

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT** **B**  
STRUCTURAL AND COHESION POLICIES

Agriculture and Rural Development



Culture and Education



Fisheries



Regional Development



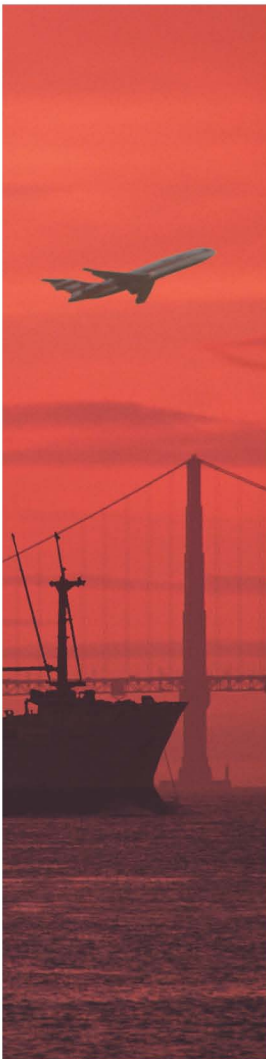
**Transport and Tourism**



**DEVELOPMENT AND  
IMPLEMENTATION OF EU  
ROAD CABOTAGE**

**PROVISIONAL VERSION**

**STUDY**







**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES**

**TRANSPORT AND TOURISM**

# **DEVELOPMENT AND IMPLEMENTATION OF EU ROAD CABOTAGE**

**STUDY**

**PROVISIONAL VERSION**

This document was requested by the European Parliament's Committee on Transport and Tourism.

## **AUTHORS**

*Steer Davies Gleave* - Roberta Frisoni, Francesco Dionori, Christoph Vollath,  
Karol Tyszka, Lorenzo Casullo, Clemence Routaboul  
Andrius Jarzemskis  
Katalin Tanczos

## **RESPONSIBLE ADMINISTRATOR**

Mr Piero Soave  
Policy Department Structural and Cohesion Policies  
European Parliament  
B-1047 Brussels  
E-mail: [poldep-cohesion@europarl.europa.eu](mailto:poldep-cohesion@europarl.europa.eu)

## **EDITORIAL ASSISTANCE**

Nora Revesz

## **LINGUISTIC VERSIONS**

Original: EN.

## **ABOUT THE EDITOR**

To contact the Policy Department or to subscribe to its monthly newsletter please write to:  
[poldep-cohesion@europarl.europa.eu](mailto:poldep-cohesion@europarl.europa.eu)

Manuscript completed in March, 2013  
© European Union, 2013.

This document is available on the Internet at:  
<http://www.europarl.europa.eu/studies>

## **DISCLAIMER**

The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorized, provided the source is acknowledged and the publisher is given prior notice and sent a copy.



DIRECTORATE GENERAL FOR INTERNAL POLICIES  
POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES

TRANSPORT AND TOURISM

# DEVELOPMENT AND IMPLEMENTATION OF EU ROAD CABOTAGE

STUDY

**PROVISIONAL VERSION**

## **Abstract**

The study provides an analysis of the European freight cabotage transport services in the EU and discusses the main changes that have occurred in the regulation of this market in recent years. The entry into force of Regulation (EC) No 1072/2009, and the gradual opening of the market to the Member States, have been the two major drivers of change in the past ten years. The study analyses the amendments that have been made to the Regulation and looks at enforcement provisions within Member States. The study provides updated statistical data on cabotage, where available. It also provides an assessment of socio-economic effects within Member States during the application of the current and previous Regulation commenting on the extent to which these changes were due to Regulation (EC) No 1072/2009 or to other factors.



## CONTENTS

<b>LIST OF ABBREVIATIONS</b>	<b>5</b>
<b>COUNTRY ABBREVIATIONS</b>	<b>7</b>
<b>LIST OF TABLES</b>	<b>9</b>
<b>LIST OF FIGURES</b>	<b>9</b>
<b>EXECUTIVE SUMMARY</b>	<b>11</b>
<b>1. INTRODUCTION</b>	<b>17</b>
1.1. Preface	17
1.2. Study Requirements	17
1.3. Why cabotage?	18
1.4. Organisation of the research study	20
<b>2. REGULATION OF CABOTAGE</b>	<b>21</b>
2.1 European legislative background	21
2.2 National legislative framework	29
2.3 Future developments	35
<b>3. ENFORCEMENT OF RULES</b>	<b>41</b>
3.1 Introduction	41
3.2 Control Bodies in charge of cabotage operations	41
3.3 Sanctions for infringements of Regulation (EC) No 1072/2009	43
3.4 Infringements statistics	44
3.5 Shortcomings and best practices of enforcement	45
3.6 Further developments	49
<b>4. MARKET REVIEW</b>	<b>53</b>
4.1 Introduction	53
4.2 Evolution of the road freight transport in the EU	53
4.3 National versus international transport by EU hauliers	56
4.4 The role of road cabotage in the EU	57
<b>5. SOCIO-ECONOMIC IMPACTS OF FURTHER LIBERALISATION OF ROAD CABOTAGE</b>	<b>65</b>
5.1 Introduction	65
5.2 Evidence from case studies	65

5.3	Summary of findings by socio-economic theme	70
5.4	The current debate on further liberalisation of the cabotage market	74
<b>6.</b>	<b>CONCLUSIONS AND RECOMMENDATIONS</b>	<b>79</b>
6.1	Conclusions	79
6.2	Recommendations	80
	<b>REFERENCES</b>	<b>83</b>
	<b>ANNEX A</b>	<b>87</b>
	<b>EXECUTIVE SUMMARY OF CASES STUDY</b>	<b>87</b>
<b>A.1.</b>	<b>CASE STUDY AUSTRIA</b>	<b>95</b>
<b>A.2.</b>	<b>CASE STUDY FRANCE</b>	<b>105</b>
<b>A.3.</b>	<b>CASE STUDY GERMANY</b>	<b>117</b>
<b>A.4.</b>	<b>CASE STUDY UNITED KINGDOM</b>	<b>129</b>
<b>A.5.</b>	<b>CASE STUDY HUNGARY</b>	<b>138</b>
<b>A.6.</b>	<b>CASE STUDY ITALY</b>	<b>150</b>
<b>A.7.</b>	<b>CASE STUDY LITHUANIA</b>	<b>162</b>
<b>A.8.</b>	<b>CASE STUDY NETHERLANDS</b>	<b>172</b>
<b>A.9.</b>	<b>CASE STUDY POLAND</b>	<b>182</b>
<b>A.10.</b>	<b>CASE STUDY SPAIN</b>	<b>191</b>



## LIST OF ABBREVIATIONS

<b>AusIBG</b>	Ausländerbeschäftigungsgesetz (Austrian Foreign Labour Act)
<b>AVRAG</b>	Arbeitsvertragsrechts-Anpassungsgesetz (Austrian Labour Contract Law)
<b>BAG</b>	Bundesamt für Güterverkehr (German Federal Office of Goods Transport)
<b>CETM</b>	Confederación Española de Transporte de Mercancías (Spanish Confederation of Goods Transport)
<b>EC</b>	European Community
<b>EEA</b>	European Economic Area
<b>EEC</b>	European Economic Community
<b>EFTA</b>	European Free Trade Agreement
<b>EP</b>	European Parliament
<b>ERRU</b>	European Registers of Road Transport Undertakings
<b>EU</b>	European Union
<b>EU12</b>	The Member States which joined the EU in 2004 and in 2007
<b>EU15</b>	EU Member States before the 2004 enlargement
<b>EU27</b>	The current Member States
<b>GITD</b>	Główny Inspektorat Transportu Drogowego (Polish Inspectorate of Road Transport)
<b>GüKG</b>	Güterkraftverkehrsgesetz (German Road Haulage Act)
<b>GUS</b>	Główny Urząd Statystyczny (Central Statistical Office of Poland)
<b>HLG</b>	High Level Group
<b>ILT</b>	Inspectie Leefomgeving en Transport (Dutch Inspectorate for Human Environment and Transport)
<b>KiM</b>	Kennisinstituut voor Mobiliteitsbeleid (The Netherlands Institute for Transport Policy Analysis)
<b>Km</b>	Kilometre

- LOTT** Ley de Ordenación de los Transportes Terrestres (Spanish Land Transport Management Act)
- MS** Member State
- NTA** Hungarian National Transport Authority (Nemzeti Közlekedési Hatóság, NKH)
- OCRS** Operator Compliance Risk Score
- PWD** Posting of Workers Directive
- TNL** Transport and Logistics in the Netherlands (Dutch Association of Transport and Logistic)
- VOSA** Vehicle & Operator Services Agency

## **COUNTRY ABBREVIATIONS**

<b>AT</b>	Austria
<b>BE</b>	Belgium
<b>BG</b>	Bulgaria
<b>CY</b>	Cyprus
<b>CZ</b>	Czech Republic
<b>DE</b>	Germany
<b>DK</b>	Denmark
<b>EE</b>	Estonia
<b>EL</b>	Greece
<b>ES</b>	Spain
<b>FI</b>	Finland
<b>FR</b>	France
<b>UK</b>	United Kingdom
<b>HU</b>	Hungary
<b>IE</b>	Ireland
<b>IT</b>	Italy
<b>LT</b>	Lithuania
<b>LU</b>	Luxembourg
<b>LV</b>	Latvia
<b>MT</b>	Malta
<b>NL</b>	Netherlands
<b>PL</b>	Poland
<b>PT</b>	Portugal
<b>RO</b>	Romania

**SE** Sweden

**SI** Slovenia

**SK** Slovakia

**LIST OF TABLES**

<b>Table 1</b>	Additional measures by Member States defining the temporary character of cabotage as per Council Regulation (EEC) No 3118/93 in force in 2006	22
<b>Table 2</b>	Overview of contents of Regulation (EC) No 1072/2009	23
<b>Table 3</b>	Summary of Regulation (EC) No 1072/2009 and clarifications on road cabotage operations	27
<b>Table 4</b>	Applicative measures by Member States in relation to Regulation (EC) No 1072/2009	31
<b>Table 5</b>	Application of the PWD to cabotage in selected Member States	34
<b>Table 6</b>	Cabotage enforcement bodies in selected Member States	42

**LIST OF FIGURES**

<b>Figure 1</b>	Cabotage restrictions, years in which bans were lifted	30
<b>Figure 2</b>	Sanctions applicable to cabotage in selected Member States (€)	43
<b>Figure 3</b>	Tonne-km generated in inland freight transport in the EU in 2010	54
<b>Figure 4</b>	Share of inland modes in the total EU freight transport market in 2010	54
<b>Figure 5</b>	Tonne-km generated in transports by road in the EU, by region where the vehicle was registered	55
<b>Figure 6</b>	Evolution of road freight transport activity in tonne-km between 2009 and 2011 and between 2007 and 2011 by nationality of haulier	55
<b>Figure 7</b>	Share of national, bilateral international, cross-trade and cabotage transports by hauliers in the EU, the EU15 and the EU12 MSs (based on data in tonne-km)	56

<b>Figure 8</b>	International road freight transport in 2011 by relation (share of international bilateral, cross-trade and cabotage transport in the activities of the hauliers from each Member State)	57
<b>Figure 9</b>	Total volumes of cabotage carried out in the EU by country where vehicle is registered	58
<b>Figure 10</b>	Origin of most active cabotage operators in the EU in 2007 (left) and 2011 (right) (based on data in tonne-km)	58
<b>Figure 11</b>	Main host countries for cabotage in the EU in 2007 (left) and 2011 (right) (based on tonne-km)	59
<b>Figure 12</b>	Tonne-km generated in 2011 for international transports by road between EU27 countries, by country where the vehicle was registered	61
<b>Figure 13</b>	Cabotage penetration rates in 2011 relative to the national road haulage market (based on data in tonne-km)	62
<b>Figure 14</b>	Trend of cabotage penetration rate in EU27, EU15 and EU12	62
<b>Figure 15</b>	Evolution of total cabotage volumes compared to the total national market	63
<b>Figure 16</b>	Net cabotage volumes in the EU (based on data in tonne-km)	64
<b>Figure 17</b>	Operating costs of cabotage operations (€/h)	71
<b>Figure 18</b>	Ratio between labour costs (€/h) in a selection of MSs and Polish ones	71
<b>Figure 19</b>	Evolution of the labour costs index in the EU (2004-2011)	72

## EXECUTIVE SUMMARY

This research study is intended to inform the parliamentary debate on further liberalisation of the road haulage sector looking at the manner in which cabotage has grown in Europe in recent years, understanding how much of the changes have been due to the entry into force of Regulation (EC) No 1072/2009 or other causes and discussing the socio-economic impacts following these changes. A description of cabotage and its functioning is included in Chapter 1.

The study is composed of a number of sections as set out in Chapter 1 and is supported by evidence that has been gathered through a number of case studies that are annexed to this study. The analysis is supported, where possible by quantitative information although we have seen that the amount of quantitative information that has been gathered by Member States is often limited and is usually different between Member States.

## THE REGULATION

Regulation (EC) No 1072/2009, adopted to harmonise cabotage rules across the EU, was passed when the EU international road freight market was undergoing numerous changes, mostly driven by the 2004 enlargement which opened the door to hauliers from new MS although with some restrictions. These restrictions were removed in 2009 (and in 2012 for Romania and Bulgaria). EU legislation prior to this Regulation (in the form of Regulation EEC No 3118/93) already contained cabotage provisions although some areas were not defined in sufficient detail (for example: what was meant by cabotage needing to be temporary) leading to different interpretations at a national level creating barriers to entry for foreign cabotage operators.

