



The extra-mile towards a full-fledged enforcement scenario in the **EU road transport sector**

An ETF proposal to policy makers



EUROPEAN TRANSPORT WORKERS' FEDERATION

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The European Transport Workers' Federation (ETF) represents more than 3.5 million transport workers from 230 transport unions and 41 European countries, in the following sectors: road transport, railways, maritime transport, inland waterways, civil aviation, ports, tourism and fisheries. The ETF is the recognised social partner in seven European Sectoral Social Dialogue Committees including the one for Road Transport.

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THE CONTEXT

Currently, in the EU road haulage sector, the best enforced EU laws are driving and rest time, the digital tachograph rules and, to some extent, the working time. This is largely due to the tachograph itself, a technological device permitting automatic registration, secure storage and downloading of data for control purposes. Also reasonably well enforced are the rules on maximum weights and dimensions and on the technical condition of the vehicle.

By contrast, enforcers seem to have given up on EU regulations and directives such as cabotage (Regulation (EC) No 1072/2009), the criteria for access to the occupation of road transport undertakings (Regulation (EC) No 1071/2009), and the EU social and labour rules applicable to professional drivers, notably the Posting of workers directive (Directive 97/71/EC) and the Rome I Regulation (Regulation (EC) No 593/2008). This is mainly because the existing enforcement instruments and practices are not adapted to these rules.

In the road sector, according to the 'access to occupation' regulation (Regulation (EC) No 1071/2009), only compliant carriers will be granted Community licences enabling them to operate within the EU. Once licenced, the operator's compliance will be monitored and assessed, to determine whether at any given moment it still fulfils the conditions required to keep the licence.

Law-binding enforcement tools have been in place for this purpose. Member States had to set up risk rating systems for road transport undertakings, to establish national electronic registers (NERs) and to interconnect them to the European Register for Road Transport Undertakings (ERRU). This complex enforcement infrastructure aims to facilitate information exchanges between the Member States on: 1) minimum data about licensed operators and 2) their infringement records. However, the NERs and the ERRU are currently only accessible to licence issuing authorities and not to enforcement agencies.

Concentrating all enforcement capacity on working time, driving and rest time rules, the tachograph, etc. has made compliance records over-reliant to these aspects. However, it is precisely the *access to occupation criteria*, the cabotage and the social and labour rules, which play a determining role for the fair competition in the sector. These rules are currently poorly enforced and controlled, and they are not part of company infringement records. Thus, law-breaking carriers will continue to operate along with compliant ones, while social dumping practices and letter-box companies keep expanding.

Mindful of the above, one may conclude that by and large the enforcement capacity and infrastructure developed by Member States fall short of their purpose.

Reactions to this situation have been extremely diverse. Many called for clarification, simplification or even removal of what they call 'non-enforceable' rules. Some Member States adopted measures to tackle distortions caused by illegal cabotage, letter-box companies and social dumping. These initiatives only show the urgent need for articulate EU-wide measures that effectively address the growing unfair competition and social problems in the sector. Beyond these reactions and responses, there is a general understanding among Member States, social partners and other players that much can be done for the sector by simply stepping up on enforcement. The IRU - ETF policy scenario for the revision of the Road package¹ reflects precisely this view point.

Two more factors feed into the current poor levels of enforcement in the road sector:

- The critical decline in enforcement capacities across the EU: the European Commission report on the implementation of working time and of the driving and rest time (reporting period 2011 - 2012) shows a

¹ Social Sector Partners Proposal for a policy package for the next revision of EU Regulations 1071/2009 on access to the profession and 1072/2009 on access to the road haulage market, February 2013.

- decline in enforcement staff by 75% for all Member States, from 383 thousand to 96 thousand²;
- The inadmissible delays by some of the Member States to fully implement the EU legislation, notably to connect their NERs to the ERRU³ and to establish risk rating systems⁴ for road transport operators.

Delays in the implementation of some law-binding enforcement instruments / Regulation (EC) No 1071/2009 make it mandatory for Member States to interconnect their national electronic registers for transport undertakings (NER) at the EU level into the ERRU by December 2012⁵. To date, only 20 Member States are connected. Likewise, Directive 2006/22/EC requires Member States to introduce risk rating systems for road transport operators based on the number and severity of infringements against a number of EU rules that an individual undertaking has committed. In practice, this is done by assigning a risk score to each operator, according to its compliance record. Risk rating systems should have been in place by April 2007. In the absence of EU uniform requirements on risk rating systems, the latter fail to be compatible and lead to comparable outcomes.

To conclude, vast enforcement instruments exist but unfortunately they are not uniformly implemented, nor are they fully adapted to the sector's needs. This, together with the lack of access of enforcement agencies to existing Member State registers and the gradual decline in enforcement capacity have discouraged attempts to effectively control and address illegal cabotage, the letter-box phenomenon and social dumping practices.

In 2016, the European Commission intends to launch a review of the road package to address the social and competition problems faced by the sector. Whatever the legislative changes might be, they will have to be enforceable in practice. We trust that the enforcement solutions proposed herein by the ETF will remain valid even in the context of EU law revision, in as much as these solutions go along the intentions of the legislator: to restore fair competition and improve the social record within the EU road haulage market.

