had never lived nor worked in Cyprus

When those contracts were performed, they continued to live in the Netherlands and worked, on behalf of those transport undertakings, in two or more Member States, and also, in the case of some of those long-distance lorry drivers, in one or more European Free Trade Association (EFTA) States

AFMB

The employer of an international long-distance lorry driver is the undertaking which has actual authority over that long-distance lorry driver, which bears, in reality, the costs of paying his or her wages, and which has the actual power to dismiss him or her and not the undertaking with which that long-distance lorry driver has concluded an employment contract and which is formally named in that contract as being the employer of that driver

The interpretation of the concept of employer should not

« make it easier for employers to be able to resort to **purely artificial arrangements in order to exploit the EU legislation with the sole aim of obtaining an advantage from the differences that exist between the national rules**

In particular, such exploitation of that legislation would be likely to have a **‘race to the bottom’ effect on the social security systems of the Member States** and perhaps, **ultimately, reduce the level of protection offered by those systems »**

§ 69

DRV Intertrans, C-410/21 (2023)

DRV Intertrans BV is a company established in **Belgium**

The director of the company and his spouse set up the company Md Intercargo s. r. o., established in **Slovakia**

The business of both companies is national and international transport

The competent Slovak authority issued A1 certificates attesting that several employees of Md Intercargo were affiliated to the Slovak social security system

The Belgian Social Security Inspectorate found that **Md Intercargo was in fact managed from Belgium where most of its transport services took place**

According to the Belgian Social Security Inspectorate, Md Intercargo had been set up in order to assign a cheap labour force to DRV Intertrans by posting workers

Although it held a Community licence for road transport issued by the Slovak authorities, Md Intercargo had **no relevant economic activity in Slovakia**, which was confirmed by the authorities of that Member State

Criminal proceedings were brought against DRV Intertrans and its director before a Belgian court for **fraud relating to social security contributions**

During those criminal proceedings, the **Belgian Social Security Inspectorate requested the Slovak issuing institution to withdraw retroactively the A1 certificates** in respect of the workers concerned

The Slovak issuing institution provisionally withdrew all the A1 certificates relating to the workers concerned

- An A1 certificate issued by the competent institution of a Member State is **binding upon the institutions and courts of the Member State in which the work is carried out, including where ...** that institution has declared that it has provisionally suspended the binding effects of that certificate until such time as it decides definitively on that request

➤ **But a court of the Member State in which the work is carried out, seised in the context of criminal proceedings brought against persons suspected of having fraudulently obtained or used the same A1 certificate, may find that there has been fraud and consequently disregard that certificate, for the purposes of those criminal proceedings, provided that:**

1. A reasonable period has elapsed without the issuing institution having reconsidered the grounds for issuing that certificate and having adopted a decision on the specific evidence submitted by the competent institution in the host Member State, which gave rise to the view that that certificate had been obtained or invoked fraudulently, as the case may be, by cancelling or withdrawing the certificate
2. The guarantees inherent in the right to a fair trial are afforded

Conclusion on the specific situation of posted workers in road transport

- The case law of the ECJ has evolved to ensure better recognition and enforcement of posted drivers' rights
- But the notion of posting is unclear, too sophisticated to be easily implemented (although ELA and the electronic portal for notification and documents should facilitate controls)
- In particular, neither EU legislation nor the ECJ case law prohibits operations that are set up in order to circumvent the application of national law of the country where the company is incorporated

Thank you for your attention!

*Mobility package I: overview of the
legislative framework
(with specific focus on cooperation
between and within Member States)*

PRESENTED BY:

WILLEM WAEYAERT

RESERCHER AT EFTHEIA

Overview

- **Social legislation in road transport**
- **Cooperation in the field of road transport**

Social legislation in road transport

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)		
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) 1024/2012	Administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC	25.10.2012
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		
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
Regulation (EU) 1024/2012	Administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC	25.10.2012
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		
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) 1024/2012	Administrative cooperation through the Internal Market Information System (IMI) and repealing Commission Decision 2008/49/EC	25.10.2012
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		
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

Overview of the EU legal framework on social legislation in road transport

1. Legislation on **access to the road transport market for transport operators established in the EU** (Regulation (EC) 1071/2009, amended by Regulation (EU) 2020/1055);

2. Legislation on **the social harmonisation concerned with international road transport operations conducted within the EU** (Regulation (EC) 561/2006, amended by Regulation (EU) 2020/1054; Directive 2006/22/EC; and Directive (EU) 2020/1057);

3. Legislation on **posting of workers including on the posting of drivers in the international road transport sector in the EU** (Directive 96/71/EC as amended by Directive (EU) 2018/957; Directive 2014/67/EU; and Directive (EU) 2020/1057);

4. Legislation on the **coordination of social security systems for persons who are moving within the EU** (Regulation (EC) 883/2008 and Regulation (EC) 987/2009).

Mobility Package I

- **Regulations (EU) 2020/1054 and (EU) 2020/1055**

→ changes to the working conditions of international transport drivers and on the conditions for the access to the occupation of road transport operators

- **Directive (EU) 2020/1057**

→ specific rules on the posting of drivers in the international road transport sector.

Access to the road transport market road operators

- Considerable changes Mobility Package I
- Licensing system
- Regulation (EC) 1071/2009: four principal requirements
 - Stable and effective establishment
 - Good repute
 - Appropriate financial standing
 - Professional competence
- ERRU and IMI

Driving times, breaks and rest periods

- Objective:
 - Health and safety drivers
 - Road safety
- Scope:
 - Carriage of goods by vehicles of > 3,5 tonnes
 - Carry more than nine people (including the driver)
 - Regardless of employment status

Driving times, breaks and rest periods (2)

- Driving times: *Daily (9h) / weekly (56) / fortnightly (90h) driving*
- Breaks: *45 minutes/15-30 minutes*
- Rest periods: *Daily (11h) / Weekly (45 h)*
- Mobility Package I?
 - Extension personal scope
 - More flexibility
 - Go back “home” at least every 4 weeks
 - Accommodation (Delegated Regulation (EU) 2022/1012)

Driving times, breaks and rest periods (3)

- Tachograph
- Enforcement strategies:
 - Annually at least 3% of the number of days worked
 - Annually at least six concerted roadside checks on drivers and vehicles
 - Risk rating systems
- IMI module

Posting rules

- **Before:** Rules on posting of workers not adapted to highly mobile nature of road transport
- **Now:** Directive (EU) 2020/1057 on Lex Specialis on posting of drivers will start applying on 2 February 2022
 - Closed list of administrative requirements transport operators (derogation from Directive 2014/67/EU)
- Transposition in MS

Posting (2)

→ Based on link with MS of establishment

1. Bilateral operations
2. Cross-trade operations
3. Cabotage
4. Transit

Posting rules (3)

- Closed list of administrative requirements:
 - Posting declaration
 - At drivers' his/her disposal during check
 - IMI module
 - Employment contract?