Regulation (EC) No 1072/2009 sought to address these concerns through a number of provisions, the two main ones being: the introduction of the rule whereby no more than 3 cabotage operations can be undertaken within a 7 day period following an international consignment; and the harmonisation of the documents that need to be carried on a cabotage journey to confirm the legitimacy of the cabotage operation.

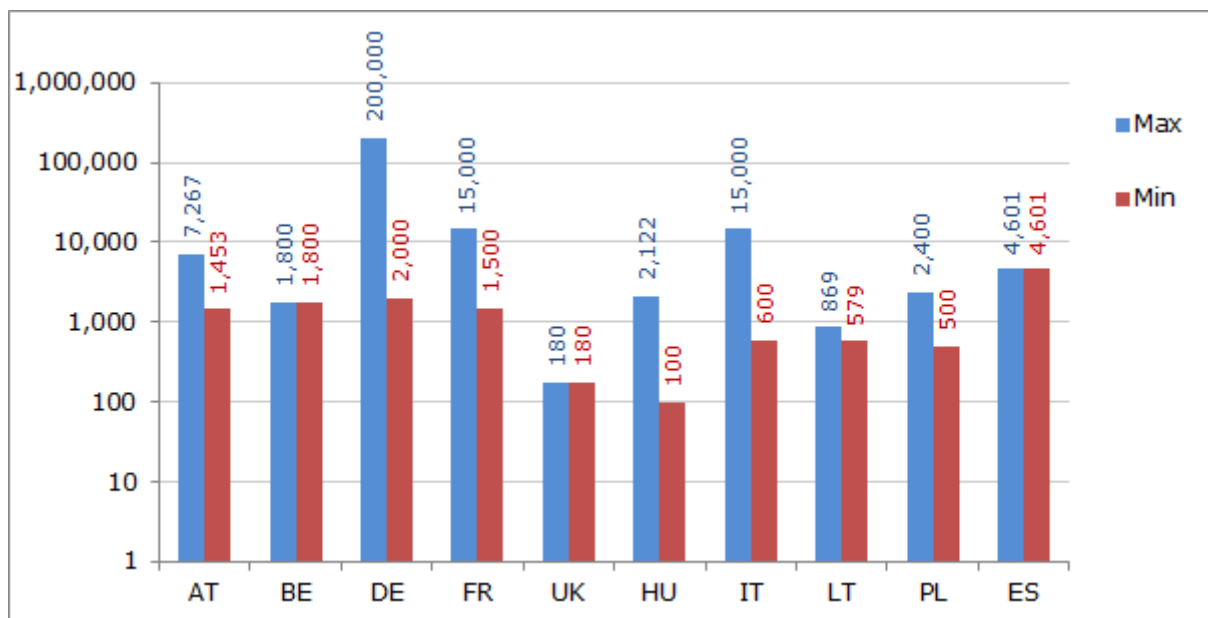
Following the entry into force of the Regulation in May 2010 the Commission published a number of clarifications to facilitate the interpretation of the Regulation. Some concerns still remain in relation to, for example, multidrogs and sanctions. These issues are discussed in more detail in Chapter 2.

## ENFORCEMENT

This research study has looked in detail at monitoring and enforcement of cabotage provisions within a number of Member States and has found that there are a number of factors that have a direct impact on the manner in which cabotage operations are monitored and enforced. Firstly, in a number of Member States there are multiple bodies tasked with monitoring infringements in road transport legislation (including cabotage), this fragmentation has led to difficulties in coordination and has made it difficult to monitor cabotage operations effectively. Secondly, and related to the first point, there is little coordination across national borders making enforcement of operations in the "home" market even more difficult. Thirdly, a number of enforcement bodies do not have sufficient resources to monitor cabotage operations effectively. Finally, sanctions for cabotage

infringements vary greatly across the EU creating different incentives in different Member States (as shown in the figure below).

**Figure E.1: Sanctions applicable to cabotage in selected Member States (€)**



\*additionally in France hauliers can be sentenced for up to 1 year of imprisonment (limited to hauliers from countries that are not allowed to undertake cabotage operations in France);

**Source:** SDG case studies, national laws and interviews with Ministry of Transport in selected MSs.

Although data on infringements is difficult to come by, we have seen that in those case studies countries where detailed information is available (Germany and the United Kingdom) infringements were between 0.2% and 0.45% of total inspections.

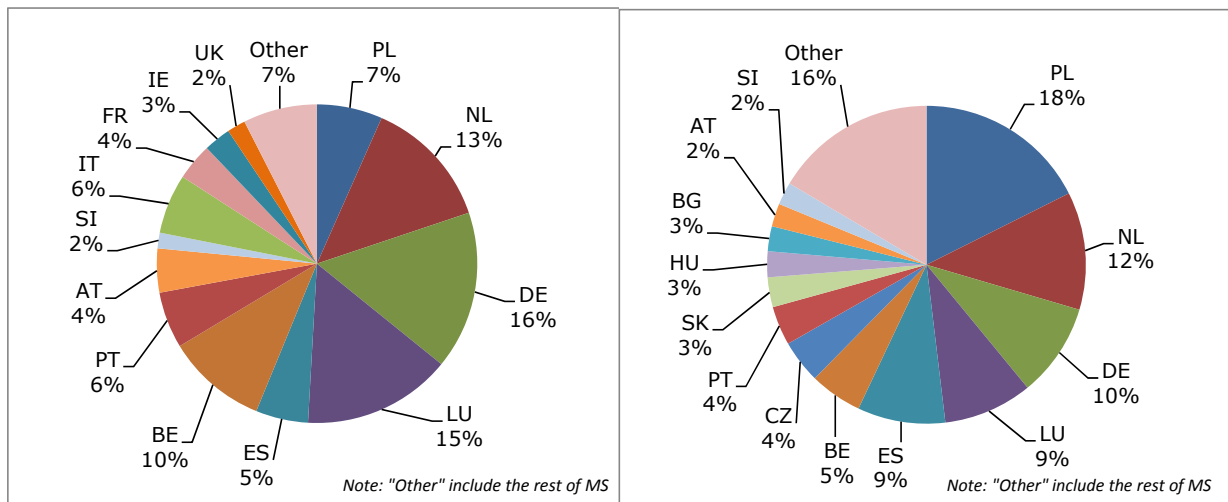
Through the analysis set out in Chapter 3 we have also been able to identify a number of good practices in enforcement, these include the coordination efforts relating to enforcement pursued in Italy and the OCS developed in the United Kingdom. These should be studied in more detailed and applied in other Member States where feasible.

## MARKET REVIEW

The analysis of market data shows that a key change has occurred in the EU cabotage market with hauliers from EU12 Member States having an increased role in cabotage operations. Overall the proportion of cabotage operations undertaken by vehicles registered in one of the EU12 Member States increased from 12% in 2007 to nearly 40% in 2011. Polish hauliers are among the most active ones: in 2011 they carried out the most cabotage operations in the EU, surpassing the volumes of German and Dutch hauliers. By contrast, the destination countries have remained the same: Germany, France, Italy and the United Kingdom. The figure below shows the change in origin of the main cabotage operators between 2007 and 2011.



**Figure E.2: Origin of most active cabotage operators in the EU in 2007 (left) and 2011 (right) (based on data in tonne-km)**



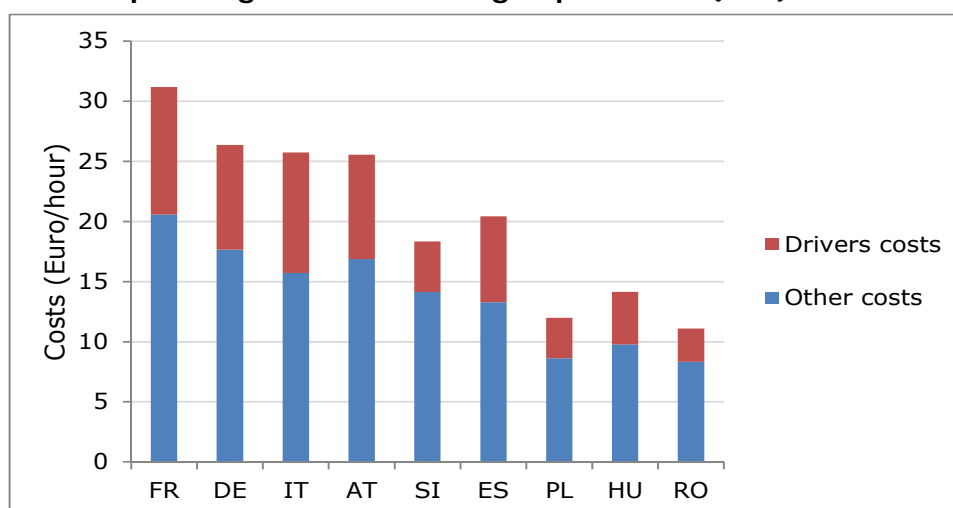
Source: SDG analysis of Eurostat (2012).

As can be seen from this figure, Poland has taken a leading role in cabotage operations accounting for 18% of all cabotage figures. Chapter 4 of this study sets out the full market review and provides more details on cabotage activities across the EU.

## SOCIO-ECONOMIC IMPACTS OF CABOTAGE

The evolution of cabotage has had differing social and economic effects on different Member States. One aspect has remained constant for all Member States, the recession that had an impact on all road freight transport as shown in the data provided in Chapter 4. While road freight transport volumes have not yet recovered from the economic crisis that started in 2008, two main trends have been identified. Firstly, companies from EU15 MSs have intensified the practice of flagging-out to exploit the favourable labour cost differences and regain competitiveness. Secondly, companies from EU12 MSs have made greater use of cabotage opportunities offering cheaper alternatives to European consignees looking to reduce their costs.

The increased activity of EU12 hauliers in the recent years can be partially explained by the fact that they can offer lower prices thanks to the lower labour costs in comparison to most EU15 MSs. This cost advantage is attributable to different wage levels (that over the long term should level out), but also to different social protection systems that impose different labour costs on firms from new and old MSs. This is best illustrated in the figure below.

**Figure E.3: Operating costs of cabotage operations (€/h)**

Source: SDG elaboration on HLG Report (2012) and Centro Studi Sistemi di Trasporto (2008).

In the long term, increasing salaries in EU12 Member States and stagnant salaries in EU15 Member States could lead to a convergence of labour costs although opinions are divided on this issue as set out in Chapter 5. Although labour costs are also affected by other legislation, in particular social security provisions within Member States that can have a significant impact on costs. Some Member States (Austria and France) have introduced provision to limit unfair competition from different social security provisions.

Some cases of full liberalisation of cabotage already exist within the EU. The Benelux region represents an example of successful market opening in the presence of a harmonised socio-economic environment. National governments have repeatedly prolonged this agreement given its efficiency benefits, which include higher revenues per truck, greater economic integration of national businesses and a reduction in empty runs although set on the backdrop of three countries with a similar level of economic activity. Nevertheless Belgium - along with France, Italy, Austria and Denmark - is reluctant to adopt further liberalisation of cabotage in the EU, at least until "serious market irregularities" leading to social dumping are addressed. The five states expressed their view through a joint statement at the Transport Council, held in Brussels on 11 March.

Economic efficiency is in turn linked to environmental efficiency. Reducing empty running (which across the EU is equivalent to about 22% of all vehicle-km) would have a knock on effect on CO<sub>2</sub> emissions. National governments need to be sure however that any increase in economic activity and cabotage operations does not have downward impact on road safety which is an area of concern that has been put forward by a number of stakeholders during this study.

From the analysis undertaken it seems that the need for further market opening are driven by: the need to reduce empty runs and the overarching goal of creating a European Single Transport Area where road hauliers from different MSs are free to get access to the transport profession in different countries as well as to undertake transport operations across the EU. Any review of existing cabotage rules would benefit from the introduction of a distinction between the two goals mentioned above. This would help to identify the amendments that should be made to current legislative provisions.

## CONCLUSIONS AND RECOMMENDATIONS

The study shows that between the two main drivers for liberalisation - i.e. amendment of existing rules to increase clarity and EU enlargement - the latter has been the one that has led to more changes in the structure of the cabotage market.

The study indicates areas where the framework conditions for cabotage operations vary across MSs, thus challenging the smooth functioning of this market. For example, the extent to which clients of road haulage operations are co-responsible for potential infringements by cabotage operators or the insurance requirements imposed on vehicles circulating on the national networks. Both of these areas are interpreted differently in different MSs and a harmonisation of these issues would benefit the market as a whole.

The presence of such heterogeneous conditions across the EU has had different socio-economic effects in different countries. The analysis in this study shows that, overall, cabotage has put downward pressure on transport costs in several EU15 MSs and has created new business opportunities for EU12 hauliers. This has however been counterbalanced by the reduced profitability of EU15 operators, safety concerns and the potential of driver shortages going forward. All these factors are likely to amplify in the short term with further market opening unless the liberalisation is carried out in a gradual manner and it is accompanied by stronger enforcement regimes at a national level.