THE NEED OF THE EU ROAD HAULAGE SECTOR

The sector is in urgent need to redress its social and employment record and restore fair competition for the benefit of all players. The enforcement of working time, driving and rest time and tachograph rules is far from enough to address this need. A step further must be taken, to effectively tackle the letter-box phenomenon, the illegal cabotage and the unlawful social practices, the three real factors currently undermining the EU road haulage market.

It is thus essential that operators' compliance records include a holistic assessment and monitoring of compliance, to include illegal cabotage, the *letter-box company* status and social dumping practices.

Last but not least, it is essential that the Member States and the European Institutions - particularly the European Commission - act in a climate of full responsibility to ensure that:

- All Member States are interconnected to the European Register for Road Transport Undertakings (ERRU) and that the latter functions at its full capacity / deadline by law December 2012;
- All Member States have functional, similar and comparable risk rating systems / deadline by law April 2007;
- All Member States reach their quota of checks (roadside and company) as required by Directive 2006/22/EC.

² Commission Staff Working Document "Report on the implementation in 2011-2012 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities" (SWD (2014) 342 final).

³ Regulation (EC) No 1071/2009, Article 16.5.

⁴ Directive 2006/22/EC, Article 9.

⁵ Regulation (EC) No 1071/2009, Article 16.5.

THE AIM OF THIS DOCUMENT

In the ETF view, lack of proper enforcement does not mean laws are 'non-enforceable'. Enforcement of Community law - be it cabotage, access to occupation or EU social and labour legislation - may be somehow complex but it is certainly achievable.

Attaining a full-fledged enforcement scenario in road transport is a matter of walking an extra mile only, particularly with the considerable 'infrastructure' deployed so far in the road sector.

While acknowledging the current regulatory framework as a sound base, the purpose of this document is to guide the European and national policy makers through this 'extra mile' meant to make enforcement possible and effective in tackling unfair competition and social dumping in our sector.

The EU rules applicable to road transport, a sound base / Liberalisation of the EU road haulage market started in 1992, with the international transport. Road transport proved to be vital in the context of the fast-growing trade and volumes of freight and passengers moved around Europe. As the Single Market enlarged gradually, the EU regulatory framework applicable to road transport developed, to ensure fair competition, equal rights and labour conditions for its mobile workers, and last but not least, a climate of safety for all road users.

Today, the sector benefits from a sound legal base, including amongst others:

- *Driving and rest time and working time rules (Regulation (EC) No 561/2006, respectively Directive 2002/15/EC), aiming to safeguard **road safety, fair competition and occupational health and safety of professional drivers**;*
- *Requirements and criteria - i.e. **effective and stable establishment, good repute, appropriate financial standing** - to ensure that the right to operate within the Internal Market, the so called Community licence, is granted to and held by genuine, compliant operators as supposed to letter-box companies with an infringement record (Regulation (EC) No 1071/2009);*
- ***Mandatory national electronic registers (NERs)** for road transport undertakings, interconnected at the EU level into a **European Register for Road Transport Undertakings (ERRU)**. These are national - respectively European - registers enabling the exchange of information between Member States on licensed operators, while monitoring their compliance with the EU rules. Bad compliance records ultimately lead to the loss of 'good repute' and consequently, to the withdrawal of the Community licence;*
- *A **list of infringements** related to a number of road-specific directives and regulations, encoded in the NERs and the in ERRU, against which the operators' good repute is monitored and assessed;*
- *Rules on **cabotage** (Regulation (EC) No 1072/2009);*
- *Rules establishing **levels of enforcement and controls**, as well as the setting up of **national risk rating systems** to promote targeted checks on road transport operators with a poor level of compliance (Directive 2006/22/EC);*
- *Rules establishing the **social and labour law applicable to professional drivers** working outside their Homebase country, notably the **Posting of workers directive** (Directive 96/71/EC) and the **Rome I Regulation** (Regulation (EC) No 593/2008).*

THE ETF PROPOSAL

The ETF proposal is essentially based on **extending the existing enforcement practices to a larger spectrum of Community rules, notably cabotage, the access to occupation criteria and the social and labour legal regime applicable to professional drivers.** Consequently, an operator's compliance history will no longer be assessed and monitored in relation to driving and rest time, working time and tachograph rules only, but will also indicate whether the operator is genuine or not (the letter-box phenomenon), whether it performs cabotage on a temporary basis and in line with the rules, and whether it resorts or not to unlawful social practices (fraudulent employment and pay schemes, circumvention of social contributions, etc.).

The ETF proposal **requires no amendments to the existing EU rules, but rather offers a set of EU-wide measures that can be urgently adopted** by only marginally revising some of the European Commission decisions (i.e. The Commission decision on minimum requirements for the data to be entered in the national electronic register of road transport undertakings).

Key elements of our approach

Our approach is largely based on the **cooperation between three levels of enforcement** - roadside, back-office service and company checks - with the view to develop an **electronic operator's compliance record** that is as complete and accurate as possible. In more practical terms this will consist of:

- a. **comparing electronic data from multiple sources**, namely comparing data momentarily obtained during roadside or company checks against information declared by the operator in the NERs, the ERRU and other relevant databases such as IMI⁶;
- b. **automatically detecting data conflicts and registering them in the NERs, ERRU and the risk rating systems, as part of the operator's compliance record.**

Data conflicts will play the role of an **automatic early-warning signal** for infringements, indicating the need for more in depth, targeted checks meant to clarify the operator's compliance stand, which will be updated subsequent to the in depth checks.