Social security coordination

- No changes with Mobility Package I
- Article 13 Regulation (EC) 883/2004
- Simultaneous professional activities in two or more Member States
- 1) country of residence + 2) 25% substantial work in that country = the closest link

Cooperation in the field of road transport

EU legislation concerned with the labour and social dimension of international road transport: cooperation measures and obligations

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	Conditions to be complied with to pursue the occupation of road transport operator	Articles 6 section 2 (b)	Priority setting of checks
Regulation (EU) 2020/1055 <i>(amending Regulation (EC) 1071/2009)</i>	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	Article 10	Designation of one or more competent authorities
		Articles 11 and 12	Mandatory checks upon registration operator and checks after authorisation
		Article 16	Maintenance of updated and connected national registers
		Article 18	National contact points and (new) administrative cooperation mechanism, ERRU and IMI
		Article 22	Rules on penalties and obligation to notify the rules
		Article 26	Reporting to European Commission (authorisations, certificates, statistics)
Article 27	List of competent authorities responsible for the authorisation of transport operators and for the examinations + certificates professional competence and obligation to notify European Commission		
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
Regulation (EU) 1024/2012	Administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (IMI)		
Regulation (EU) 480/2016	Common rules concerning the interconnection of national electronic registers on road transport undertakings and repealing Regulation (EU) No 1213/2010 (ERRU)		
EU legislation on specific social and labour legislation concerning the international road transport operations conducted within the EU		Reference articles and provisions	
Regulation (EC) 561/2006	Harmonisation of social legislation relating to road transport (driving times, breaks and rest periods)	Article 19 section 2	Penalties
Regulation (EU) 2020/1054 <i>Regulation (EC) 561/2006</i>	<i>(amending)</i> 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	Article 22	(New) administrative cooperation mechanism
Directive 2006/22/EC	Minimum conditions for the enforcement of social legislation relating to road transport activities	Articles 4 and 6	Roadside checks
Directive (EU) 2020/1057 <i>Directive 2006/22/EC</i>	<i>(amending)</i> 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 5	Concerted checks
		Article 6	Checks at premises of undertaking
		Article 7	National bodies for intracommunity liaison
		Article 8	Exchange of information and IMI
		Article 9	Risk rating systems
Article 11	Training and staff exchanges		
Regulation (EU) 1024/2012	Administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (IMI)		
EU legislation on the posting of workers, including on the posting of drivers in the road transport sector in the EU		Reference articles and provisions	
Directive 96/71/EC	Posting of workers in the framework of the provision of services	Article 4	One or more liaison offices, administrative cooperation and exchange of information
Directive (EU) 2018/957 <i>Directive 96/71/EC</i>	<i>(amending)</i> Amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services		
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	One or more competent authorities, liaison office
		Article 6	Mutual assistance, cooperation and exchange of information
		Article 7	Administrative cooperation
		Article 8	Accompanying measures
		Article 10	Exchange of information in case of inspections
		Articles 13 - 19	Penalties and fines: national competent authorities for enforcement penalties and procedures, IMI
Article 20	Notification of rules on penalties to the European Commission		
Article 21	IMI		
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 11 and 16	Administrative cooperation 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
Regulation (EU) 1024/2012	Administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC		
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
(Implementing) Regulation (EC) 987/2009	Procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems	Article 76	Administrative cooperation and exchange of information
		Article 2	Exchange of data between institutions
		Article 20	Cooperation between institutions
		Chapter III	Recovery of contributions and benefits

Cooperation measures and obligations

Main Categories/types

- Setting up an institutional and operational framework
- Recording and maintaining specific data
- Exchange of information and data with other Member States
- Conduct checks/investigations/inspections
- Periodically report to the European Commission
- Joint trainings and staff exchanges

Cooperation challenges within MSs (1)

- Different authorities/agencies involved
 - E.g. most MS: verification of the driving time during the roadside checks → (traffic) police
 - Difference roadside checks vs. checks at the premises of an undertaking.
- Authorities conducting checks/investigations ≠ Authorities exchanging the information and data with other MS

Cooperation challenges within MSs (2)

- Coordination issues and deficient exchange of information
 - Delays in processing time of possible violations
 - Difficulties coordination of shared inspections
- Uniform interpretation of the legal framework
- Lack of standardisation of the information exchange
- Potential limitations due to data protection provisions
- Lack of (qualified) staff

Cooperation challenges within MSs (3)

- (Quasi-) permanent coordinating meetings/working groups/panels
- Various information exchange agreements or protocols
- Plans/strategies with the objectives and operational arrangements
- (Joint) trainings
- Shared inspections

Cross-border cooperation challenges

- Implementation/interpretation EU legal framework
 - Recent introduction of Mobility Package I and lack of implementation in some Member States
 - Different methodologies and practices across the Member States and lack of uniform interpretation of EU law
- Difficulties in information exchange
 - Slow and insufficient responses/information from other MS
 - Lack of authority/jurisdiction in the other MS
 - Identification of the competent authority/institution in the other MS
- Complex set-up, lack of resources and lack of willingness to cooperate

Factors enabling cross-border cooperation

- Higher/lower level of cooperation between MS:
 - Geographical proximity
 - Number of drivers coming from a given MS
 - Uniform interpretation of EU law
 - Similar working practices
 - Personal contacts
 - Bilateral/multilateral agreements
- Importance *international* transport network groups (e.g. Corte, ECR, ROADPOL)

Thank you for your attention!

COFFEE BREAK

10.55-11.20

Il settore dell'autotrasporto: il contesto normativo italiano

PRESENTED BY:

GIULIA FROSECCHI

UNIVERSITA' DI FIRENZE

IL SETTORE

- Il trasporto internazionale di merci svolto con **veicoli immatricolati in Italia** risulta pari a **25.177** migliaia di tonnellate, di cui:
 - **1.615** migliaia di tonnellate di merce sono state oggetto di attività di **cabotaggio** (luogo di carico e di scarico situati nello stesso Paese, appartenente all'Unione europea diverso dall'Italia).
- Il trasporto internazionale di merci svolto con **veicoli immatricolati in uno Stato membro dell'UE diverso dall'Italia**, che prevede il carico o lo scarico in territorio italiano risulta pari a **84.689** migliaia di tonnellate, di cui:
 - **8.932** migliaia di tonnellate di merce sono state oggetto di attività di **cabotaggio** (luogo di carico e di scarico situati in territorio italiano).