In light of future liberalisation of the sector it would be useful to clarify the goals behind market opening of the road haulage market. As mentioned above, the study indicates two main factors driving the debate on further liberalisation: the need to reduce empty running and the creation of a European Single Transport Area. It is the view of the authors of this Report that these two factors need to be addressed separately to ensure that the overall goal of increasing the efficiency of the road transport market is achieved. The proposal put forward by the HLG that distinguishes between linked and non linked cabotage operations goes in this direction.

To ensure efficiency and reduce empty running a different approach to the "3 in 7" rule could be considered through the removal of the maximum number of cabotage operations (3) allowed in 7 days and/or a revision of the provision that requires the full unloading of international carriage before a cabotage operation.

At the same time enforcement could be facilitated by linking cabotage to border crossing rather than unloading as well as introducing other complementary provisions such as those set out in Chapter 6 of the study. In particular, greater cooperation and exchange of information between national and international bodies could improve enforcement.

As for the goal of achieving a fully integrated European Transport Area, a detailed Impact Assessment of the socio-economic effects of different options should be carried out. This is necessary because of the great imbalances that still exist between different framework conditions (in particular labour aspects) in different MSs. In addition to the enforcement aspects, a decision needs to be taken on further harmonisation of cabotage labour laws and on co-responsibility? of clients before full opening of the market is implemented.



# 1. INTRODUCTION

## 1.1. Preface

This study looks at the manner in which cabotage has grown in Europe in recent years focusing on the impact over the last 10 years and understanding how much of the changes have been due to the entry into force of Regulation (EC) No 1072/2009.

The analysis included within this study is based exclusively around the cabotage provisions in the above mentioned Regulation and not any related provisions. As a result, the study only briefly touches on other important issues within the road haulage market, such as social and working conditions of road transport hauliers.

The study has been informed by a number of previous studies, desktop analysis and discussions with stakeholders and provides a review of current developments in a subset of Member States based on case studies. Case studies were selected according to a number of criteria: the role of each MS in the EU cabotage market, the existence of good practices in the implementation and enforcement of the Regulation and the need to ensure a balance between EU15 and EU12 Member States.

## 1.2. Study Requirements

The objective of this research study is to provide the TRAN Committee with an update on the workings of road cabotage across Europe. In particular the terms of reference for the study required the following activities to be completed:

- An overview of the legislative background with a focus on the new rules that came into force with Regulation (EC) No 1072/2009 and their aim of removing the uncertainties that had developed as a result of different national interpretation of the previous cabotage rules as set out in Regulation (EEC) No 3118/93. The degree of enforcement of the old and new rules in the Member States and their real impact on the road haulage market. The need of a review of the applicable rules in order to overcome the persistent problems of unfair competition within the internal market and/or the use of other instruments stemming the social dumping.
- Updated statistical data for EU27 Member States relating to road haulage and more specifically cabotage information where available in relation to number of operators, origin of operators and volumes covering, where possible, a diverse mix of Member States.
- An assessment of the economic and social impact of full liberalisation of road cabotage beyond the transitional steps created by the current rules looking at the different domestic policy responses to move towards a more integrated market for cabotage. This assessment is to be facilitated through the preparation of at least 10 case studies which are to be developed in association with discussions with stakeholders at a national level as well as through discussions with the European Commission.
- An overview of the different national controlling/enforcement procedures regarding cabotage with particular emphasis on whether the controls are effective, if they can be improved, and if the courts system can be an effective way of substituting national controls. In addition to a review of the effectiveness of the introduction of a registration requirement at national level proving linked cabotage.

Finally, this study provides conclusions on the development of cabotage across Europe, looks at the possible impacts of the current EU rules and approaches concerning cabotage on the domestic road transport policies and formulates recommendations, in view of the future debate in the TRAN Committee on the review of the internal market in the road freight transport.

### 1.3. Why cabotage?

In order to increase the efficiency of the economy, in many cases, the European Institutions have sought to **liberalise** numerous sectors of the economy. Liberalisation has also been pursued in the transport sector with the various modes following different timescales. In the road haulage sector this was first in relation to purely international haulage and now seeking to address liberalisation on a national level.

Road haulage accounts for the vast majority of freight movements across Member States (MSs) with the exception of Latvia and Estonia where rail is the dominating mode in freight transport. Road haulage activity is either **national domestic** (when hauliers of one country transport goods within their country's borders) or international transport. The latter is often related to trade activities between Member States which can be further classified into: **bilateral international transport** (where either loading or unloading activities take place in the country where the vehicle is registered), **cross-trade** (where loading and unloading take place in two different countries, none of which is the country where the vehicle is registered) and international **cabotage** activities (where loading and unloading take place in the same country which is not the country where the vehicle is registered, herewith referred to as "cabotage").

Liberalisation in the road haulage sector is currently focusing on ensuring that current and future cabotage provisions work effectively. Cabotage is seen as an important, transitory step in increasing the efficiency of the market as it is seen as a way of reducing empty running after an international journey. For example, an operator carrying goods from country A to country B would probably run empty when returning to country A. If however, on the return journey to country A can make additional stops within country B where further loading and unloading occurs, the share of the total journey that is undertaken with an empty vehicle is reduced, thus increasing the efficiency of the journey and also reducing CO<sub>2</sub> emissions.

The current cabotage provisions as set out in Regulation (EC) No 1072/2009 were created primarily to decrease uncertainty resulting from the previous Regulation where national interpretation of the requirements resulted in an inhomogeneous approach to application of the requirements. (The detailed provisions of the Regulation are discussed in Chapter 2). Fundamentally however, as mentioned above, the provisions of the Regulation were established as transitory provisions. This emerges clearly in the preamble of the Regulation, which states that "the establishment of a common transport policy implies the removal of all restrictions against the person providing transport services" on the grounds of nationality or country of establishment, but to provide a system where "(..) smoothly and flexibly, [a] provision should be made for a transitional cabotage regime as long as harmonisation of the road haulage market has not yet been completed". To ensure that the Regulation remains transitory, the Commission is required to review the market by the end of 2013 in order to assess whether the system has: "...progressed to such an extent that the further opening of domestic road transport markets, including cabotage, could be envisaged"".

In parallel to the assessment study required by Regulation (EC) No 1072/2009, the Commission is also working on a legislative proposal amending existing rules on cabotage.

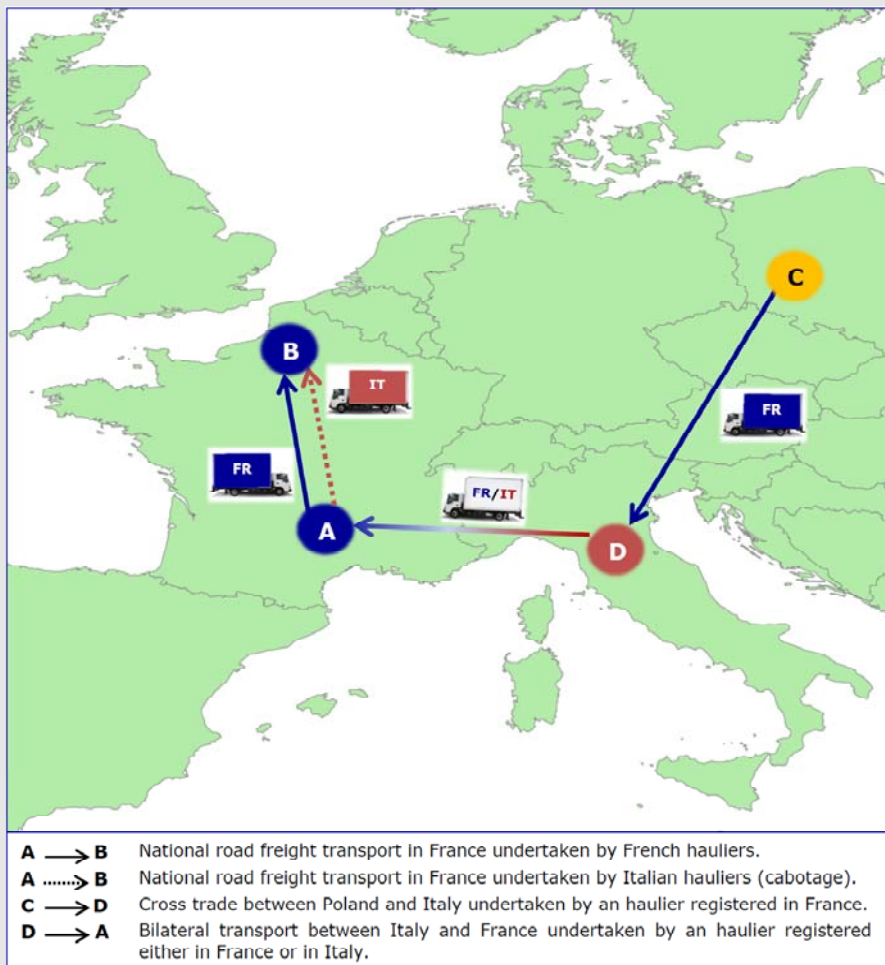
As announced by the Commission on a number of occasions, the proposal may be presented along with an impact assessment study. However, at the Transport Council on 11 March 2013, the Visegrád Group (Czech Republic, Hungary, Poland and Slovakia) explicitly asked the Commission not to publish the report on the road transport situation simultaneously with the proposed legislation. They argue that more time is required to allow for a comprehensive debate in MSs. At the Transport Council, a total of nine MSs raised concerns with respect to a further liberalisation of cabotage in the EU, while some other countries, stated that they would agree with a move to further liberalisation in this field, in line with the goal of a single transport market. The Commission assured all MSs that it would thoroughly assess the situation before presenting any proposal.

The detailed rules for cabotage operations set out in Regulation (EC) No 1079/2009 and the manner in which the various Member States have interpreted these provisions are set out in Chapter 2.

### Box 1 : Types of road haulage operations

#### National and international road haulage operations

In order to ease the reading, this box illustrates the different types of road transport. Each movement set out in the figure is explained and defined in the legend underneath. The figure illustrates the four main types of movements: **national carriage** by **domestic** hauliers, national carriage by foreign hauliers (**cabotage**), **cross-trade** and **bilateral transport**.



## **1.4. Organisation of the research study**

The remainder of this research study is structured as follows:

- Chapter 2 provides an overview of the current EU and national regulation for road transport cabotage operation;
- Chapter 3 provides an overview of the different national enforcement procedures regarding cabotage;
- Chapter 4 presents updated statistical data concerning the road cabotage market in the EU;
- Chapter 5 outlines the economic and social impact of the full liberalisation of road cabotage; and
- Chapter 6 concludes by outlining key findings and recommendations.



## 2. REGULATION OF CABOTAGE

### 2.1 European legislative background

#### Introduction to road transport legislation

Road freight cabotage was gradually liberalised across the European Union in the years preceding the introduction of Regulation (EC) No 1072/2009. Liberalisation was kick-started by Council Regulation (EEC) No 3118/93, which stated that any non-resident hauliers holding a Community authorisation provided for in Council Regulation (EEC) No 881/92 were entitled to operate, on a temporary basis, national road haulage services in another MS, without having a registered office or other establishment in that MS. The previous system, based on quantitative restrictions (quotas) - which governed cabotage before Regulation (EEC) No 3118/93 - was thus replaced by a more flexible, but not more uniform framework. The exact definition of "temporary" mentioned above was left to MSs to determine, a provision which has caused difficulty and created uncertainty, delaying harmonisation at the EU level.

#### 2.1.1 National cabotage provisions prior to Regulation (EC) No 1072/2009

As for Regulation (EEC) No 3118/93 the opening of the EU road cabotage market occurred in June 1998, the date established in Art. 2 of this Regulation for the full removal of the quota restrictions that used to govern this sector and introduce the new regime that allowed this type of operations on a temporary basis.

The International Transport Forum<sup>1</sup> reports that since 1998 Member States chose to interpret the new rules laid down by Regulation (EEC) No 3118/93 in different ways. Some MSs did not add any specific provisions to clarify "temporary", others applied additional specifications. For example in 1998, Greece imposed a time limit on cabotage operations, a maximum of two months per year - an interpretation that was subsequently abandoned following pressure from the Commission. In 2002, the regulations in the UK set a limit that required haulier's vehicle to leave the country at least once per month. In 2004, Italy limited cabotage operations to 15 days a month for a maximum of five consecutive days and required hauliers to carry a book of record sheets for cabotage operations on board. Between 2002 and 2004 France specified strict requirements for the "temporary basis" of cabotage operations by introducing in 2002 a Circular imposing a time limit of one week, then in 2004 a Decree defined cabotage as transport operations "which do not give rise to the presence on the national territory of one and the same vehicle for more than 10 consecutive days, nor more than 15 days in any 60 day period". Both of these attempts by the French government to provide interpretations of Council Regulation (EEC) No 3118/93 were ruled by the French Council of State as being incompatible with the aims of the Regulation.

Following these national initiatives, and following numerous requests from MSs on how to interpret the requirements of Regulation (EEC) No 3118/93, the Commission in 2005 issued an Interpretative Communication<sup>2</sup> that indicated four criteria for assessing the temporary nature of cabotage operations: duration, frequency, periodicity and continuity. These

<sup>1</sup> International Transport Forum (2009), *The construction and operation of the road freight transport market in Europe*, Forum Paper 2009-1.