National electronic registers (NERs) and the European Register for Road Transport Undertakings (ERRU) / Regulation (EC) No 1071/2009 makes it mandatory for all Member States to establish NERs and to interconnect them at European level into the ERRU, with the view to exchange information on licensed operators, while monitoring their compliance with the EU rules. Bad compliance records ultimately lead to the loss of 'good repute' and consequently, to the withdrawal of the Community licence. The NERs and the ERRU contain two sets of important information: 1) minimum data on all licensed carriers operating within the Internal Market - this data is defined in a European Commission decision on "minimum requirements for the data to be entered in the national electronic register of road transport undertakings"; 2) infringement records for each licensed operator, determined in relation to a list of infringements decided on by the European Commission and the Member States, and endorsed by the European Parliament. The ERRU should have been functioning by December 2012. Unfortunately, at present, the NERs and ERRU are solely accessible to the licence-issuing authorities of the Member States, and not the Member State enforcement agencies.

⁶ IMI is the Internal Market Information System is an administrative cooperation platform enabling Member States to exchange information in four areas, of which posting of workers.

The multiple-source data testing stays too at the core of the ETF proposal. Indeed, operators will have to present a high degree of consistency to prove they respect EU laws of key importance for the well-functioning of the sector. For instance, to determine compliance with the social and labour regime applicable to the drivers an operator employs, the enforcer will compare data from the following sources: the driver's information declared by the operator in the national electronic register and in ERRU, tachograph data, the 'posting' pre-notification submitted by the operator⁷, and the data entered in the IMI platform.

The key actions

Five actions stay at the core of the ETF proposal:

Action 1 / Pooling enforcement intelligence and technology - i.e. the digital tachograph, the 'roadside - company check' cycle - to develop complete and accurate electronic operator compliance records;

Action 2 / Setting up 'integrated operator files' by shifting the focus from a fragmented control approach, of vehicle, driver, operator as separate elements, to an integrated one, where vehicle and driver are intrinsically linked to the operator as the main organiser of the transport activity and user of resources;

Action 3 / Setting up electronic 'integrated compliance records' for each licensed operator by introducing data conflicts, 'clear' controls and risk scores in the operator's compliance history;

Action 4 / Allowing Member State enforcement agencies real-time access to NERs, ERRU, risk scores and other relevant Member State databases;

Action 5 / Moving from paper-format to e-documents and enabling on-board vehicle and company-site storage of all data relating to the integrated vehicle-driver-operator file.

The five actions are strongly interconnected and thus, 'picking and choosing' will considerably reduce their overall effect.

Advantages of the ETF proposal

The five actions enable controls and enforcement of a larger spectrum of EU legislation which is key for well-functioning of the road sector notably: aspects related to *access to occupation*, of cabotage rules and of the social and labour law regimes applicable to professional drivers when working outside of their Homebase country.

The ETF proposal entails no amendments of the existing Community rules

The ETF proposal only requires minimum adjustments to European Commission decisions and to the existing enforcement instruments:

- Minimum additions of mandatory operator information in the NERs and ERRU, entailing minor changes to the European Commission decision on minimum requirements for the data to be entered in the NERs;
- Adopting requirements on risk rating systems with the view to make them compatible and interoperable across the 28 EU Member States, subject to easy exchanges between Member State enforcement agencies;
- Interconnection of the NERs and the ERRU with other relevant Member State registers such as IMI.

⁷ See requirements of Article 9 of Directive 2014/67/EU on the enforcement of posting of workers.

The ETF proposal optimises the already existing enforcement tools and infrastructure

The proposal builds on enforcement instruments, technology and infrastructure already deployed in the sector:

- the national electronic registers for road transport undertakings (NERs);
- the European Register for Road Transport Undertakings (ERRU);
- the Internal Market Information System (IMI);
- the risk rating systems;
- the digital tachograph, its functions and its associated enforcement infrastructure;
- the EU legal requirements on the digital tachograph, the minimum data to be entered into the NERs, on the functioning of the ERRU, on the pre-notification of posting⁸, etc.

The proposal integrates elements of best practice developed by individual Member States, as part of our package of actions

The UK example: Mandatory vehicle registration number plate combined with automatic number plate recognition / In an attempt to more effectively detect and sanction non-compliant operators and to improve safety on its busy roads, the UK has introduced an automatic number plate recognition technology (ANPR) targeting commercial transport activities. This is used to detect for instance unlicensed operators, untested or overloaded lorries, etc. In implementing the system, the UK enforcement agencies resorted to existing CCTV camera networks that were converted for this purpose. The roadside readings are compared to data inputs from various databases. It is worthwhile mentioning that the UK is one of the Member States requesting the road transport undertakings registered on its territory to provide the registration number plate of each of their vehicles in use. This information is entered in the national electronic register (NER) of the UK. Thus, besides being able to target non-compliant vehicles (i.e. weight limits, vehicle safety status), the ANPR will also contribute to developing a compliance record of the undertaking by constantly scanning its vehicle fleet. The ANPR enables the UK enforcers to focus on non-compliant operators. This example certainly demonstrates that Member States can develop intelligent enforcement systems by building on the existing technology and infrastructure, while adapting them slightly, to respond to the needs of the sector and of control services.