(Dati Eurostat, 2019)

D.lgs. 27/2023, di attuazione della Direttiva 2020/1057, che modifica il d.lgs. 136/2016

- **Ambito di applicazione**
 - «Le disposizioni del presente Capo si applicano alle prestazioni transnazionali di servizi di trasporto su strada o di Cabotaggio nel cui ambito sono distaccati conducenti in Italia» (Art. 12-bis, c. 1)
- **Controlli**
 - Polizia stradale
- **Sistema sanzionatorio**
 - Sanzioni pecuniarie per violazioni amministrative

D.lgs. 27/2023, di attuazione della Direttiva 2020/1057, che modifica il d.lgs. 136/2016

- Norme di raccordo
 - «Alle prestazioni transnazionali di servizi di cui all'articolo 12-bis, commi 1 e 2, si applicano le disposizioni di cui agli **articoli 3 e 4, commi 1 e 1-bis**, e di cui agli **articoli 5, 7 e 8** del presente decreto, nonché le disposizioni **dell'articolo 83-bis, commi da 4-bis a 4-sexies, del decreto-legge 25 giugno 2008, n. 112, convertito, con modificazioni, dalla legge 6 agosto 2008, n. 133.**» (Art. 12-quinquies, c.1)

Art. 4, c. 1, d.lgs. 136/2016

- a) periodi massimi di lavoro e periodi minimi di riposo;
- b) durata minima dei congedi annuali retribuiti;
- c) **retribuzione, comprese le maggiorazioni per lavoro straordinario.**
- d) condizioni di somministrazione di lavoratori, con particolare riferimento alla fornitura di lavoratori da parte di agenzie di somministrazione;
- e) salute e sicurezza nei luoghi di lavoro;
- f) provvedimenti di tutela riguardo alle condizioni di lavoro e di occupazione di gestanti o puerpere, bambini e giovani;
- g) parità di trattamento fra uomo e donna, nonché altre disposizioni in materia di non discriminazione;
- h) condizioni di alloggio adeguate per i lavoratori, nei casi in cui l'alloggio sia fornito dal datore di lavoro ai lavoratori distaccati lontani dalla loro abituale sede di lavoro;
- i) indennità o rimborsi a copertura delle spese di viaggio, vitto e alloggio per i lavoratori fuori sede per esigenze di servizio. Rientrano in tali ipotesi le spese di viaggio, vitto e alloggio sostenute dai lavoratori distaccati nel territorio italiano [...]

Thank you for your attention!

Diritti dei lavoratori e questioni giuridiche nel settore della logistica e dei trasporti

PRESENTED BY:

ALBERTO GUARISO

ORDINE DEGLI AVVOCATI DI MILANO

DIRITTI DEI LAVORATORI E QUESTIONI GIURIDICHE NEL SETTORE DEI TRASPORTI E DELLA LOGISTICA

avv. Alberto Guariso

www.studiodirittielavoro.it

La struttura organizzativa del settore

- 1,5 milioni di addetti (+ 6,9% nel 2021)
- Fatturato 80 miliardi = 9% del PIL
- Circa 90.000 imprese di cui il 90% con meno di 10 addetti = elevata frammentazione
- Bassa innovazione (ma in via di cambiamento)

segue

- I compiti: magazzinaggio, movimentazione interna, consegna
- Le figure di lavoratori: i camionisti, i facchini e «pickerista», i driver per «l'ultimo miglio»
- La struttura (vecchia) dell'impresa: il grande appaltante → appalto (di solito a consorzio di cooperative) → subappalto alla cooperativa → sdoppiamento tra una cooperativa per la logistica, un'altra per il trasporto → da questa ai driver (spesso imprese individuali con pochi mezzi di trasporto e pochi dipendenti)

segue

- **Vantaggi** (per l'impresa):
 - Flessibilità in relazione ai flussi di lavoro
 - Basse retribuzioni finali
 - Elevato controllo della produttività
- **Svantaggi**
 - Retribuzioni finali eccessivamente basse
 - «volatilità» periodica delle imprese subappaltatrici, con residui debiti nei confronti dei lavoratori, del fisco, dell'INPS
 - Condizioni di lavoro poco tutelate: elevato numero di infortuni (11% del totale, 15% di quelli mortali – INAIL)
 - Conseguente forte conflittualità sindacale, gestita da sindacati non confederali
 - Creazione delle «catene etniche»
 - Distacco transnazionale favorito dalla frammentazione

La risposta del sistema: il livello organizzativo

- Innovazione tecnologica (il magazzino automatizzato) con enorme risparmio di personale (anche 100/200 esuberanti per magazzino)
- Superamento dell'appalto con:
 - Assunzione diretta della maggioranza con quota ridotta di lavoratori somministrati per i picchi di lavoro (DHL, Fedex)
 - Assunzione diretta di pochi con maggioranza di somministrati flessibili (Amazon)

La risposta dal sistema: il livello giuridico

- a) La sanzione penale – art. 603bis e segg. c.p. (processi a carico di CEVA Logistic, BRT e altri per «caporalato» sfruttamento lavorativo, evasione fiscale)
- b) La riforma del lavoro in cooperativa (L. 142/2001 e DL 248/07) con previsione di:
- Obbligo di stipulare con il socio un contratto «ulteriore» (normalmente di lavoro subordinato)
 - Obbligo di applicare il CCNL
 - Applicazione «tendenziale» delle norme sul licenziamento del lavoratore
- c) La responsabilità solidale dell'appaltante (introdotta nel 2003) per tutta la catena, per i crediti retributivi dei dipendenti
- c) Il mantenimento del divieto di interposizione

I limiti di questa azione

a) Per la responsabilità solidale:

- è limitata alla retribuzione (esclusi gli importi non retributivi)
- E' soggetta al termine di decadenza di due anni dalla cessazione dell'appalto.
- C'era la possibilità di deroga da parte della contrattazione collettiva (rimasta in vigore dal 2012 al 2017)
- Era necessaria la «preventiva escussione» dell'appaltatore (rimasta in vigore dal 2012 al 2017)

Segue: i limiti e la questione del trasporto

- Era esclusa (secondo le aziende) l'attività di trasporto perché costituiva adempimento di un contratto di trasporto e non di appalto;
- la giurisprudenza ha superato questa limitazione, introducendo la nozione di «appalto di servizi di trasporto»
- Il legislatore ha accolto la richiesta delle aziende introducendo l'art. 1677bis codice civile che intendeva «smontare questa nozione» e sottrarre l'attività di logistica, ove collegata al trasporto, alle norme sull'appalto.
- Per ora la giurisprudenza non ha seguito e lo stesso Ministero del lavoro ha abbandonato questa interpretazione.