<sup>2</sup> European Commission (2005), *Commission Interpretative Communication on the temporary nature of road cabotage in the movement of freight*, 2005/C 21/02, Official Journal of the European Union of 26 January 2005.

criteria originated from three judgements by the Court of Justice in relation to the temporary nature of services (Gebhard judgment<sup>3</sup> and Schnitzer judgment<sup>4</sup>) and cabotage operations (Andreas Hoves judgment<sup>5</sup>) undertaken in a host MS in the EU.

The Commission Communication did not however solve the interpretation issue: the criteria identified were too vague to provide clarity on the meaning of the “temporary basis”: as shown by Table 1 below, after its publication, there was still room for divergent interpretations of Regulation (EEC) No 3118/93 across EU.

**Table 1: Additional measures by Member States defining the temporary character of cabotage as per Council Regulation (EEC) No 3118/93 in force in 2006**

Member State	Additional Measures
Austria, Germany, Luxembourg, Netherlands, Slovenia, Spain, Sweden	No additional measures
France	Limits the number of consecutive days (30) and non-consecutive days (45) in any calendar year
Italy	Limits the number of consecutive days (30) and non-consecutive days (60) in any calendar year and states that cabotage vehicles must leave Italian territory at least once per month
United Kingdom	States that the cabotage vehicles must leave the UK at least once per month. Operations must be ad-hoc, casual, circumstantial and at infrequent intervals

Source: Adapted from ECORYS and E&Y – DG TREN Publication (2006).

“To enhance the clarity, readability and enforceability of the existing rules”, in 2007 the Commission presented a proposal to recast some of the existing rules applied to international road haulage, including those regarding cabotage operations<sup>6</sup>. The Commission’s proposal was under scrutiny for two years until an agreed text was approved by the European Parliament and the Council in in 2009 (see section 1.1.3 below).

In the two years the new rules were under discussion, some Member States anticipated their application by adopting national rules that interpreted the “temporary basis” of Regulation (EEC) No 3118/93 – still in force – using the criteria that would have been introduced in the new legislative provisions. For example, Spain, Italy and Germany introduced a new cabotage regime in 2008 and 2009 respectively with very similar provisions to those contained in the final text of Regulation (EC) No 1072/2009:

- The Italian Transport Ministry Decree of 3 April 2009 in force between 29 April 2009 and 13 May 2010 established that hauliers authorised to undertake cabotage operation in Italy according to Regulation (EEC) No 3118/93 were allowed to

<sup>3</sup> European Court of Justice (1995), *Judgment of 30 November 1995, Gebhard*, C-55/94, ECR I-4165

<sup>4</sup> European Court of Justice (2003), *Judgment of 11 December 2003, Bruno Schnitzer*, C-215/01

<sup>5</sup> European Court of Justice (2002), *Judgment of 2 July 2002, Andreas Hoves International Transport Service Sarl*, C-115/00

<sup>6</sup> COM(2007) 265 final/3. *Proposal for a Regulation of the European Parliament and of the Council on common rules for access to the international road haulage market.*

undertake up to 2 cabotage operations within 7 days from the last unloading in Italy following international carriage (rules were less restrictive in previous legislation, as outlined below). It also abolished the special register, "libretto dei resoconti", where hauliers were asked to track cabotage operations and listed the types of documents to be provided, aligning them to those that would then have been included in forthcoming Regulation (EC) No 1072/2009.

- In 2008 the German government introduced a rule allowing hauliers from other Member States to undertake 3 cabotage operations within 7 days, following the transportation of a cross-border load to Germany which involved the full or partial unloading of the vehicle. This rule came into force on 14 May 2008 and was established by an amendment of Article 17a of the Ordinance on International Road Haulage and Cabotage (GüKGrKabotageV) of 22 December 1998. The same Article further established the documentation necessary for carrying out cabotage in Germany, close to those that would then have been included in Regulation (EC) No 1072/2009.
- In Spain, the Ministerial Order ORDEN FOM/2181/2008 approved in July 2008 - composed of only two articles - laid out the limits for cabotage operations following the "3 in 7" rule and prescribed the documents required for foreign hauliers.

### 2.1.2 Road cabotage transport – Regulation (EC) No 1072/2009

In October 2009 Regulation (EC) No 1072/2009 was adopted by the European Parliament and the Council with the aim of modernising and simplifying the rules for access to the international road haulage market through a harmonisation of rules relating to cabotage and minimising the administrative burden to the industry.

The Regulation laid down common rules applicable to access contestable markets for cabotage, namely "international carriage of goods by road for hire or reward" within the European Union and clarified the conditions to be fulfilled to undertake international carriage of goods.

In addition, Regulation (EC) No 1072/2009 aimed at bringing together a number of legislative provisions. For example, it incorporated Directive 2006/94/EC which contained separate provisions for the liberalisation of international road transport of mail and for vehicles less than 3.5 tonne of weight. The Regulation also sought to harmonise the requirements for community licences (Article 4) and drivers' attestations (Article 5) across the EU. The following table highlights the main areas addressed by the Regulation.

**Table 2: Overview of contents of Regulation (EC) No 1072/2009**

Chapter	Articles	Key provisions
I - General provisions	Scope (Art. 1)	-Applied to <b>international carriage</b> of goods for <b>hire or reward</b> for journeys within the Community - <b>Types</b> of carriage <b>excluded</b> by the Regulation (e.g. carriage from EU to Third Countries; mail as universal service; vehicles < 3.5 t; self-carriage; carriage of goods for medical care; etc.)

Chapter	Articles	Key provisions
	Definitions (Art. 2)	<p><b>-Vehicle:</b> motor vehicle registered in a MS or a coupled combination of vehicles where the motor vehicle is registered in a MS</p> <p><b>-International carriage:</b> laden journey undertaken by a vehicle where departure and arrival are in two different MS, with or without transit through one or more MS or third countries; other provisions defining international carriage</p> <p><b>-Host Member State:</b> MS in which a haulier operates other than the haulier's MS of establishment</p> <p><b>-Non-resident haulier:</b> a road haulage undertaking which operates in a host MS</p> <p><b>-Driver:</b> any person who drives the vehicle even for a short period, or who is carried in a vehicle as part of his duties to be available for driving if necessary</p> <p><b>-Cabotage operations:</b> national carriage for hire or reward carried out on a temporary basis in a host Member State, in conformity with this Regulation</p>
II – International carriage III – Cabotage	General Principle (Art. 3)	<b>International carriage</b> shall be carried out subject to <b>possession of a Community licence</b> and, if the driver is a national of a third country, in conjunction with a <b>driver attestation</b>
	Community Licence (Art. 4)	Specifies provisions to: Issuing of the licence; Ten year maximum validity of licence; Hauliers' duty for keeping the licence; Uniform licence format; Serial number and recording of licence
	Driver attestation (Art. 5)	Issuing and format of attestation; Haulier's ownership of driver attestation and duty to keep and use it or its certified copies; Validity of attestation set by MS, maximum 5 years;
	Verification of conditions (Art. 6)	Rules to carry out checks by MS to verify the conditions for issuing and keeping the Community licence and driver attestation
	Refusal to issue & withdrawal of attestation (Art. 7)	Cases where MS can refuse to issue or renew a Community licence or a driver attestation; cases where MS can withdraw Community licences or driver attestations
	General Principle (Art. 8)	<p><b>-Hauliers</b> for hire or reward that hold a <b>Community licence</b> and whose driver holds a <b>driver attestation</b>, entitled to carry out <b>cabotage</b> operations.</p> <p>-Cabotage operations may start only <b>after unloading</b> of the goods from an incoming <b>international carriage</b>. <b>Up to 3 cabotage operations within 7 days</b> from the unloading of international carriage. Hauliers may carry out some or all of the cabotage operations in any MS under the condition but limited to <b>1 cabotage operation per MS within 3 days</b> of the unladen entry into the territory of that MS.</p> <p>-Hauliers must be able to show <b>clear evidence</b> of the incoming international carriage and of each subsequent cabotage operations. A list of evidence to be shown is listed.</p>

Chapter	Articles	Key provisions
	Rules applicable to cabotage operations (Art. 9)	MS <b>national provisions</b> apply to the following: conditions governing the transport contract; weights and dimensions of road vehicles; requirements relating to the carriage of certain types of goods (dangerous goods, perishable foodstuffs and live animals); driving times and rest periods; VAT.
	Safeguard procedure (Art. 10)	Procedures for the request for <b>safeguard provisions</b> in case the new Regulation creates "serious disturbance" to the national transport market of a MS and the type of measures the Commission may decide to adopt if the request is justified.
IV – Mutual assistance and penalties	Mutual assistance (Art. 11)	MS required to grant <b>reciprocal assistance</b> in the application and monitoring of the Regulation. Exchange information via the national contact points established pursuant to Article 18 of Regulation (EC) No 1071/2009.
	Sanctioning of infringements by the MS of establishment (Art. 12)	- <b>Sanctions for serious infringements</b> or for any misuse of driver attestations are <b>decided by MS of establishment of the haulier</b> ; potentially leading to the temporary or permanent withdrawal of Community licence. -Penalties need to be proportionate to infringement. -MS shall ensure that hauliers have the right to appeal against any administrative penalty imposed on them.
	Sanctioning of infringements by the host MS (Art. 13)	- <b>Exchange of information</b> between <b>host MS</b> and <b>MS of establishment</b> in case of infringement of this Regulation or of Community road transport legislation. The host MS shall transmit to the MS of establishment, within 6 weeks of their final decision on the matter, the information regarding the infringement (description, type, penalties). - <b>Host MS</b> authorities can <b>impose penalties on a non-resident haulier</b> who has committed <b>infringements</b> in their territory during a <b>cabotage</b> operation. Penalties need to be imposed on a <b>non-discriminatory basis</b> . These penalties may, inter alia, consist of a warning, or, in the event of a serious infringement, a temporary ban on cabotage operations on the territory of the host Member State where the infringement was committed. -MS shall ensure that hauliers have the right to appeal against any administrative penalty imposed on them.
	Entry in the national electronic register (Art. 14)	Serious infringements which have led to the imposition of a penalty by any MS shall be recorded by the MS of establishment of hauliers in the <b>national electronic register of road transport undertakings</b> .
V – Implementation	Penalties (Art. 16)	<b>MS shall lay down the rules on penalties</b> applicable to infringements of the Regulation and take all the measures necessary to ensure that they are implemented. Penalties provided for must be effective, proportionate and dissuasive. MS shall ensure that all such measures are taken <b>without discrimination as to the nationality or place of establishment of the haulier</b> .

Chapter	Articles	Key provisions
	Reporting (Art. 17)	- <b>Exchange of information</b> between MS and the Commission on the <b>number</b> of hauliers possessing <b>Community licences</b> and of certified copies for vehicles issued and number of <b>driver attestations</b> issued. - <b>Commission</b> required to <b>drawing up a report on the state of the Community road transport</b> market by the end of <b>2013</b> .
VI - Final provisions	Repeals (Art. 18)	Repeal of Regulations (EEC) No 881/92 and (EEC) No 3118/93 and Directive 2006/94/EC.
	Entry into force (Art. 19)	Applicable from 4 December 2011, with exception of Art. 8 and Art. 9 on cabotage, which shall apply from 14 May 2010.

Source: SDG elaboration on Regulation (EC) No 1072/2009.

As set out at the start of this chapter, Regulation (EC) No 1072/2009 defines “**cabotage**” as “national carriage for hire or reward carried out on a temporary basis in a host Member State”, and states that any haulier for hire or reward who is a holder of a Community licence and whose driver, if he is a national of a third country, holds a driver attestation, “shall be entitled (...) to carry out cabotage operations, within the conditions laid down in Article 8, 9 and 10 of the Regulation”.

More specifically, Article 8 of the Regulation provides that every haulier is entitled to perform up to three cabotage operations within a seven-day period starting the day after the unloading of the international transport. A haulier may decide to carry out one, two or all three cabotage operations in different Member States and not necessarily the Member State in which the international transport was delivered. In this case only one cabotage operation is allowed in a given MS to be carried out within three days of entering that MS without cargo.

Article 8 also lists the evidence that needs to be produced by the international haulier regarding cabotage operations and Article 9 indicates that, in a number of areas (unless otherwise provided in Community legislation) hauliers must abide by the laws, regulations and administrative provisions in force in the host MS.

Article 10 was included to provide a “safeguard procedure” for Member States related to the risk of “serious disturbance of the national transport market in a given geographical area due to, or aggravated by, cabotage” (see box).

Article 16 delegates to MSs the role of establishing the sanctions applicable to infringements of the provisions of the regulation, ensuring that “measures are taken without discrimination as to the nationality or place of establishment of the haulier”.



**Box 2 : Safeguard procedure****Article 10 and the safeguard procedure**

The inclusion of Article 10 to Regulation (EC) No 1072/2009 is viewed as the result of a compromise emerging from the negotiations between Member States wishing to open up domestic road markets and those wishing to protect their national industries.

The compromise provides for a specific provision which allows MSs to apply for a temporary restriction of cabotage activities, either for a specific area within their national territory or for the whole country. The Commission must decide on the appropriateness of the requests to ascertain whether cabotage is causing "serious disturbance" to the domestic freight market.

The Regulation clarifies the term "serious disturbance" as "the existence on the market of problems specific to it, such that there is a serious and potentially enduring excess of supply over demand, implying a threat to the financial stability and survival of a significant number of hauliers".