With this ETF approach, essential progress will be made in terms of smart enforcement and targeted checks, enforcers being able to concentrate on non-compliant operators, while constantly having access to records of compliant ones.

The ETF solutions will ultimately relieve much of the administrative burden experienced today by enforcers, operators and professional drivers, in terms of data provision and storage, of managing proof and information during checks and will ultimately render controls much more time effective.

⁸ See requirements of Article 9 of Directive 2014/67/EU on the enforcement of posting of workers.

Action 1

Pooling enforcement intelligence and technology - i.e. the digital tachograph, the 'roadside - company check' cycle - to develop a complete and accurate *electronic operator compliance record*

1.1. A threefold, strongly interconnected enforcement cycle: roadside, back-office, company checks

With this Action, roadside checks will act as a *one-stop* collection point of on-board vehicle information on carrier, vehicle and driver - the so called integrated 'operator file'. Once collected, the information will be transferred to the back-office enforcement unit of the Member State hosting the roadside check. The unit will test its accuracy against the data declared by the operator and stored in the NERs, the ERRU and other relevant Member State data centres (i.e. IMI). Any detected conflict will be automatically registered in the NERs, the ERRU and will be part of the risk scores, as an *early detection signal* of infringements, and will be notified to the Member State where the operator is established. Communication between back-office enforcement units of various Member States will be organised in the same way as described in the Commission regulation establishing common rules on the interconnection of NERs⁹. Based on the number of detected conflicts and on the operator's compliance record, the competent enforcement agencies will further proceed - if necessary - for in depth company checks and will subsequently update the operator's compliance status according to the outcomes.

It is important to note that under this action, in terms of effective control tasks, roadside checks will continue to keep their focus on driver's activities, the technical status of the vehicle, secure loading etc. As for the legal requirements that cannot be effectively checked at the roadside - i.e. the operator's genuine establishment (the letter-box phenomenon) and EU social and labour rules applicable to the driver - roadside inspectors will only download data relevant to this effect, and transfer it to back-office enforcement units for a compliance test. The back-office role may be fulfilled by the existing national contact points¹⁰.

The national contact points / Regulation (EC) No 1071/2009 requires each Member State to designate national contact points responsible for the exchange of information with other Member States in all aspects regarding the application of this regulation, including infringements, the compliance status of operators, etc. The national contact points had been effective since December 2011.

Advantages of the action

- All enforcement levels contribute to developing complete and accurate compliance records for road transport operators as part of the NERs and the ERRU;
- No additional control tasks are assigned to roadside inspectors, although roadside checks play an key role in this action;
- As back-office analysis of information and detection of data conflicts are supposed to be automatic, the task of the back-office enforcement unit will be minor;
- The action optimises the use and usefulness of existing Member State registers: the NERs, the ERRU, the IMI, the risk rating systems.

⁹ Commission Regulation (EU) No 1213/2010 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings.

¹⁰ See Article 18, Regulation (EC) No 1071/2009.

Existing resources

- Member State and EU electronic registers: the NERs, the ERRU, the IMI;
- The national contact points;
- The risk rating systems¹¹;
- The roadside check - company check system and the respective quotas set by Directive 2006/22/EC;
- EU legal requirements on the minimum data to be entered in the NERs, on the interconnection of the NERs at EU level and the functioning of the ERRU.

The extra mile to a full-fledged enforcement scenario involves

- Setting up back-office enforcement units - this function can be assigned to the existing national contact points;
- Real-time access of all enforcement levels - roadside, company site and back-office units - to the NERs and the ERRU;
- Interconnection and interoperability between the NERs, the ERRU and other relevant Member State registers such as the IMI.

1.2. Making use of the smart tachograph in enforcing cabotage rules and the social and labour laws applicable to the professional driver

In 2019, a new generation of digital tachograph (the smart tachograph)¹² will be introduced on the market, and will be mandatory for all newly registered commercial vehicles. In 15 more years from this date, the smart tachograph will be mandatory for all commercial vehicles in the scope of the tachograph regulation, operating within the EU¹³. Once operational, one of the functions of the smart tachograph will be to automatically record the exact geo-positioning of vehicle and driver at the start and the end of the driver's working day, as well as every three hours of cumulated driving time. This information will be stored in a secure way both on-board vehicle and at the company site, as requested by the EU rules, and thus will be downloadable both during roadside and company checks. In the ETF view, this particular tachograph function will be essential in controlling the period of time over which vehicle and driver operated on a territory of a given Member State. Hence the possibility to control compliance with the cabotage rules, and to determine the Member State whose social and labour laws are applicable to the driver. While compliance with cabotage rules will be easily detectable during roadside checks, determining the so called 'applicable social and labour law' is of a more complex nature. This, due to the ambiguous employment schemes currently in use (i.e. driver recruited in country A, with a contract in country B, working from country C, etc.), as well as the cross-border character of the driver's activity.