Segue, i limiti...

- b) Per la tutela del lavoro in cooperativa
- Questioni procedurali complicate che hanno ridotto la possibilità di tutela
 - Assenza di norme sui contratti pirata e sul salario minimo

(ma vedi ora il nuovissimo art. 441-ter c.p.c.)

Il contributo del diritto dell'Unione

- Limiti al distacco transnazionale (rinvio)
- Artt. 6 (obbligo applicazione contratti collettivi) e 8 (responsabilità solidale nell'appalto) direttiva 2009/52 per i lavoratori irregolari: estensione ai lavoratori nazionali per effetto del divieto di discriminazioni alla rovescia anche ex art. 53 L. 234/2012
- Proposta di direttiva 2023/53 del 1.3.2023 sulle licenze di guida

Infine: una particolare vicenda italiana

- La carenza di autisti (le associazioni indicano 20.000)
- Il governo (DM 30.6.2022) vara il «buono patente autotrasporto» : contributo fino a 2.500 euro per il conseguimento di patente per trasporto merci o persone per i giovani tra 18 e 35 anni
- Riservato a italiani e europei.
- E' compatibile con la direttiva 2011/98 e la direttiva 2003/109 ?
- Il giudice deciderà !!

Thank you for your attention!

Concerted and Joint inspections in road transport

PRESENTED BY:

ARGENTINA FREIRE TAVARES

SECONDED NATIONAL EXPERT
ENFORCEMENT & ANALYSIS UNIT
EUROPEAN LABOUR AUTHORITY

ELA's mandate

- **Free movement of workers**
(Regulation 492/2011; Directive 2014/54)
- **EURES**
(Regulation 2016/589)
- **Posting of workers**
(Directives 96/71 (as amended by 2018/957) and 2014/67)
- **Social security coordination**
(Regulations 883/2004 and 987/2009)

Road Transport



- Driving and rest time rules for drivers in road transport
 - Posting of Drivers
 - Access to the profession
- (Regulation 561/2006; Directive 2006/22;
Regulation 1071/2009; Directive 2020/1057)

Art. 8 ELA Regulation

‘the Authority shall coordinate and support concerted or joint inspections in the areas within the Authority’s competence’



Joint inspections are inspections carried out at one or multiple locations in MS with the participation of the national authorities of one or more other MSs, and supported, where appropriate, by the staff of the Authority.

Joint cross-border inspections are inspections carried out at one or multiple locations in MS with the participation of the national authorities of one or more other MSs, and supported, where appropriate, by the staff of the Authority.



MSs shall endeavour to participate in CJIs but the participation in CJIs shall be subject to their agreement. **If a MS decides not to participate in CJi it shall provide information on the reasons for its decision and measures to resolve the issue**



Information on CJIs is confidential to ELA and MS including those that decide not to participate in the inspection



CJIs, follow-ups and use of evidence shall be carried out in accordance with the law or practice of a MS where inspection takes place

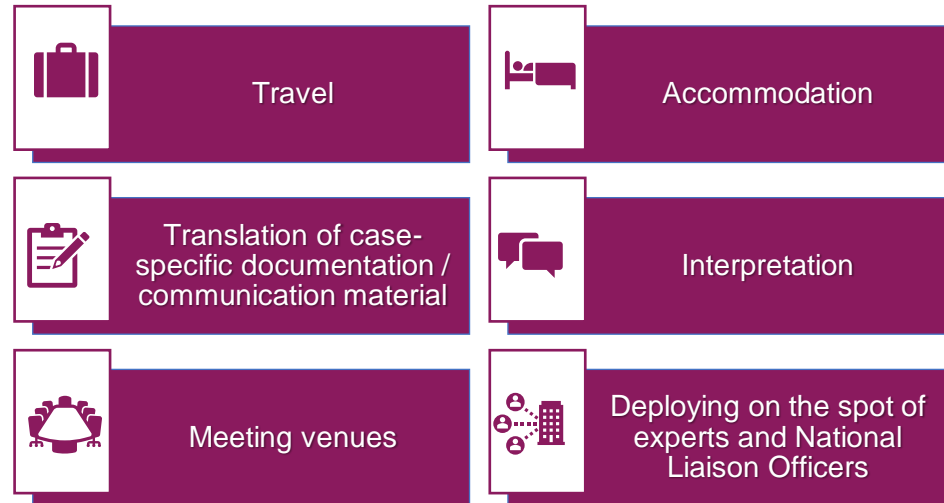
Coordination and support



The Authority shall provide **conceptual, logistical and technical support**, and, where appropriate, **legal expertise**, if requested by the Member States concerned, incl. **translation and interpretation services**, to Member States carrying out concerted or joint inspections.

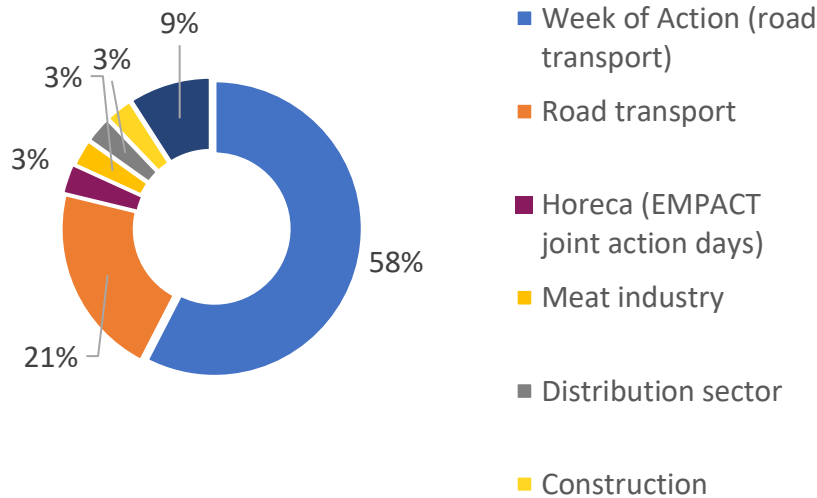


Regular discussions on new/ other types of support

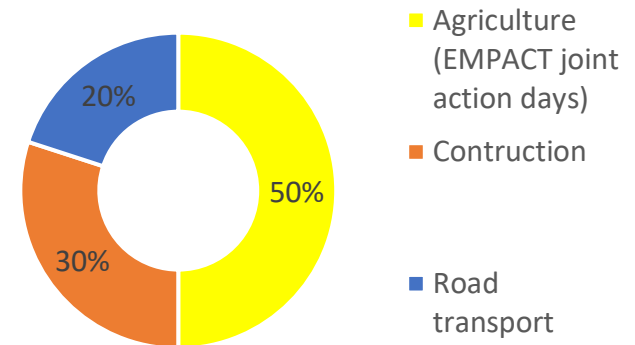


CJIs per sector/type of action

% of CJIs per sector and type of action (2022)
weeks of action & targeted actions