As of early 2013, although local industry groups (in the Dutch port of Rotterdam) and local governments (in the Italian region of Friuli) have asked their national governments to apply Art.10 in order to protect their regional markets, no requests for a safeguard procedure have been put forward by MSs. Stakeholders have indicated that this is due to national governments' reluctance to comply with the justifications required by the Regulation, as well as the difficulties in determining what a counterfactual?? would be in the absence of cabotage.

Although the Regulation increased the degree of harmonisation across Europe in relation to cabotage some differing practices remained. Following the adoption and the entry into force of the cabotage provisions on 14 May 2010, several MSs and stakeholders raised issues regarding its correct application. To clarify the interpretation, the Commission organized in 2011 a committee meeting to go through the main critical points on the cabotage provisions. This was then followed by the publication of a "frequently asked questions" sheet clarifying aspects such as the starting date of the cabotage period, the possibility of a cabotage operation to allow for several loading and/or unloading points (multi-drops) and the calculation of the 7-days period. The following summarises these clarifications.

**Table 3 : Summary of Regulation (EC) No 1072/2009 and EC clarifications on road cabotage operations**

Article	Summary of provisions	Q&A Clarifications 2011
Art. 2(6) <i>Definition of a cabotage operation</i>	"Cabotage operations" means national carriage for hire and reward carried out on a temporary basis in a host Member States	The term "operation" needs to be defined according to the common practice in the industry. It means "the carriage of a consignment from the picking up of the goods until their delivery at the consignee as specified in the consignment note".  "A cabotage operation <b>can involve several loading points, several delivery points or even several loading and delivery points</b> , as the case may be".

Article	Summary of provisions	Q&A Clarifications 2011
<p data-bbox="199 593 311 622">Art. 8(2)</p> <p data-bbox="199 656 363 779"><i>Limits on the number of trips and days</i></p>	<p data-bbox="379 226 874 443">Once the goods carried in the course of an incoming international carriage have been delivered, hauliers shall be permitted to carry out up to three cabotage operations following the international carriage from another Member State or from a third country.</p> <p data-bbox="379 544 874 734">The last unloading in the course of a cabotage operation before leaving the host Member State shall take place within 7 days from the last unloading in the host Member State in the course of the incoming international carriage.</p> <p data-bbox="379 898 882 1144">Within the time limit referred above, hauliers may carry out some or all of the cabotage operations permitted under that subparagraph in any Member State under the condition that they are limited to one cabotage operation per Member State within 3 days of the unladen entry into the territory of that Member State.</p>	<p data-bbox="898 226 1441 510">A haulier is only allowed to start performing cabotage, if he/she has carried out an international, i.e. cross-border transport. All <b>goods carried in the course of the incoming transport must have been delivered</b>. In case the incoming carriage consists of several consignments, cabotage can only start once all consignments have been delivered.</p> <p data-bbox="898 544 1441 857">"Days" as contained in the Regulation refers to calendar days and not just a period of 24 hours. Therefore the overall period of 7 days referred to in Article 8(2) starts from 0h00 of the day following the last unloading in the course of the incoming international carriage. The last unloading in the course of the final cabotage operation must consequently take place at 24h of the seventh day at the latest.</p> <p data-bbox="898 898 1441 1144">A haulier may decide to carry out one, two or all three cabotage operations not in the Member State of the incoming international transport but in other Member States. In this case there is <b>only one cabotage operation</b> allowed in a given Member State and the operation has to be carried out within <b>3 days</b> of the unladen entry.</p>
<p data-bbox="199 1377 311 1406">Art. 8(3)</p> <p data-bbox="199 1440 343 1496"><i>Documents required</i></p>	<p data-bbox="379 1361 882 1518">Non-resident hauliers shall produce clear evidence of the incoming international carriage and of each consecutive cabotage operation carried out, as detailed in Art. 8(3) subparagraph 2.</p>	<p data-bbox="898 1155 1441 1406">Hauliers are required to keep documentation of every carriage carried out in connection with their cabotage operations. This must comprise all the details listed in Art. 8(3) subparagraph 2. These details are contained in the consignment note or bill of lading, normally in the CMR format.</p> <p data-bbox="898 1440 1441 1727">No additional document is required in order to prove that the cabotage rules have been respected. This provision, however, does not mean that control authorities cannot use other evidence required by road transport legislation, e.g. the tachograph data, to establish whether a cabotage operation is carried out according to the rules.</p>
<p data-bbox="199 1809 279 1839">Art. 9</p> <p data-bbox="199 1872 327 1928"><i>National legislation</i></p>	<p data-bbox="379 1733 882 2011">The performance of cabotage operations shall be subject, save as otherwise provided in Community legislation, to the laws, regulations and administrative provisions in force in the host Member State with regard to weights and dimensions, driving times and rest periods, VAT on transport services. Non-discrimination.</p>	<p data-bbox="898 1733 1441 2011">The new rules on road cabotage are applicable on 14 May 2010. From this date this new regime will prevail over any national legislation which provides for diverging rules. This also means that national authorities cannot require any additional document to the one with which the haulier gives evidence of the details of each cabotage operation.</p>

Source: SDG research (2012).



Despite these clarifications, there are still different interpretations of specific issues concerning the cabotage regime in different MSs. These different interpretations are discussed further later in this chapter.

As noted by the High Level Group Report on the development of the road transport market published in June 2012 (hereafter HLG Report<sup>7</sup>), harmonisation needs to cover a number of areas: technical conditions and costs of vehicle, working conditions and labour costs of manpower and the enforcement of existing EU rules on the various aspects of the road transport market (e.g. training, working conditions, access to profession, transport of dangerous goods, etc.). The scope of this Research Study is limited to the cabotage specific aspects included in Regulation (EC) No 1072/2009 though on some occasions we will report stakeholders' views on the other aspects set out above.

## 2.2 National legislative framework

### 2.2.1 Introduction

This section provides an overview of the introduction of Regulation (EC) No 1072/2009 in Member States. However in order to better understand the different factors affecting the regulation of cabotage across Europe, it is necessary to explain some key background elements of the provisions:

- An overview of the geographic scope for the introduction of EU-wide rules on road freight cabotage, including the existing temporary restrictions on labour mobility applied to Member States joining the Union after 2004, but also any bilateral agreements which have conversely liberalised freedom of movement between some MSs
- A description of the impacts of introducing the Regulation in a selection of Member States, highlighting the main legislative changes required
- An analysis of other regulatory issues which affect the ability of non-resident hauliers to perform cabotage in other Member States, such as the rules on the posting of workers and insurance requirements.

### 2.2.2 The geographic scope for EU rules on road freight cabotage

At present all countries that are members of the European Economic Area – i.e. all EU MSs, Iceland, Norway and Liechtenstein – are subject to Regulation (EC) No 1072/2009 although accession of new Member States in recent years has changed the cabotage landscape.

The ability of hauliers from new Member States (joining the EU after 2004) to perform cabotage in older Member States (EU15) since their accession to the European Union has been governed by a system of temporary restrictions. These restrictions have been set at the national level through the pre-accession treaties and have had an impact on the development of cabotage across Europe, effectively limiting cabotage activities for the EU12 MS up to 2012. The matrix in **Error! Reference source not found.** shows the year in which restrictions were lifted based on the available evidence.

---

<sup>7</sup> Bayliss et al. (2012), *Report of the High Level Group on the Development of the EU Road Haulage Market.*

**Figure 1 : Cabotage restrictions, years in which bans were lifted**

		Country of origin of the hauliers																									
		BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	LV	LT	LU	HU	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	
Country where cabotage takes place	BE		2012	2008	EU15	EU15	2008	EU15	EU15	EU15	EU15	EU15	2008	2008		2009		EU15	2009	EU15	2012	2004	2008	EU15	EU15	EU15	
	BG	2012		2012	2011	2012	2009	2007	2012	2012	2012	2012	2012	2012	2012	2012	2012	2012	2012	2012	2012	2007	2012	2012	2012	2012	
	CZ	2008	2012		2009	2009	2009	2007	2009	2009	2009	2009	2009	2009	2009	2009	2009	2009	2009	2009	2009	2012	2009	2009	2009	2006	2009
	DK	EU15	2011	2009		EU15	2007	EU15	EU15	EU15	EU15	EU15	2009	2007	EU15	2009	EU15	EU15	2009	2009	2011	2004	2009	EU15	EU15	EU15	
	DE	EU15	2012	2009	EU15		2009	EU15	EU15	EU15	EU15	EU15	2009	2009	EU15	2009	EU15	EU15	2009	EU15	2012	2004	2009	EU15	EU15	EU15	
	EE	2008	2009	2009	2007	2009		2007	2009	2009	2009	2009	2009	2007	2009	2009	2009	2009	2009	2007	2009	2007	2007	2009	2006	2009	
	IE	EU15	2007	2007	EU15	EU15	2007		EU15	EU15	EU15	EU15	2009	2007	EU15	2009	EU15	EU15	2007	EU15	2007	2004	2007	EU15	EU15	EU15	
	EL	EU15	2012	2009	EU15	EU15	2009	EU15		EU15	EU15	EU15	2009	2009	EU15	2009	EU15	EU15	2009	EU15	2012	2004	2009	EU15	EU15	EU15	
	ES	EU15	2012	2009	EU15	EU15	2009	EU15	EU15		EU15	EU15	2009	2009	EU15	2009	EU15	EU15	2009	EU15	2012	2004	2009	EU15	EU15	EU15	
	FR	EU15	2012	2009	EU15	EU15	2009	EU15	EU15	EU15		EU15	2009	2009	EU15	2009	EU15	EU15	2009	EU15	2012	2004	2009	EU15	EU15	EU15	
	IT	EU15	2012	2009	EU15	EU15	2009	EU15	EU15	EU15		EU15	2009	2009	EU15	2009	EU15	EU15	2009	EU15	2012	2004	2009	EU15	EU15	EU15	
	LV	2008	2012	2009	2009	2009	2009	2009	2009	2009	2009	2009		2009	2009	2009	2009	2009	2009	2009	2012	2009	2009	2009	2009	2009	
	LT	2008	2012	2009	2007	2009	2007	2007	2009	2009	2009	2009	2009		2009	2009	2009	2009	2009	2009	2007	2012	2007	2009	2009	2006	2009
	LU		2012	2009	EU15	EU15	2009	EU15	EU15	EU15	EU15	EU15	2009	2009		2009		EU15	2009	EU15	2012	2004	2009	EU15	EU15	EU15	
	HU	2009	2012	2009	2009	2009	2009	2009	2009	2009	2009	2009	2009	2009	2009		2009	2009	2009	2009	2012	2009	2009	2009	2009	2009	
	NL		2012	2009	EU15	EU15	2009	EU15	EU15	EU15	EU15	EU15	2009	2009		2009		EU15	2009	EU15	2012	2004	2009	EU15	EU15	EU15	
	AT	EU15	2012	2009	EU15	EU15	2009	EU15	EU15	EU15	EU15	EU15	2009	2009	EU15	2009	EU15		2009	EU15	2012	2004	2009	EU15	EU15	EU15	
	PL	2009	2012	2009	2009	2009	2009	2007	2009	2009	2009	2009	2009	2009	2009	2009	2009	2009		2007	2012	2009	2009	2009	2007	2009	
	PT	EU15	2012	2009	EU15	EU15	2007	EU15	EU15	EU15	EU15	EU15	2009	2007	EU15	2009	EU15	EU15	2007		2012	2004	2007	EU15	EU15	EU15	
	RO	2012	2007	2012	2011	2012	2009	2007	2012	2012	2012	2012	2012	2012	2012	2012	2012	2012	2012	2012	2012		2007	2007	2012	2012	2012
	SI	2004	2012	2009	2004	2004	2007	2004	2004	2004	2004	2004	2009	2007	2004	2009	2004	2004	2004	2009	2004	2007		2009	2004	2004	2009
	SK	2008	2012	2009	2009	2009	2007	2007	2009	2009	2009	2009	2009	2009	2009	2009	2009	2009	2009	2009	2007	2007	2009		2009	2006	2009
	FI	EU15	2012	2009	EU15	EU15	2009	EU15	EU15	EU15	EU15	EU15	2009	2009	EU15	2009	EU15	EU15	2009	EU15	2012	2004	2009		EU15	EU15	
	SE	EU15	2012	2006	EU15	EU15	2006	EU15	EU15	EU15	EU15	EU15	2009	2006	EU15	2009	EU15	EU15	2007	EU15	2012	2004	2006	EU15		EU15	
	UK	EU15	2012	2009	EU15	EU15	2009	EU15	EU15	EU15	EU15	EU15	2009	2009	EU15	2009	EU15	EU15	2009	EU15	2012	2009	2009	EU15	EU15		
	Years of opening					2004	2006	2007	2008	2009	2011	2012															

Source: SDG case studies, national laws and interviews with Ministry of Transport in MSs.

Notes: Green = full liberalisation (Benelux); EU15 = old MSs with no restrictions; MT and CY: no restrictions.

The picture emerging from the analysis of the restrictions across Europe shows fragmented and gradual opening of cabotage, in particular for hauliers from the new Member States wishing to operate in EU15 countries. **Most restrictions were lifted in 2009** for the Member States acceding to the EU in 2004, although cabotage movements to Ireland and Sweden were liberalised earlier. **Bulgarian** and **Romanian** hauliers were not allowed to perform cabotage in most countries until 1 of January **2012**. This piecemeal market opening is also an important factor when trying to draw conclusions from cabotage statistics.