The labour and social provisions applicable to professional drivers during the exercise of their activity / The so-called 'applicable labour and social law' will be determined according to the criteria set by the Rome I Regulation (Regulation (EC) No 593/2008) with its jurisprudence (the ECJ ruling on the Koelzsch case of 15 March 2011) and in relation to the posting of workers directive (Directive 96/71/EC). These two pieces of EU legislation ensure that, in certain conditions, while working outside of his Homebase country, a driver will benefit by the labour and social rights of the Member State hosting his activity. The 'applicable labour and social law' will govern aspects such as the driver's level of pay, the working conditions, as well as social security.

A correct identification of the social and labour law applicable to the drivers, as well as a correct assessment on whether operators comply with it, will be possible by: a) communication, exchange and analysis of data

¹¹ Article 9, Directive 2006/22/EC.

¹² Regulation EU No 165/2014.

¹³ Regulation EU No 165/2014, Article 3.4.

between the three enforcement levels mentioned in Action 1; b) mandatory inclusion in the NERs and the ERRU of data on all drivers employed by an operator; c) introduction of mandatory pre-notifications for each posted driver, as required by Article 9 of Directive 2014/67/EC; d) downloads and communication of tachograph data on the exact geo-positioning of driver and vehicle.

Putting the three enforcement levels at work, to determine company compliance with labour and social provisions applicable to drivers / Tachograph data and complete operator data (driver-vehicle-operator) will be momentarily collected at roadside and company checks and transferred to the back-office enforcement unit. The unit will 'test' it against: a) the driver's data declared by the operator in the NERs and ERRU as described in Action 2 of this document; b) the 'posting' pre-notification submitted by the operator in line with the provisions of Article 9, Directive 2014/67/EU on the enforcement of posting of workers; c) the posting conditions declared by the operator in the IMI. Data conflicts will be automatically registered in the NERs and the ERRU, and will be part of the operator's compliance record as early warning signals for infringements on the 'applicable social and labour rights'. Based on the number of conflicts detected and of the operator's compliance record as a whole, enforcement agencies will decide on in depth checks. The operators' compliance records will be updated according to the findings of the in depth checks.

Without a doubt, the smart tachograph plays a central role for this action, as it provides secure and accurate information on the exact positioning of driver and vehicle. However, one must not wait 15+ years for the large-scale introduction of the new tachograph generation to start enforcing and controlling aspects of the 'social and labour applicable law'. Urgent measures can be taken already to address social fraud. The ETF proposal enables already the testing of the on-board vehicle and company-site data on drivers employed by the operator against the information declared by the operator in the NERs, the ERRU, the IMI, and in the pre-notification.

Advantages of this action

- The action enables the enforcement and control of cabotage rules, hence its potential to address illegal cabotage and domestic market distortions caused by it;
- The action enables enforcement and control of the social and labour law applicable to the drivers when working outside their Homebase country, hence the potential to put an end to social dumping practices, i.e. by targeting operators who circumvent payment of social contributions and who employ drivers on pay and conditions of drivers' country of origin.

Existing resources

- The digital tachograph and its enforcement infrastructure, i.e. secure data storage on-board vehicle and at company site;
- The EU regulatory framework on the digital tachograph and on its technical specifications;
- Member State and EU electronic registers: the NERs, the ERRU, and the IMI;
- The risk rating systems;
- EU legal requirements on the minimum data to be entered in the NERs, on the interconnection of the NERs at EU level and the functioning of the ERRU;
- EU requirements and control measures on posting of workers, among which the pre-notification of posting (Directive 2014/67/EC, Article 9(a)).

The extra mile to a full-fledged enforcement scenario involves

- Minor additions to the NERs and the ERRU, notably data on drivers employed by the operators;
- Interconnection and interoperability of the IMI with the NERs and ERRU;
- Member States to meet their obligations regarding the implementation of the Posting of workers enforcement directive (Directive 2014/67/EC) and introduce the pre-notification for posting for the road transport sector.

Action 2

Setting up 'integrated operator files' by shifting the focus from a fragmented control approach, of vehicle, driver, operator as separate elements, into an integrated one, where vehicle and driver are intrinsically linked to the operator as the main organiser of the transport activity and user of resources

Typically, during a roadside check, a roadside inspector will be confronted with a puzzle of disconnected elements. The inspector will invariably check a vehicle registered in country A and a trailer registered in country B, provided with a Community licence issued by country C, while the driver's documents will probably be issued in countries D, E and F. The driver's employment situation will add even more complexity to the equation.

The above example illustrates that currently, in terms of compliance with the law, the enforcer is limited to making separate judgements on the vehicle (i.e. law-compliant documentation, technical status, weigh, load securing), driver (i.e. validity of driver card, proof of professional competence, driver licence) and operator (licensed or not). Against this backdrop, the ETF proposes a shift from disconnected vehicle, driver and operator data, to an integrated approach centred on the operator as the main organiser of the transport activity and user of resources. The NERs and implicitly the ERRU will thus contain 'integrated operator files', to enable a holistic compliance assessment of the operator, also in relation to its resources and the way these resources - vehicle and driver - are deployed. This will entail consolidating the operator's entries in the NERs and the ERRU with three additional mandatory elements¹⁴:

- The number plates of all vehicles in use by the operator;
- Information about the drivers employed by the operator, to include: name, nationality, country of residence, driving licence number and validity period, CPC, Member State of registration of labour contract, Member State of payment of social contributions, and social insurance number;
- Additional information about the transport manager, more precisely past and current road transport undertakings the respective transport manager has been in charge of.