% of CJIs per sector (2021)



The number of sectors in which ELA actively supported CJIs has increased significantly compared to 2021. ELA aims to further expand its sectors of operation in 2023 to help guaranteeing fair labour mobility in all sectors.

Number of workers per CJI per sector (2022)

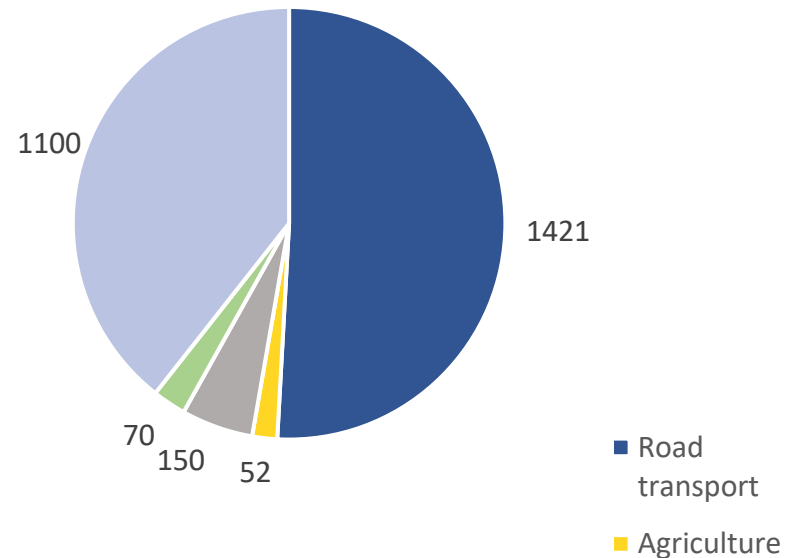
Based on the available information provided by the Member States and ELA's observations, CJIs in 2022 directly involved at least 2793 workers.

The number of concerned workers largely depends on the scale/number of performed actions per sector.

In view of the number of CJIs in road transport, most concerned workers can be found in that sector.

The number of concerned workers in construction mainly relates to one large-scale inspection relating to social security fraud.

CJIs which took place within the distribution and meat industry mainly focused on the housing conditions for workers and directly concerned more than 220 workers.



ENFORCEMENT ACTIVITIES IN ROAD TRANSPORT 2022

ELA 
EUROPEAN LABOUR AUTHORITY

Focus on road transport – Truck and Bus operation

CJIs during the weeks of action in road transport 2022

3 weeks of action organised: February, June and October

- Focus on compliance with rules related to:
 - Tachograph;
 - Posting of drivers;
 - Driving and resting times;
 - Other working conditions: i.e. remuneration.
- Vehicles also checked for:
 - Overall road safety;
 - Speeding;
 - Technical deficiencies;
 - Driving under the influence of alcohol or drugs.

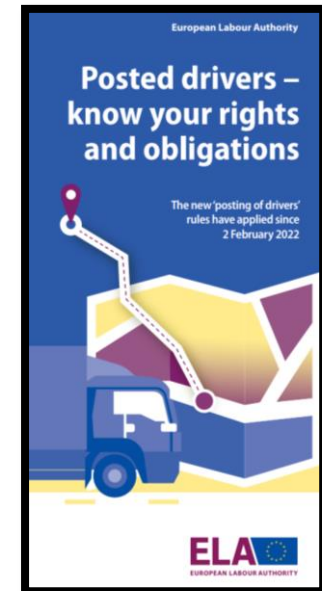
ELA's role in operational support:

- Assisting in preparation, coordination and follow-up of concerted and joint inspections:
 - Facilitating exchange of information, interpretation and translation of case-specific documentation.

Roadside checks: raising awareness

- Roadshows:
 - First roadshow: Romania, 12 October 2022
 - Objective: disseminate practical information about the new rules introduced by the Mobility Package
 - Target: transport operators and heavy goods vehicle (HGV) drivers
- Leaflets:
 - Roadside checks to raise awareness among drivers on their rights and obligations
 - ELA's leaflets on posting of drivers and driving and resting time available in several languages

Leaflet on posted drivers (ENG)



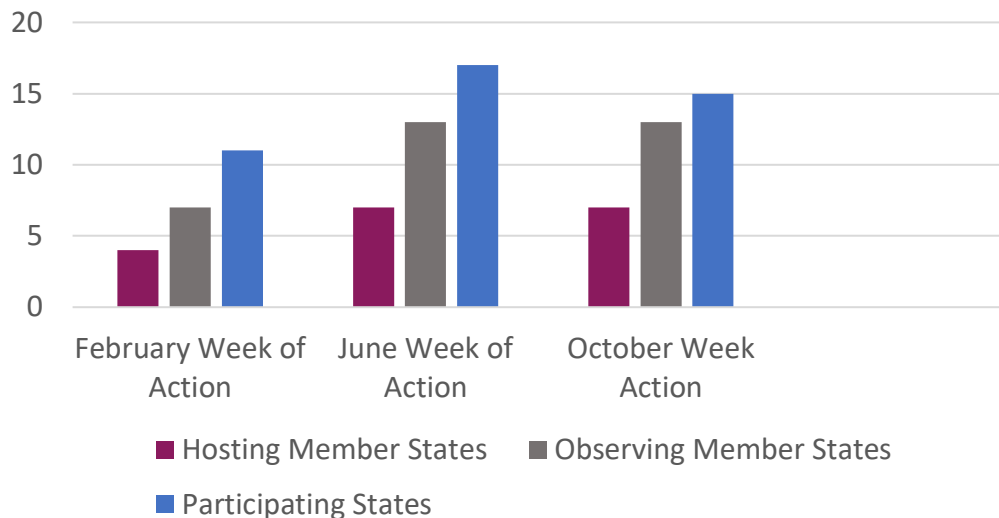
Campaign Leaflets

- Information **Leaflets** – Driving & Resting Times / Posting of Drivers
 - Individual translation available on the ELA website
 - Print & Web formats
 - 24 EU Language versions + 11 additional languages including Ukrainian, Turkish, Albanian, Macedonian, Russian