In contrast, there were also some bilateral (trilateral) agreements that liberalised cabotage activities between some Member States either fully or partially, before the entry into force of the Regulation. **Benelux** countries (Belgium, the Netherlands and Luxembourg) fully liberalised cabotage in 1991 and have repeatedly prolonged this agreement, most recently in 2008 through the *Conseil Interparlementaire Consultatif*. The rationale for this decision lies in the recognition that hauliers gain higher revenues per truck by being able to reduce empty runs across the Benelux countries.

A special agreement is also in place in the Republic of Ireland. The Irish government negotiated a derogation in relation to the haulage of road vehicles around the seasonal peak, running from the start of the calendar year to mid-February. In this period, cabotage rules are relaxed in Ireland to allow for seasonal peak demand to be met by overseas hauliers. In this case, the majority of hauliers that enter the Irish market are from the UK.

### 2.2.3 Introducing Regulation (EC) No 1072/2009 in Member States

The new rules on the access to the road haulage market required Member States to apply Articles 8, 9 and 10 related to cabotage from 14 May 2010. Although the entry into force of a Regulation is automatic, a number of Member States made some modifications to their existing regimes to bring them into line with the Regulation: in some cases (e.g. **Spain, Italy and Germany**), some of these changes were inserted into national legislation before the new Regulation was approved (see section 2.2.2 above) and amended where necessary once the Regulation entered into force; in other cases they were made in parallel (**France**) or straight after its entry into force (**United Kingdom, Poland and Hungary**). The table below sets out a summary of these efforts in a selection of Member States.

**Table 4: Applicative measures by Member States in relation to Regulation (EC) No 1072/2009**

Member State	Additional Measures
Austria	Amendment of Austrian Road Freight Transport Act (GütbefG) of 31 August 1995
Belgium	Royal Decree of 10 August 2009
France	Article 33 of Law No 2009-1503 of 8 December 2009, Articles L 3421-3 to L 3421-10 of transport code, Decree of the State Council No. 2010-389 of 19 April 2010
Germany	Amendment of Article 17a of the Ordinance on International Road Haulage and Cabotage (GüKGrKabotageV) of 22 December 1998
Hungary	Amendment of Ministerial Decree No. 89/1988 Government Decree No. 156/2009
Italy	Circolare Ministeriale 1/2010/TSI of 5 May 2010 Circolare Ministeriale 1/2011/TSI of 25 November 2011 Circolare Ministeriale 3/2012/TSI of 28 May 2012
Latvia, Netherlands	No specific national legislation
Poland	Amendment of Road Transport Act of 6 September 2001: Ustawa o zmianie ustawy o transporcie drogowym oraz o zmianie niektórych innych ustaw z 12 lutego 2010 r. Dz. U. 2010 nr 43 poz. 246
Spain	Ministerial Order (ORDEN FOM/2181/2008) of July 2008 (Informe Ministerio de Fomento) of 6 May 2010
United Kingdom	Goods Vehicles (Licencing of Operators) Act of 1995 Goods Vehicles (Licencing of Operators) Regulations of 1995 (modified in 1996 and in 2010); Transport Act 2000 (that modifies the 1995 Act) Goods Vehicles (Enforcement of Powers) Regulations 2001 (subsequently amended in 2009).

Source: SDG Analysis (2013).

In **Hungary**, it was necessary to amend existing regulations in order to remove the need for registration to a national register by foreign vehicles. This was incompatible with Article 8 of Regulation (EC) No 1072/2009. Similarly in **the UK** the introduction of the new

Regulation led to some changes, such as the removal of the requirement contained in the Goods Vehicles (Licensing of Operators) Act of 1995 to have a UK licence to operate in the UK where a company has a Community licence.

In **Poland**, between May 2009 and the entry into force of Regulation (EC) No 1072/2009 in May 2010, the Road Transport Act specified that in order to perform cabotage operations on Polish roads, transport undertakings had to obtain a permit from the Ministry of Infrastructure. In order to apply for such permits, the transport undertaking had to obtain two positive references from Polish national road haulage organisations. Such permits had a time limit on their validity, but did not specify how many cabotage operations could be carried out within that period. After the entry into force of the Regulation, EU hauliers are no longer subject to the permit system, which is still in force for non EU hauliers

By contrast, other Member States have not yet modified or updated their national laws following the introduction of the Regulation, as a result in some cases there is either incongruence between old and new provisions, or a legislative vacuum with regards to the applicable sanctions. Of the selected case studies, the **Netherlands** fall within this category. The Dutch government is in the process of drafting complementary legislation to Regulation (EC) No 1072/2009 in order to establish the necessary sanctions in case of infringements related to cabotage. A new legislative framework is expected to enter into force in early 2013. It was only in February 2013 that the **Austrian** government amended the Austrian Road Freight Transport Act in response to the entry into force of Regulation (EC) No 1072/2009<sup>8</sup>.

#### 2.2.4 Different interpretation of the Regulation

The analysis undertaken for this study has revealed that some specific aspects of Regulation (EC) No 1072/2009 do not appear to have been uniformly applied across all Member States. The following examples suggest that some differences exist in the interpretation of the provisions of this Regulation.

Partial loading and unloading during a cabotage trip, known as multi-drop traffic, is regarded as part of a single cabotage trip in some Member States such as **Denmark**, but not in others. In **France**, for instance, multi-drops are considered differently: partial loading/unloading is regarded as a cabotage operation. This reduces the scope for cabotage operators to maximise the distributions of loads within the seven-day period.

In **Portugal**, the national law governing cabotage was modified in 2009 with reference to the new provisions. However, the approved Decree regulates cabotage for vehicles heavier than 2.5 t, whereas the EU Regulation is designed to be applied for vehicles over 3.5 t and the vast majority of Member States has interpreted it in this manner. In **the UK**, all documents required to prove the legitimacy of the cabotage operations need to be carried on board of vehicles, a provision that does not seem to be applied in other Member States.

Further examples were presented during the hearing of the High Level Group and reported by the European Commission to stakeholders in January 2013. These relate, for example, to specialised oversize transport<sup>9</sup>. Due to the heavy-haul nature of this type of transport and the general pace at which loads are commissioned and transported, transport of such loads is usually longer than seven days. This gives rise to concerns by some MSs over how to reconcile operational requirements with cabotage rules.

---

<sup>8</sup> Amendment to the Austrian Road Freight Transport Act : BGBl. I Nr. 32/2013

<sup>9</sup> This refers to specific sectors, such as the wind turbines one, where the nature (duration and weight) of the transport activities generated usually require trips longer than seven days.

### 2.2.5 Other regulatory issues

Regulation (EC) No 1072/2009 – and its related implementation and enforcement acts adopted in the national legislative systems – are supplemented by other European and national provisions setting the contest for the cabotage market in different MSs which, in many cases, create differences in the conditions road hauliers have to fulfil to operate cabotage operations in different countries.

In the course of this study we have encountered examples related to **co-responsibility** of the companies commissioning haulage (e.g. provisions where shipper, forwarder, forwarding agent are also liable if a cabotage infringement is identified, not only the haulier) and transport companies as well as between transport undertakings and drivers; to the presence of different regimes regarding **insurance of vehicle fleets** circulating in different MSs; and to the application of the **Posting of Workers Directive (PWD)** to drivers and, in particular, those performing cabotage activities.

With respect to the first issue, co-responsibility, it is difficult to assess the extent to which national authorities are shifting the burden from hauliers to customers. During the case analysis undertaken for this assessment, stakeholders from several Member States (**Belgium, France, Germany** and **Austria**) mentioned that in their countries fines can be applied to freight customers in view of their co-responsibility in respecting cabotage legislation.

#### Box 3 : Co-responsibility example in the road haulage market

##### The case of Germany

German law foresees the possibility for control bodies to identify the co-responsibility of the contracting organisation, ruled in Article 7c of the GüKG. The Article states that any organisation contracting transport services to another enterprise on a commercial basis, must not allow this services to be carried out in the event he has the knowledge or negligently has no knowledge that the contracted enterprise:

- does not hold an allowance in accordance with Article 3, does not hold an entitlement in accordance with Article 6, or alternatively a community licence, or illegitimately uses the allowance, entitlement or licence;
- deploys drivers in a manner not compliant with provisions of Article 7b (1) sentence 1, or for whose he does not hold a driver attestation in accordance with Articles 3 and 5 of Regulation (EC) No 1072/2009;
- subcontracts services to another freight forwarder or haulier which carries out the services under the conditions listed in 1), or listed in 2).

In summary, the contracting party is required to request information from the haulier on the availability of the required documentation. The contracting party can be made responsible and fined if this was not the case.

Several stakeholders in other MSs where co-liability is not present in the law have spoken in favour of increasing the administrative controls for both service providers and customer companies to ascertain, when possible, where the failure to comply with the rules originate.

Also the HLG Report indicates that with such a high number of participants in the logistics chain, “ways must be developed to achieve joint responsibilities and liabilities”, claiming that this will also encourage cooperation between parties and lead to efficiency gains.

Other regulatory requirements, which are specific to some Member States, impose some additional burdens to non-residents wishing to perform cabotage and alter the actual costs of these activities. For instance in **Germany**, Article 7a of the Road Haulage Act<sup>10</sup> establishes the requirement that all hauliers carrying out domestic road transport operations in Germany must hold liability insurance against the damage of goods carried. The minimum amount of insurance is €600,000 for each claim, and no less than €1.2 million for a year. The haulier has to guarantee that a certificate of this insurance is carried by the driver while carrying out transport operations. Some stakeholders from new MS have claimed this to be a high barrier for them in undertaking cabotage operations in Germany.

Similarly the application of **Posting of Workers Directive**<sup>11</sup> to hauliers performing cabotage in other Member States is subject to different national interpretations. A recent study by the European Commission provides an overview of the degree of harmonisation in this field<sup>12</sup>, highlighting the lack of a uniform application of PWD to cabotage workers in most MSs. A summary of their findings is presented in Table 5 below. The study explains that with the opening up of the local markets to cabotage, the application of a minimum level of protection to the workers performing the cabotage service is becoming more urgent.

**Table 5 : Application of the PWD to cabotage in selected Member States**

	LU	BE	IT	SE	NL	FR	EE	AT
Applied to cabotage	✓	✓		✓		✓		✓
Unclear application to cabotage			✓		✓		✓	

Source: SDG analysis of EC Study on PWD (2011).

One of the difficulties highlighted in the study with respect to the application of the PWD to cabotage relates to the requirement of an “employment relationship” between the undertaking making the posting and the worker during the period of posting. However stakeholders in **Sweden** have pointed out that this would mean that there has to be a contract between the transport company and a service recipient operating in the state where the cabotage takes place. In Sweden such a contract is deemed to be absent when the contract with the transport company was entered into by a forwarding or freighting agency established outside the country of cabotage.

In **Austria**, cabotage operations count as postings of workers and are subject to the provisions of the Austrian Law Amending the Labour Contract Law (AVRAG). According to Article 7b of this Act, postings of workers are only permitted if a notice of this posting is submitted to the responsible authority (Ministry of Finance) at least one week in advance of the start of operations. The one week notice is not applicable to cabotage operations

<sup>10</sup> GüKG.

<sup>11</sup> Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provisions of services.

<sup>12</sup> A. Van Hoek & M. Houwerzijl (March 2011), *Comparative study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union*, European Commission. This study is the result of a research project commissioned by the European Commission on the legal aspects of the posting of workers in the context of the provision of services in the EU, as part of the TRANSPO pilot project launched in July 2009 “working and living conditions of posted workers”.



carried out at short notice. In this case it is sufficient to give notice before the start of operations.

**Box 4 : Posting of Workers Directive for road cabotage activities**

**The case of Austria**

In order to prevent social dumping as a result of the opening of the labour market to the EU27 and to guarantee fair competition with domestic labour conditions, the following additional requirements for companies sending staff abroad (to Austria) were established in the Wage and Social Dumping Combat Act. The provisions of this law amended the Employment of Foreign Nationals Act (AuslBG) and the Austrian Law Amending the Labour Contract Law (AVRAG), both of these also apply to cabotage and relate to:

- Obligation to comply with the wage levels set out in Austrian legislation including classification criteria (basic pay, including overtime base salary but excluding extra payments, allowances, bonuses, premiums and individual contractual overpayments);
- Obligation to carry all wage documents in German on the vehicles during the exercise of cabotage operations.

Transport companies established outside **France** whose employees perform cabotage operations in this Member State are subject to the rules of posting under the Labour Code (Articles from L 1261-1 to 1263-2 and from R 1261-1 L to R 1264-3) as per the French Directive 2008/17 of 5 October 2008 on posting rules. The Decree of 19 April 2010 softened the rules of prior notification of posting foreseen by the Labour Code. Prior notification of posting is required only when the driver works in France for a period of at least 8 consecutive days. Most of the road haulage companies posting employees in France to carry out cabotage operations will not have to fill this notification<sup>13</sup>.

In summary, the existence of regulatory asymmetries across MSs is an obstacle to the creation of a level playing field in the road haulage market. The opportunities to perform cabotage and the related costs are affected by uncertainties over the application of the Posted Workers Directives (e.g. in the case of subcontracting), different levels of insurance requirements and non-uniform laws about the conjoint responsibilities of consignees.