The above data will have to be declared by the operator and entered into NERs and ERRU when requesting the Community licence from the Member State of its establishment, and will be subject to prompt updates, whenever changes occur.

Community licence / Regulation (EC) No 1072/2009 stipulates that carriers willing to operate outside of their country of establishment must apply for a Community licence in the Member State of their establishment. For this purpose they have to provide minimum data, as listed in a European Commission decision¹⁵ adopted in December 2009. The carriers will be able to keep their Community licence as long as they comply with the EU road transport regulatory framework. To this end, the NERs and the ERRU equally include a list of infringements against 12 EU directives and regulations which, when repeatedly committed by a carrier, will lead to its loss of good repute.

¹⁴ Commission decision on minimum requirements for the data to be entered in the national electronic register of road transport undertakings.

¹⁵ Idem

2.1. Mandatory entries in the NERs and the ERRU of vehicle number plates, drivers employed by the operator, and transport managers

2.1.1. Mandatory declaration of number plates of all vehicles in use – currently, the minimum requirements for data to be entered into national registers¹⁶ make the declaration of vehicle number plates optional. Making it mandatory will give the enforcer a better indication for instance on whether the operator has an effective and genuine status, but more importantly, will enable an easy detection of a number of infringements such as speeding and overloading, thus facilitating the pre-selection of vehicles targeted for roadside checks. Road offences such as speeding and overloading will be considered and assessed in relation to the company that operates the vehicle, and to its compliance history. This will avoid holding the driver liable for what may be flaws in the work organisation the company is ultimately responsible for. Furthermore, Member States should seriously consider developing automatic number plate recognition systems, as per the UK example mentioned earlier.

2.1.2. Mandatory information about the drivers employed by the operator – there is currently no obligation for operators applying for or holding a Community licence to provide data about the drivers they employ. A considerable number of carriers operating in the Internal Market make use of ambiguous employment schemes, recruiting drivers in country A - usually, low-income Member States - employing them on contracts based in country B, making them work from or in country C - usually, a Member State with much higher levels of pay and conditions. These employment practices raise at least two serious problems, currently widely spread in the industry:

- Drivers are employed on pay levels and conditions of their Homebase country and not of the country hosting their activity. This is against the provisions of the Rome I Regulation (Regulation (EC) No 593/2008) and the posting of workers directive (Directive 96/71/EC);
- Social contribution obligations are easily circumvented by the employer.

Against this backdrop, to properly tackle the above situation, the ETF proposes that the NERs and the ERRU include the following *mandatory driver information*: driver's name, nationality, country of residence, driving licence number and validity period, CPC, Member State of registration of labour contract, Member State of payment of social security contribution, and social insurance number. In providing this information, operators can easily resort to their human resource database. This implies moving towards a level of transparency which will enable enforcers to trace down non-compliant operators and make them meet their legal obligations in terms of levels of pay, working conditions, and social contributions.

2.1.3. Mandatory additional information about the transport manager – the list of the minimum required data to be entered in the NERs already includes a section dedicated to the transport manager. This is an important starting point but unfortunately fails to address cases where letter-box companies close down their business only to re-open under a different name and address, in an attempt to clear their bad compliance record. These practices are resorted to particularly by letter-box companies subject to investigations or court proceedings. Indeed, the lack of effective assets and of genuine operational centres gives these companies a fair degree of flexibility and volatility. To better tackle this persisting problem, the ETF proposes to include, in both the NERs and the ERRU, under the "Transport manager" data field, a mandatory requirement for names of all operators previously and currently managed by a transport manager. This will provide additional possibilities to trace down practices as the one described above.

Advantages of this action

- The '**integrated operator file**' will enable enforcement and control of operators' compliance with: criteria on *access to occupation* (letter-box phenomenon) and the social and labour law applicable to drivers;
- This action will help develop complete and accurate operators' compliance records;

¹⁶ Idem

- This action will enable enforcement agencies to better assess the overall compliance of operators;
- This action will make the NERs and the ERRU fit for enforcement purposes, and thus will optimise their use;
- The **mandatory introduction** in the NERs and the ERRU **of the number plates of all vehicles in use** by the operators will contribute to targeted checks and will connect a series of infringements to the carriers' compliance pattern. Road safety and the criteria for *access to occupation* will be better enforced as a result;
- The **mandatory introduction** in the NERs and the ERRU **of information regarding the drivers employed by operators** will allow a better enforcement of the social and labour law applicable to the driver, as well as better indications on whether operators meet their social contribution obligations;
- The **mandatory introduction** in the NERs and the ERRU **of names of past and current companies managed by transport managers** will make it more difficult for the operators to clear their non-compliance records. This will render risk rating systems much more effective;
- In more general terms, this action will enable better controls on letter box companies and on unlawful social and labour practices in road transport.

Existing resources

- Member State and EU electronic registers: the NERs, the ERRU, IMI;
- EU legal requirements on the minimum data to be entered in NERs, on the interconnection of NERs at EU level and the functioning of the ERRU;
- The risk rating systems;
- The UK best practice – mandatory declaration of number plates of vehicles used by the operator in combination with the automatic number plate recognition.