Participation in CJIs February - June - October 2022

Participation in CJIs February to October 2022



Roadside checks in February 2022

Hosting Member States:
BE, DE, HR and PT

Observing Member States:
CY, EL, IT, LT, MT, ES and SK

Roadside checks in June 2022

Hosting Member States:
BG, **ES**, FR (2x), **HR**, IT, **LT** and NL

Observing Member States:
EL, SI, EE, ES, DK, LV, RO, LT, IE, HR, SK, PL, and MT

Roadside checks in October 2022

Hosting Member States:
BE, BG, **DK**, FI, **FR**, **RO** and **SK**

Observing Member States:
BE, CZ, DK, ES, FR, HR, IE, IT, PL, PT, RO, SE and SK

Funded by the



Weeks of action on Road Transport

ELA joined forces with the European Roads Policing Network (ROADPOL) and supported inspections during **three** “truck&bus weeks of action” in 2022.

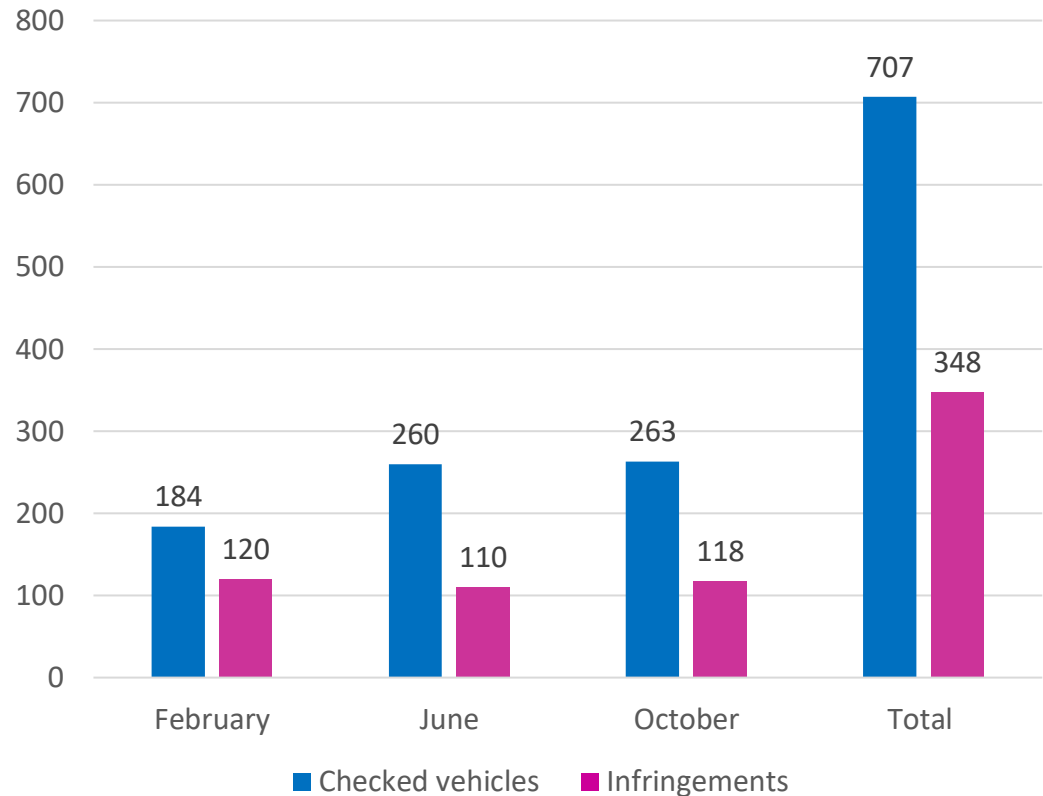
Main outcomes

High ratio of irregularities detected when compared to checked vehicles and number of participating inspectors / other staff.

#Road2FairTransport – a comprehensive approach

Provide information on the key rights and obligations of employers and employees on posting of drivers, resting and driving times, and raise awareness of the benefits of declared work.

Overview results - Weeks of action 2022



Types of infractions identified

- ☑ Tachograph manipulation
- ☑ Driving and resting time
- ☑ Traffic rules compliance

- ☑ Technical requirements
- ☑ Roadworthiness of the vehicle
- ☑ Load security

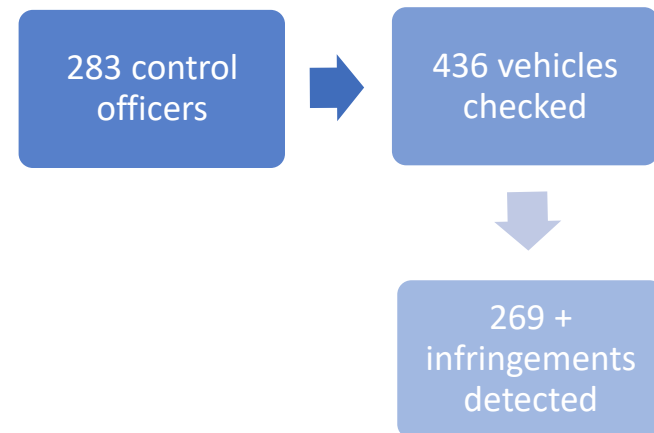
- ☑ Lack of technical control
- ☑ Non-possession of a drivers license
- ☑ Bogus self-employment

- ☑ Irregularities in relation to posted workers
- ☑ Confiscation
- ☑ Further investigation