## 2.3 Future developments

Overall, Regulation (EC) No 1072/2009 has led to a **reduction in the uncertainties** raised from the different national interpretations of the previous rules (Regulation (EEC) No 3118/93). The new Regulation has clarified the temporary nature of cabotage by introducing quantitative criteria to define the scope for this type of operation and it has linked it to international carriage operations - a requirement that had not been included in the previous rules. Moreover it **harmonised** the requirements for documentation, which were previously much diversified across the EU and in some cases represented a high barrier to entry for hauliers from foreign MSs.

<sup>13</sup> "Il n'y a donc plus aucune référence dans les articles du Code du travail concernant le détachement transnational des travailleurs, au cas particulier du cabotage" See précis Droit des transports Dalloz, page 109 footnote 1

Nevertheless some shortcomings still remain in the interpretation of current rules and application of sanctions: the way different MSs deal with **multidrops** or the existing differences between the type and level of **sanctions** levied for infringements of EU cabotage provisions are two key examples of these shortcomings.

Several stakeholders also claim that the current rule of 3 operations in 7 days is very difficult to **monitor**. The European Commission recently<sup>14</sup> pointed out that the documentation checked by **enforcement** bodies to verify the compliance with EU rules can be easily falsified or hidden, thus making controls rather ineffective.

Some stakeholders also point out that in some cases the provisions introduced by Regulation (EC) No 1072/2009 might limit the contribution that cabotage could give to the improvement of **efficiency** of the road haulage sector: for example the allowance of a maximum of 3 operations in 7 days could limit the possibilities available to road hauliers to optimize their logistics chain and contribute to the reduction of empty running. Other rules might pose the same issue, such as the one that imposes the full unloading of the international carriage before cabotage operations can start or the one that indicates that a maximum of 1 cabotage operation can be done in a MS different from the one where the international carriage has been unloaded.

**Future actions** aiming at refining existing rules with the aim of **facilitating their monitoring and enforcement**, along with their **ability to improve the efficiency** of the road haulage market, could reduce some of these shortcomings. Some examples in this direction could be the removal of the maximum number of cabotage operations (3) allowed in 7 days, the possibility to start cabotage operations even before a vehicle has been fully unloaded after an international carriage or the withdrawal of the link between cabotage operations and international carriage of goods (options suggested also by the HLG report as shown in the following box). However these and other options would need to be investigated in detail to assess all the possible economic, social and environmental impacts they could generate – through a methodology like the one used by the European Commission for carrying out impact assessments of policy options<sup>15</sup> - before any decision is taken on their execution.

---

<sup>14</sup> Discussion Paper presented at the final stakeholder hearing organized by the European Commission on the Review of Regulations (EC) No 1071/2009 and 1072/2009 on access to the road haulage market organized in Bruxelles in January 2013.

<sup>15</sup> See [http://ec.europa.eu/governance/better\\_regulation/impact\\_en.htm](http://ec.europa.eu/governance/better_regulation/impact_en.htm)



**Box 5 : The High Level Group proposals on regulation of cabotage<sup>16</sup>****Options for revision of road freight cabotage in the EU**

The HLG indicates that the current regime for cabotage operations needs to be amended to better achieve the goal of achieving a Single European Transport Area.

The HLG suggests that a distinction should be made between **linked** and **non-linked** cabotage:

**Linked cabotage.** Features: a) linked to an international carriage operation; b) not to be subject to Posting of Workers Directive; c) cabotage operations to be restricted to 4 days from the crossing of the border of the country where cabotage has to be conducted; d) no limit to the number of cabotage operations within the 4 days; e) no need to have fully unloaded the international carriage before cabotage can take place. Aim: to further reduce empty running. Legal contest: it would be regarded as an international carriage operation.

**Non-linked cabotage.** Features: a) could be linked or not to an international carriage operation; b) to be subject to Posting of Workers Directive, that should apply to all cabotage operations of this type, no matter what form the contractual operation (e.g. freight forwarders, sub-contractors or neither); c) gradual introduction of this regime through a quota system encouraging the use of environmentally friendly vehicles (e.g. 50 days per year to Euro V vehicles, 30 days per year for other vehicles); d) subject to pre-registration and severe sanctions when infringements occur. Aim: opening up the domestic cabotage market of EU MS. Legal contest: it would be known simply as "cabotage".

The proposal set out by the HLG is for a gradual and continuous opening of the road haulage market. It is suggested that the system above should be introduced gradually and with flexibility, taking into account the current road haulage environment (see pages 5-6 of the HLG Report).

In addition, as shown in this chapter, other regulatory aspects hinder the smooth functioning of the cabotage market in the EU, *in primis* the application of certain cross-sector social legislation to the road haulage sector, such as Directive 96/71/EC concerning the **Posting of Workers**. To date, EU MSs have developed a patchwork of rules regulating labour aspects of road haulage operations and there is no uniform application of the Directive 96/71/EC in the cabotage market. This is because the application of this Directive to a labour force as mobile as road drivers is rather controversial and difficult to monitor. At the same time, with the full opening of the cabotage market to EU12 road hauliers - that can rely on cheaper labour force - the need to harmonise different social and working conditions has been put at the top of the agenda by several stakeholders. A number of **alternative measures could be considered to further harmonise** these aspects: these could range from the introduction of specific labour rules within a new EU cabotage Regulation, to the promotion of more coordinated application of the existing PWD to the cabotage sector. Before any decision is taken in this area, all possible options would need to be assessed in detail to evaluate the social and economic impact of such changes.

<sup>16</sup> Bayliss et al. (2012), *Report of the High Level Group on the Development of the EU Road Haulage Market*. Available at: <http://ec.europa.eu/transport/modes/road/doc/2012-06-high-level-group-report-final-report.pdf>

Finally, substantial focus needs to be put on the way existing and/or future provisions are **monitored** and **enforced** as any attempt to improve the current situation by means of modifying the existing legislative framework could be meaningless without the presence of an adequate enforcement system.

### KEY FINDINGS

- Prior to the entry into force of Regulation (EC) No 1072/2009 there was a **lack of harmonisation** among different Member States on the rules foreign hauliers had to respect to undertake cabotage operations across the EU. In particular the criteria of the “temporary basis” that EU rules (Regulation (EEC) No 3118/93) needed to be verified for the undertaking of cabotage operations and had different interpretations across different MS.
- In October 2009, **Regulation (EC) No 1072/2009** was adopted with the aim of **modernising** and **simplifying the rules** for access to the international road haulage market through a harmonisation of the provisions relating to cabotage and minimising the administrative burden to the industry.
- Regulation (EC) No 1072/2009 was passed when the EU international road freight market was undergoing numerous changes, mostly driven by the **2004 enlargement**, which gave the possibility to hauliers from new MS to compete with those of EU15 MS. While international road transport across the EU was immediately accessible to new MS, **pre-accession treaties** limited the ability of hauliers from new MS to perform cabotage operations in EU15 Member States by means of a system of **temporary restrictions**. Most restrictions were lifted in 2009 for the Member States acceding to the EU in 2004, although cabotage movements to Ireland and Sweden were liberalised earlier. Bulgarian and Romanian hauliers were not allowed to perform cabotage in most countries until 1 January 2012.
- The **Regulation** has led to a **reduction in the uncertainties** around different national interpretations of the previous rules. The new Regulation has **clarified the temporary nature of cabotage** by introducing quantitative criteria (e.g. the “3 operations in 7 days” rule) to define the scope for this type of operation and it has linked it to international carriage operations - a requirement that had not been included in the previous rules. Moreover, it **harmonised the requirements for documentation** that were previously very diversified across the EU and in some cases represented a high barrier to entry for hauliers from foreign MSs.
- Some **shortcomings** still remain in the **interpretation** of current rules and application of **sanctions**: clear examples are the different practice adopted by MSs with respect to partial unloading of cabotage operations (multidrops) or the existing differences between the type and level of sanctions applied for infringements of this Regulation.
- There is scope for an improvement in some rules set out in the Regulation with the aim of **facilitating their monitoring and enforcement**, along with their **ability to improve the efficiency of the road haulage market**. The removal of the maximum number of cabotage operations (3) allowed in 7 days and a revision of the provision that requires the full unloading of international carriage before a cabotage operation can start are two examples of measures that might be considered to overcome the current shortcomings of the Regulation.

- The harmonised functioning of the cabotage market in the EU is also challenged by **other regulatory issues** which are out of the scope of Regulation (EC) No 1072/2009. For example, to date there is a patchwork of provisions regulating **labour aspects** of road haulage operations and there is no uniform application of the **Posting of Workers Directive** in the **cabotage** market. At the same time, the extent to which **clients of road haulage operations** are **co-responsible** for the fulfil of existing rules (including the cabotage ones) or the **insurance requirements** imposed on vehicles circulating on the national networks varies widely across the EU. Also in this case, some actions could be considered to further harmonise labour laws applying to the cabotage sector as well as the way companies commissioning haulage operations are responsible for their legacy.
- All the **options** that could improve the efficiency of the road cabotage market in the EU by harmonising the different regulatory aspects that discipline this sector would need **to be investigated** in detail to assess all the possible **socio-economic impacts** they could generate before any decision is taken on their execution.



## 3. ENFORCEMENT OF RULES

### 3.1 Introduction

This chapter sets out the enforcement issues related to Regulation (EC) No 1072/2009 by looking at the organisation of control bodies tasked with cabotage enforcement; the application of sanctions for infringements; the available statistics on sanctions across Member States; the shortcomings of current enforcement practices and future developments in this area.

It should be noted that Regulation (EC) No 1072/2009 identifies two different types of infringements: those sanctioned by the MSs of establishment (Art. 12), and those sanctioned by the host MSs (Art. 13). As discussed in Chapter 2, it is however the responsibility of the **host MS** in which cabotage operations are taking place to **monitor compliance** with the EU **cabotage provisions** and communicate serious infringements to the MSs of establishment, that will then register them and levy further sanctions if needed. Our analysis therefore focuses on the enforcement carried out by the host MS, where information is also more readily available. However the proposed reforms at the European level (see for example page 26 of the HLG Report) highlight the need for greater inter-State, as well as intra-State coordination, which will require wider controls in the MSs of establishment.

### 3.2 Control Bodies in charge of cabotage operations

There are substantial differences across EU MS with respect to the competent bodies for the enforcement of cabotage provisions laid down by Regulation (EC) No 1072/2009.

In some Member States, a specialised authority has been set up in order to **monitor cabotage** and international transport as a whole. For example, in **France** the Ministry of Transport has a specialised control body of around 500 road transport controllers. Other MSs rely on national and local police forces, reporting to the Ministry of Interior. In **the UK**, roadside checks are carried out by an executive agency of the Department for Transport, the Vehicles and Operator Services Agency (VOSA) created in 2003. As detailed below, VOSA has a centralised information system to record international vehicle movements and infringements.

In the case of **Germany**, both a dedicated body (BAG – Federal Office for Goods Transport) and Police and Customs officials can enforce the cabotage regime. In Belgium, Italy, Spain and Hungary, multiple organisations are involved in the enforcement of cabotage provisions.

In addition, in several MSs there are a number of **control bodies** tasked with roadside checks focusing on **social legislation** which do not have competencies in relation to international transport. As highlighted in a recent study commissioned by the European Parliament<sup>17</sup>, a variety of enforcement agencies are involved in the enforcement of Directives 2002/15/EC (working times) and 2006/22/EC (enforcement coordination). These include specialised agencies under the Ministry of Labour, for instance in **Greece, Estonia, Romania and Slovakia**.

<sup>17</sup> European Parliament (August 2012), *Overview and evaluation of enforcement of EU social legislation for the professional road transport sector*. See in particular chapter 3.

The table 6 below provides a summary of the enforcement bodies responsible for the enforcement of cabotage rules in the Member States that have been reviewed as part of this study. The table also indicate the MSs where other institutions are in charge of roadside checks relating to social legislation.

**Table 6 :** Cabotage enforcement bodies in selected Member States

Member State	Dedicated enforcement bodies	Presence of other bodies for road checks for social legislation
Austria	Local police	✓
Belgium	National and local police	✓
France	Contrôleurs des transports terrestres – specialised body within the Ministry of Transport	✓
Germany	BAG – Federal office for Goods Transport Police and customs	
Hungary	National and local police	✓
Italy	National and local police, customs	✓
Lithuania	Road transport Inspectorate National police	
Netherlands	Inspectorate for Transport and the Environment	
Poland	General Road Transport Inspectorate	
Spain	National and local police	
United Kingdom	Vehicles and Operator Services Agency (VOSA) – executive agency of the Department for Transport	

**Note:** UK refers to Great Britain only, Northern Ireland is excluded.

**Source:** SDG research (2013)<sup>18</sup>.

The presence of multiple enforcement bodies within one Member State is often seen as a potential barrier to effective controls in some MSs. In Belgium, six different bodies can in principle carry out cabotage enforcement, with the risk of duplicating efforts and overlapping responsibilities. In Hungary and Spain, as a result of recent devolution reforms, regional police bodies are tasked with roadside checks – however the interface between local bodies and national authorities can prove to be problematic, for example in the communication of data.