The extra mile to a full-fledged enforcement scenario involves

- Minimum additions to the NERs and the ERRU entailing slight amendments to the European Commission decision on data to be entered into the NERs;
- Adapting the NERs and the ERRU to enforcement purposes by adding mandatory data on all drivers employed by the operator, on all vehicles in use and on past and current companies managed by transport managers.

2.2. The pre-notification of posted drivers

Article 9 of the recently adopted directive on the enforcement of the Posting of workers (Directive 2014/67/EU) sets requirements on the effective registration and monitoring of posting. This consists in “a simple declaration to the responsible national competent authorities at the latest at the commencement of the service provision [...] containing the relevant information necessary in order to allow factual controls at the workplace”, and includes the identity of the service provider, the anticipated number of clearly identifiable posted workers, the anticipated duration envisaged beginning and end date of the posting, the workplace address, the nature of the services justifying the posting. It is unquestionable that implementing Article 9 of the so called enforcement directive is a Member State obligation. Road transport falls within the scope of these requirements and some Member States such as Belgium and France already apply them in road transport. Part of the ETF proposal, the posting pre-notification is one of the main data sources to compare when assessing compliance of the operator with the social and labour law applicable to the professional driver. For this purpose, the pre-notifications should be accessible in real time to at least the back-office enforcement units.

Advantage of this action

- The action enables a better control of the posting of workers and better monitoring of the operator's compliance history in the area of social and labour law applicable to the driver;
- This action allows transparency in the employment relations between the operator and drivers and ensures that drivers have access to social rights and benefits i.e. social security, etc.

Existing resources

- The IMI;
- EU legal requirements on the pre-notification of posting.

The extra mile to a full-fledged enforcement scenario involves

- Member States to meet their obligations regarding the implementation of the Posting of workers enforcement directive (Directive 2014/67/EC) and introduce the pre-notification for posting for the road transport sector;
- Interconnection and interoperability between the IMI, the NERs and the ERRU.



Action 3

Setting up electronic 'integrated compliance records' for each licensed operator by introducing data conflicts, 'clear' controls and risk scores in the operators' compliance history

At present, the NERs and the ERRU are the key Member State and European registers for road transport operators, bringing together data on licensed operators and information on their compliance records. The latter only accounts for 'committed infringements'. This may be sufficient for licence-issuing authorities to which, currently, the NERs and the ERRU are exclusively addressed. Opening these registers to Member State enforcement agencies would entail slightly adapting the two types of register for enforcement purposes.

On the other hand, the Member States' risk rating systems - mandatory according to Directive 2006/22/EC - remain marginal, despite their huge potential to lead to intelligent, targeted controls on operators with bad risk scores. One of the pitfalls of the risk rating systems is their weak degree of compatibility across the EU which makes their outcomes difficult to compare. Furthermore, Member States have different approaches when it comes to sharing risk scores: some make them public while others deny access to them. These inconsistencies could be addressed if the European Commission and the Member States adopted uniform requirements on risk rating systems, similar to the European Commission decisions governing the national electronic registers and their interconnection.

Complete, accurate and reliable electronic records of road transport undertakings are thus unachievable under the current circumstances. Yet, they are so much needed not only for enforcement purposes, but also basically for the Member States to make pertinent assessments prior to granting or withdrawing Community licences.

Against this backdrop, the ETF proposes the setting up, as part of the NERs and the ERRU, of **integrated compliance records for road transport operators**, to include, in addition to the current entries on 'committed infringements', the following:

- Inspections with no findings, so called 'clear inspections';
- The already existing operators' risk scores;
- Data conflicts resulting from comparing roadside and company check outcomes against the information declared by the operators in the NERs, the ERRU and other relevant Member State registers such as the IMI.

Advantages of the action

- The action will contribute to the development of complete, reliable and accurate operators' compliance records;
- The action optimises the use of the NERs, the ERRU and the risk rating systems;
- The action fosters intelligent enforcement and controls in road transport.

Existing resources

- The NERs and the ERRU;
- Already existing the NERs and the ERRU entries on 'committed infringements';
- The risk rating systems and risk scores for operators;
- EU rules regarding the operation and content of the NERs and the ERRU, as an example of effective EU guidance and coordination of enforcement instruments.

The extra mile to a full-fledged enforcement scenario involves

- EU requirements on risk rating systems with the view to make them compatible and interoperable;
- Minor additions to the NERs and the ERRU, notably by consolidating their 'infringement' section with information about 'clear' inspections, risk scores and data conflicts as described in this document.

Action 4

Allowing Member State enforcement agencies real-time access to the NERs, the ERRU, risk scores and to other relevant Member State databases

The development of national electronic registers (NERs) and their interconnection at the EU level via the ERRU, required considerable effort and investment by individual Member States. The NERs and the ERRU already contain enforcement-critical information about operators, i.e. records on committed infringements against which their good repute is tested, and their history of compliance monitored. However, as pointed out already, the access to the NERs and the ERRU is currently restricted to licence-issuing authorities. The ETF proposes full real-time access of all three enforcement levels - roadside, back-office and company site - to the NERs, the ERRU, to risk scores, as well as to all other Member State registers relevant for compliance with EU rules applicable to the road sector. IMI would be one of these.

IMI, the Internal Market Information System is an administrative cooperation platform enabling Member States to exchange information in four areas, of which posting of workers. To this effect, the IMI will be used to check the employment conditions for workers posted in a respective Member State.