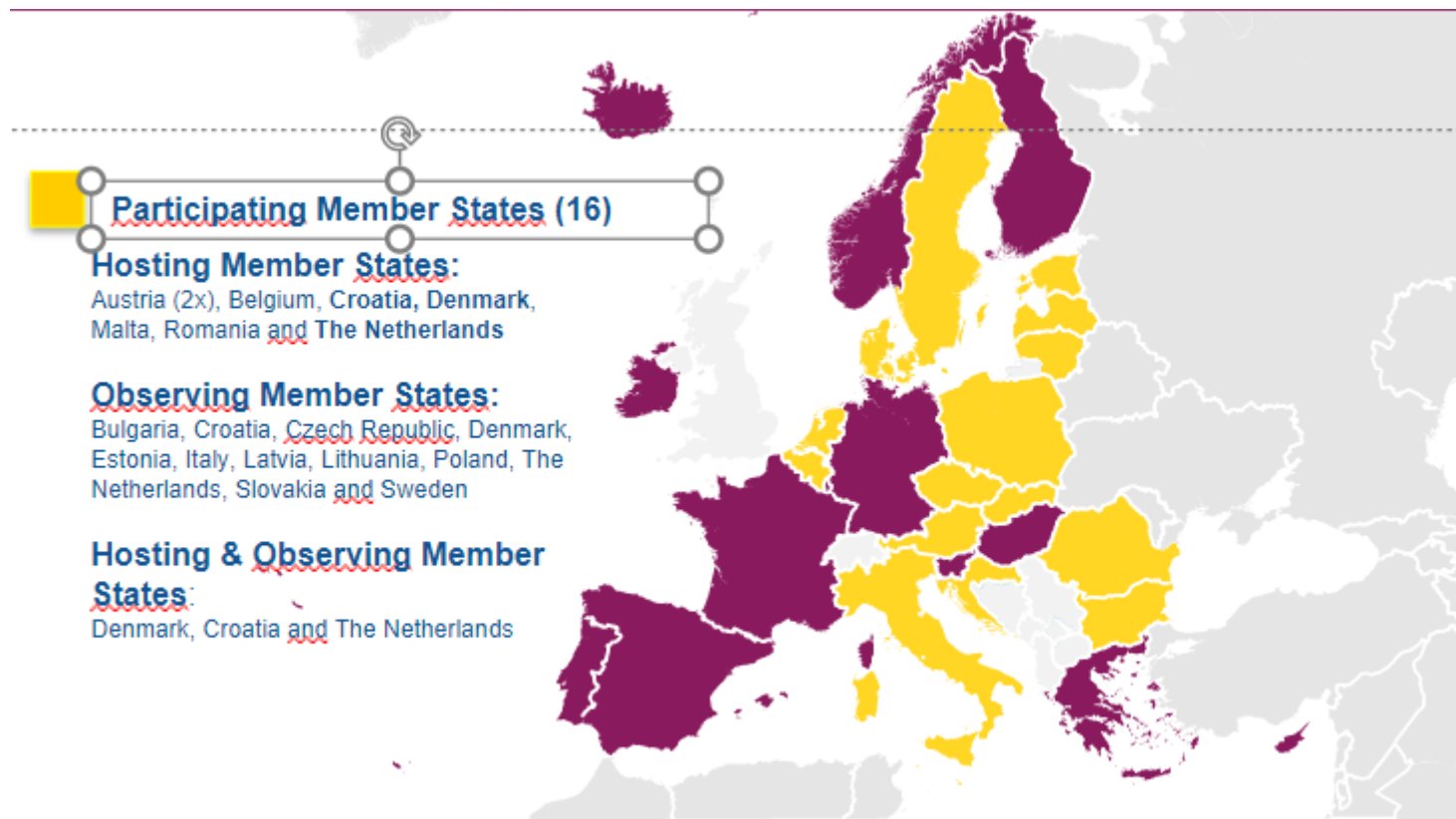


The **roadside checks involved 16 MS (7 hosts)** and aimed ensuring the application of the rules in the sector specific area of road transport.

- **compliance with the tachograph;**
- **driving and resting time rules;**
- **control of transportation documentation;**
- **technical conditions of the vehicles**



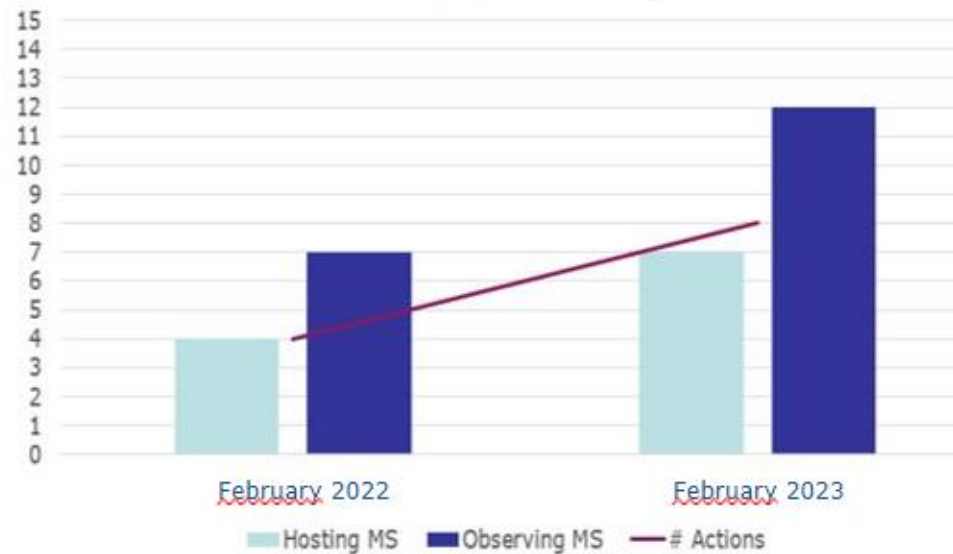
Participating Member States WoA February 2023



Details of the week of action February 2023

- 👉 8 Actions during the week of action in February 2023
- 👉 7 Hosting Member States
- 👉 12 Observing Member States
- 👉 16 individual Member States engaged in the February WoA 2023
- 👉 The hosting MS in 2023 almost **doubled** compared to the February WoA 2022

Comparison WoA February 22-23



Challenges in Road Transport

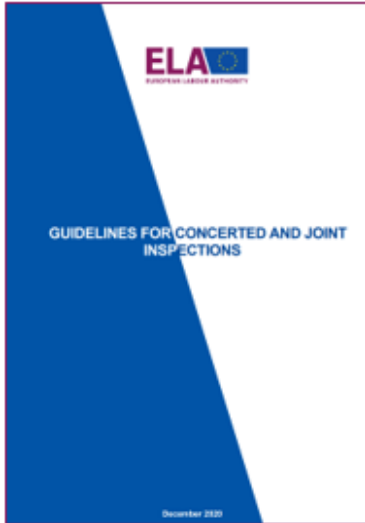
Information for drivers and operators on the rights and obligations set by Mobility Package legislation

Insufficient administrative cooperation and exchange of information between the national competent authorities
(including understanding the usage of common tools such as the Internal Market Information system (IMI) and the European Register of Road Transport Undertaking (ERRU))

Insufficient tools and resources to carry-out cross-border checks and inspections

Overarching language barrier

Tools to facilitate CJIs



Support for concerted and joint inspections

The European Labour Authority (ELA) provides conceptual, logistical, and technical support as well as legal expertise, translation, and interpretation services to Member States carrying out concerted or joint inspections (CJI). Coordination and support for CJIs is part of ELA's task to facilitate and enhance cooperation between Member States in the enforcement of relevant EU rules on labour mobility and social security coordination across the Union.