Advantages of the action

- The action increases the effectiveness of enforcement and controls in road transport, and thus, of risk rating systems and targeted checks;
- It enables inspectors performing roadside and company checks to related their findings to the overall operator's compliance history;
- It enables rapid analysis and automatic detection of conflicts, as early warning signals of infringements, by the back-office enforcement units;
- It optimises the use and usefulness of existing registers: the NERs, the ERRU, the IMI.

Existing resources

- The NERs, the ERRU, the IMI;
- The risk rating systems;
- EU rules regarding the content and interconnection of the NERs and the ERRU.

The extra mile to a full-fledged enforcement scenario involves

- Minor adjustments to the NERs and the ERRU entries, to adapt the two types of register for enforcement purposes (consolidation of both operators' data and operators' compliance sections of the NERs as described in Actions 2 and 3 above);
- Render the above mentioned registers fully interconnected and interoperable.

Action 5

Moving from paper-format to e-documents, enabling on-board vehicle and company-site storage of the integrated *vehicle-driver-operator* data

At present, only some data required for enforcement purposes is available in a non-paper format. This is the case of the tachograph digital records, documenting aspects of the drivers' activities. In addition, as a norm, the following paper-format documents must be kept on board of vehicle for control purposes (i.e. road side checks):

- Vehicle documents;
- Company / Community licence;
- Driver / Driving licence, certificate of professional competence;
- Driver's activities / CMR.

The coexistence of digital information and paper-format records in road transport poses a number of problems to the industry, making road transport outdated in relation to the highly advanced environment it operates within, namely the technology-driven logistics sector. Likewise, this paper-format e-format mix encourages a high fragmentation of operators' records. From the enforcement point of view, it often puts into question the reliability of data, it makes entries into the relevant Member State registers (the NERs, the ERRU, the IMI) time-consuming and it ultimately renders controls ineffective.

The ETF thus proposes a *shift from paper to e-format* for all documents and data constituting proof for enforcement and control purposes. This must go hand in hand with developing on-board vehicle and company-site e-storage capacities. At these two levels, both the 'integrated operator file' and the 'integrated compliance record' should be available and fully downloadable. For instance, this could be achieved by assigning Community licences with individual codes to be scanned or introduced in download software. The ETF proposal is not meant to focus on technical solutions and thus we rather leave these at the latitude of the policy-makers.

A final word about the wide-scale introduction of electronic CMRs: the electronic CMR may play a key role in enforcing various Community rules including cabotage and the social and labour law applicable to drivers. So far, nine Member States have already introduced electronic consignment notes¹⁷. However, with nineteen more Member States to go, its effectiveness is still to be seen.

Advantages of this action

- This action will facilitate the input and update of data in the NERs, the ERRU and other relevant databases such as the IMI;
- This action will facilitate prompt download, transfer and analysis of data in the context of the threefold enforcement cycle proposed under Action 1 above;
- It will eliminate fraud that may occur with paper documents;
- It will make it easier for the operator, driver and enforcement staff to keep and handle evidence during checks;
- It will lift a considerable part of administrative burden for the undertakings, as they would handle their administrative tasks online instead of filling in and supplying paper documents.

¹⁷ "Digital Transport and Logistics Forum – background".

Existing resources

- The digital tachograph, as an example of digitalisation and its benefits for road enforcement;
- Download and analysis tools in use with regard to the tachograph data, as a proof that digitalisation in road transport enforcement is an achievable goal.

The extra mile to a full-fledged enforcement scenario involves

- The conversion of paper-format documents into e-format;
- On-board vehicle and company-site solutions to enable storage of and access to the *integrated operator file* data in e-format i.e. via the introduction of a Community licence code.



FINAL CONSIDERATIONS

Without a doubt, there is plenty of technology and plenty of data available in road transport. For instance tracing and tracking systems have been long in use, enabling operators and their clients to determine the exact location of transported goods and passengers. Likewise, records on employed drivers and vehicles already exist at company sites in one form or another.

On the other hand, much effort and resources have been invested into the sector, both in terms of regulating it and equipping it with enforcement instruments (i.e. the NERs and the ERRU).

It is now time to pool together all these means and resources to promptly address the problems faced by the sector, notably unfair competition and unlawful social practices.

The European Commission has recently set itself a target, to bring the road transport sector into the modern era. This would also benefit enforcement and controls. The new digital tachograph regulation could have set a good start in this direction, but for the time being it may be considered a missed opportunity: remote communication of data and more targeted checks will only enter into force across the EU in 18 or 19 years from now, while the smart tachograph will be mandatory for all commercial vehicles at about the same time.

The ETF proposal attempts to bridge these gaps by focusing on simple enforcement solutions which can be implemented right away. What is now needed is the political will to put it in practice.

More substantial changes to the road haulage EU regulatory framework are expected with the launch of the new road package, late 2016. The ETF trusts that these changes will be enforceable - our proposal will prove its validity, no matter the nature of these changes - and be effective in tackling social dumping and unfair competition. To achieve this, the new road package must bring forward dead-lines for the implementation of the tachograph rules, tighten up criteria on access to occupation, and reiterate the principles governing the social and labour law applicable to professional drivers.



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