HOW TO APPLY?

- Member State fills in Case Description Template with case data, including requests for financial support.
- ELA evaluates the request as soon as possible within 14 calendar days.
- Concerned Member States and ELA sign the Agreement on cross-border CJIs. ELA provides support to agreed enforcement actions.

Information exchange tools

COLLABORATION SHARE INSTANT INFORMATION

Live chat with team members and convenient control, automated workflows managed by chat bots, road receipts, online support.

Transfer any document to users in real-time. GlobeKeeper will make sure its encrypted and not being compressed by any device.



Checklist to initiate and carry out a cross-border inspection with ELA support

This checklist is a quick tool that aims to help labour / social inspectors to initiate, plan, carry out and follow up cross-border concerted and joint inspections (CJIs) in the labour mobility field with ELA support. It complements the [Guidelines for concerted and joint inspections](#) that explain in more detail the key practical aspects of CJIs with a particular focus on the use of the tools and templates developed by ELA.



Modalities to initiate a follow-up procedure in case the concerned Member State decides not to participate in a concerted or joint inspection

Introduction

The aim of these modalities is to guide ELA and Member States (including the NLOs) on follow-up procedures in case one or more concerned Member States decide not to participate in a concerted or joint inspection (CJI).

Lessons learned in Roadside checks:

- Importance of consolidating relations/cooperation at EU and national level between various authorities/stakeholders
- Exchange of information and good practices about the new road transport legislation, inspection methods/tools is crucial
- Preparatory meetings, briefings are important for the success of joint inspections (to plan activities; establish good working relationship to conduct inspections together; provide information about ELA support and discuss practical/logistical aspects)
- Match the competencies of the authorities from observing MS and the objectives of the inspection in the host MS
- Interpretation, presence/role of NLOs, follow up



Objectives of the ELA Regulation

Ensure adequate
social protection of
road transport
workers

Guarantee fair
competition between
operators

Improve road safety
by averting road
fatigue

Current state of play: overview activities in RT



More info on ELA
website
<https://ela.europa.eu>

Contact us
inspections@ela.europa.eu

Thank you for your attention!

Un caso di distacco transnazionale fraudolento extraUE nell'autotrasporto merci

PRESENTED BY:

AGOSTINO DEL BALZO

ITL TORINO

La società A, iscritta alla Camera di Commercio di Torino, svolge attività di trasporto di cose per conto terzi in Italia e trasporto internazionale.

La ditta B ha sede in Albania ed è iscritta alla Camera di Commercio albanese. L'oggetto dell'attività è il trasporto internazionale su strada di merci per conto proprio, per conto terzi e con affitto.

La società A e la ditta B hanno stipulato n. 2 contratti di collaborazione. L'oggetto dei predetti contratti è la fornitura da parte della ditta albanese B di manodopera (autisti) e attrezzature alla società italiana A.

Per gli autisti albanesi distaccati presso la società italiana non sono stati esibiti MOD A1, né alcuna comunicazione preventiva di distacco.

La società A e la ditta B hanno, inoltre, stipulato un contratto di locazione senza conducente con il quale la locatrice (società italiana A) ha concesso in locazione, ad uso gratuito senza conducente, n. 17 veicoli, di proprietà di quest'ultima all'impresa locataria (ditta albanese B), per lo svolgimento dell'attività di autotrasporto c/terzi.

Dalle fatture emesse dalla ditta albanese, nonché dalle molteplici segnalazioni trasmesse dalla Polizia Stradale, risulta che i trasporti effettuati dai dipendenti della ditta albanese B per conto della società italiana A sono stati eseguiti tutti con i mezzi di proprietà di quest'ultima e hanno riguardato trasporti internazionali merci da e verso vari paesi:

- dall'Italia all'Italia;
- dall'Ungheria alla Francia;
- dalla Spagna alla Francia;
- dall'Italia alla Francia;
- dalla Turchia all'Albania etc.

Dalla dichiarazione resa da un lavoratore/autista, dipendente della ditta albanese B, è emerso che in forza di tali contratti di collaborazione:

- è stato inviato a lavorare in Italia per la società A dalla quale riceveva ordini e direttive.
- ottenuto il permesso di soggiorno è stato assunto alle dipendenze di altra società italiana il cui amministratore unico e legale rappresentante è il medesimo della società A.

Nel corso degli accertamenti il legale rappresentante della società italiana A ha, inoltre, dichiarato di avere intenzione di regolarizzare i lavoratori albanesi e ha esibito ricevute di "nulla osta al lavoro subordinato per settori autotrasporto" presentata al Ministero dell'Interno per alcuni di tali lavoratori utilizzati.

La retribuzione lorda dei lavoratori/autisti albanesi è risultata pari a circa 30.000 lek al mese ovvero circa 260,00 euro, stipendio lordo su cui vengono calcolati i contributi, decisamente inferiore rispetto alla paga base prevista dal C.C.N.L. dipendenti dalle aziende di trasporto merci e spedizione applicato dalla società italiana utilizzatrice per la qualifica di autista livello 3S (€ 1.760,37 lordi compreso E.D.R.)

Nel caso di specie si è configurato un distacco transnazionale non genuino in quanto con i contratti di collaborazione stipulati tra le aziende si è realizzata esclusivamente un'attività di mera fornitura di manodopera in assenza di apposito provvedimento amministrativo equivalente a quello richiesto dalla legislazione italiana per agenzie di somministrazione.

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Nel caso in esame il distacco non genuino ha determinato anche l'elusione delle disposizioni dell'ordinamento interno e/o del contratto collettivo applicato dall'azienda utilizzatrice italiana configurando la condotta prevista dall'art. 38 bis D.Lgs. 81/2015 (circ. INL 3/2019) con la conseguente adozione del provvedimento di prescrizione nei confronti del distaccante e distaccatario avente ad oggetto la cessazione della condotta antigiuridica ai sensi dell'art. 15 D.Lgs. 124/2004.

Thank you for your attention!

Concluding remarks

Lunch in the common room !