In **Italy**, the fragmentation problem is being overcome in some regions by the introduction of coordination between policing bodies and transport inspectors in the form of “Centri Mobili di Revisione”, a special task-force with representatives from different institutions in charge of monitoring cabotage through roadside checks. Similarly, in **Poland**, the specialised Inspectorate (Główny Inspektorat Transportu Drogowego) has laid out cooperation arrangements so that joint patrols and checks with police forces take place.

<sup>18</sup> See also table 12 of the European Parliament study (2012), *Overview and evaluation of enforcement of EU social legislation for the professional road transport sector*.

In addition to fragmentation, a number of stakeholders from different Member States have expressed their concerns regarding resourcing at their national control bodies. In the **Netherlands**, road transport associations have issued complaints regarding the negative impact that cuts to the national budget could have on the Transport Inspectorate (ILT), reducing the number of staff.

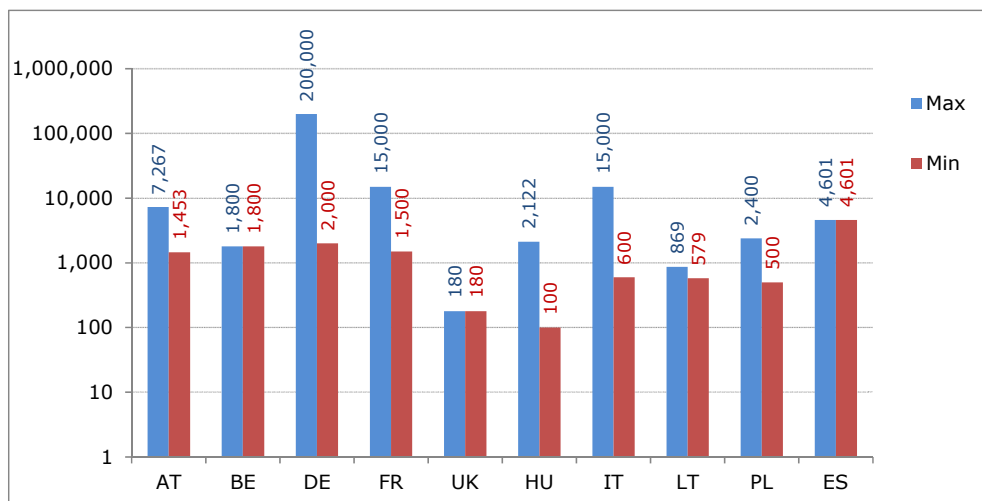
Similarly, in **Spain**, stakeholders claim that sufficient resources should be granted to control bodies to improve their ability to perform wide-ranging controls. Furthermore, stakeholders in **Italy** maintain that further language training should be provided to policing staff to ensure they can deal with hauliers coming from other MSs.

### 3.3 Sanctions for infringements of Regulation (EC) No 1072/2009

Regulation (EC) No 1072/2009 states that Member States have to define the penalties to be levied for violations of cabotage provisions undertaken in their territory as well as those for infringements of Community road transport legislation by road hauliers registered in their country. Where such sanctions have been detailed in national legislation, they tend to cover both types of infringements of Regulation (EC) No 1072/2009, and on occasions also other violations of road transport legislation. In some cases this hinders the ability to report clear figures for cabotage violations. Often, infringement statistics report figures by type of sanctions levied or by code of national legislation violated which, for example, could include infringements to cabotage operations as well as other rules on international road haulage. Where possible this chapter focuses on infringements of cabotage operations specifically.

Member States have generally laid out a regime of sanctions which varies according to the type of infringement. In most cases, the lack of a community licence is sanctioned with a lower fine than the breaking of the “three operations within 7 days” rule. For example in **Italy**, if the relevant documentation has not been completed correctly, sanctions range between €600 and €1,800; however infringements relating to the maximum number of operations can be fined up to €15,000. By contrast, in some MSs such as **Belgium** and **Spain**, a fixed fine has been introduced of €1,800 and €4,601 respectively. A summary of the sanctions applicable to cabotage is provided in Figure 2 below.

**Figure 2 : Sanctions applicable to cabotage in selected Member States (€)**



\*additionally in France hauliers can be sentenced for up to 1 year of imprisonment (limited to hauliers from countries that are not allowed to undertake cabotage operations in France).

**Source:** SDG case studies, national laws and interviews with Ministry of Transport in selected MSs.

The figure shows that the range of sanctions varies widely among Member States, as well as within Member States. In addition to monetary penalties, several other sanctions can be imposed to hauliers that contravene the provisions of Regulation (EC) No 1072/2009. This may include the following:

- Seizing of the vehicle for a set period of time – this sanction is present inter alia in Italy in the form of “fermo amministrativo” and in Poland in the form of “impounding” in case drivers are not able to pay a fine on the spot and it is enforced until the full amount of the fine is paid; in the UK, impounding is allowed for but used only in the event of repeat offences.
- Confiscation and sale of the vehicle – if the Polish authorities do not receive payments within 30 days, they might exercise the power to confiscate the vehicle and sell it off to third parties. In the UK, when an operator exhausts all appeals the vehicle is not returned and is sold.
- Temporary ban from cabotage activities – this may be enforced in France and in the UK, in the form of a one-year ban from performing cabotage, if a haulier reiterates the infringements over time.

### 3.4 Infringements statistics

As mentioned above, it is very difficult to gather data on infringements of the road cabotage rules as most national registers only record total infringements of road transport or classify them in a way it is difficult to detect cabotage. This section presents an overview of the cabotage specific statistics that have been made available to us<sup>19</sup>.

**Germany** is one of the MS that reports a breakdown of cabotage related roadside checks. In 2011, BAG (the enforcement body) carried out 118,009 roadside checks of goods vehicles registered in EU Member States, and detected a total of 612 infringements against European legislation on cabotage. In 2012, 477 infringements were identified following 106,542 inspections. The cabotage infringement rate increased from 0.2% in 2011 to 0.45% in 2012.

In **the UK**, up to the end of 2010, VOSA (the enforcement body) had issued 323 fines for the infringement of cabotage provisions following the identification of 449 offences. Furthermore, in the first 8 months of the 2012-2013 financial year, VOSA has issued 229 infringement notices relating to cabotage. In addition VOSA has also impounded a number of vehicles following the infringement of cabotage provisions. Overall, around 0.2% of inspections resulted in a cabotage infringement in the 2012-2013 period.

Information provided by the authorities in **France** for this study is specific for road side cabotage checks and shows that between 2010 and early 2011, 7% of vehicles stopped for cabotage controls were issued an infringement.

In **Poland**, official data provided by the Transport Inspectorate shows that the total number of cabotage infringements is very small. The GITD (the enforcement body) conducted 157,000 roadside checks of vehicles between January and October 2012. Infringements with regard to cabotage regulations were identified in only three cases!!, one of which involved a vehicle registered outside the EU.

---

<sup>19</sup> For a supplementary view see also Section 4.4, in particular pages 95-97, concerning 5 types of infringements of the EP Study 2012 “*Overview and evaluation of enforcement in the EU social legislation*”.



In the remaining MSs reviewed as part of this study, cabotage specific information is not available. However some conclusions can be drawn looking at more general road statistics. In **Lithuania**, according to estimates put forward by the Inspectorate (the enforcement body), about 3% of all roadside checks have led to fines for infringements related to inadequate documentation – some of those would be cabotage operators from other MSs.

An analysis of available information for **Italy** shows that between January and October 2012, infringements levied for violation of international road transport rules (which includes also cabotage infringements) was less than 0.1% of total inspections (205 infringements issued following 220,965 roadside checks). Even if cabotage infringements accounted for the majority of these infringements, the number of infringements remains lower than the average shown above for Germany and the UK: this could be explained both by the different size of the cabotage markets in these countries and the type of enforcement procedures put in place.

The analysis of infringement data can also be used to verify if checks are undertaken in a non-discriminatory manner, as required by Art. 9 of Regulation (EC) No 1072/2009. The data available refers to the UK and Italy only: in the first case, 50% of all roadside checks targeted foreign vehicles (although these account for only 15% of total traffic tonne-km); in Italy, 10.1% of all roadside checks target vehicles from other EU countries instead.

### 3.5 Shortcomings and best practices of enforcement

Enforcement of cabotage rules before the introduction of Regulation (EC) No 1072/2009 was difficult to implement both because of a lack of clarity of the legislative provisions ruling the cabotage market and because of the weakness of the instruments used and the actions put in place to monitor them.

The new **Regulation** has certainly helped to define the scope of cabotage operations by providing a **clearer definition** based on specific criteria such as the 3 operations in 7 days rule and the link to international carriage. Despite the limitations of these criteria – as set out in Chapter 2 – these parameters undoubtedly set a clearer boundary for cabotage operations than the previous rules.

Regulation (EC) No 1072/2009 has also **lowered the administrative burden** for both enforcement bodies and the haulage industry in the monitoring and undertaking of cabotage operations. Since its introduction a single Community licence is accepted in all MSs, the harmonised drivers' attestation has been put in place and a clear indication of the documents to be shown to prove the legitimacy of cabotage operations has been provided.

The extent to which the new rules can be **effectively monitored** remains an issue. In most of the countries analysed stakeholders (e.g. Italy, Spain, Austria) claimed that in many cases enforcement bodies – such as the police – do not have the means to check for infringements. In particular it appears very difficult to verify the start of cabotage operations, its link to international carriage, the calculation of the 7-day period and the identification of the number of journeys carried out within the period. The controls of these aspects are based on the documentation made available in the international waybill by road hauliers and/or drivers, who might have an incentive to provide only partial – if not false – information. In addition the complexity of some national provisions enacting the Regulation and the need to interact with drivers speaking different EU national languages, often hinders the ability of enforcement bodies to carry out roadside checks in an effective manner – not least because they often lack sufficient human resources and budget to carry out their tasks.

**Box 6 : Monitoring of the link between cabotage and international carriage**

**Parliamentary Question E-005194/2912<sup>20</sup>**

One of the most controversial points of current rules is the ability of enforcement bodies to check the link between cabotage operations and the international carriage of goods. To tackle this issue, in light of a number of claims raised by stakeholders on this matter, a Danish Member of the European Parliament in 2012 posed a written question to the Commission to verify if the situation could be improved by the introduction of a registration requirement at the national level proving the link between cabotage operations and international transport. Such a requirement would force foreign companies operating cabotage in any MS to prove that their first unloading is taking place as a result of an international journey. Commissioner Kallas rejected this suggestion on the basis that, according to Regulation (EC) No 1072/2009, no other document (other than those already listed in Art. 8) shall be required in order to prove that the conditions of linked cabotage are met.

Despite the fact that the Commission rejected this suggestion from a pure legal perspective, a careful assessment needs to be undertaken on whether the introduction of a similar register would help improve the effectiveness of sanctions against the abuse of the existing rules or would impose an additional barrier to the smooth functioning of the market. For example the effectiveness of the registration procedure suggested in the Parliament's question would be subject to the willingness of the foreign haulier to communicate (exact) information to competent authorities on the link between their cabotage operations and the international carriage. The extent to which hauliers would provide this information will ultimately depend on the ability of enforcement bodies to monitor this procedure and levy sanctions against its misuse. To make this workable, the bodies carrying out roadside checks should be able, for instance, to get direct access to their national registers through their mobile devices (computers, telephones, etc.). Even this, however, might not be sufficient to prevent frauds: for example a foreign haulier might register the unloading of the international cargo a few days after its occurrence, thus extending the time it can undertake cabotage operations. A similar registration system is currently in force in Austria for the application of the Posting of Workers Directive to international carriage operations although a number of limitations have been raised by stakeholders of this system which are similar to those set out above.

However, if such a system was **linked to on-board information recorded** on the road vehicles through, for example, **GPS or tachographs or electronic fee collection systems**, the scope for fraud or infringements would be very much reduced as it would be possible to detect with a reasonably degree of certainty the day the national border was passed, if not the day the international carriage was completed and/or cabotage was initiated.

In the end, if the system is not designed correctly, and linked to remote information recorded automatically on board vehicles, such a registration procedure, even if based on the most sophisticated communication technologies, may impose costs higher than the expected returns in terms of improved control.

<sup>20</sup> See written question raised by Jens Rohde, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2012-005104&language=EN>  
For the answer see <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012-005104&language=EN>

A review of enforcement practices in Member States suggests that there is still a substantial amount of work to be done in the **harmonisation** of the **number, types, size** and **resources** of national bodies responsible for enforcement as well as of the **procedures** enacted by them and the **penalties** imposed on the violation of the **cabotage rules**. In this respect it is worth pointing out that the harmonisation seems greater in the field of social legislation where a number of actions have already been put in place at the EU level to create a level playing field, such as Directive 2006/22/EC (on common rules on roadside controls and an obligation on MSs to cooperate) and Regulation (EC) No 3821/85 (making the tachograph a central instrument for enforcing social legislation).

A further coordination between the different types of procedures aimed at checking compliance with different areas of road haulage regulations would improve the efficiency of the system. A best-practice example which offers a more wide-ranging solution to the problems of enforcement is the Operator Compliance Risk Score (OCRS) system in force in the **UK**. This aims to predict the likelihood that an operator will infringe the Regulations set out above and has been in operation since 2006.

**Box 7: Operator Compliance Risk Score (OCRS)**

**MONITORING ROAD HAULIERS IN THE UNITED KINGDOM**

The Vehicle and Operator Services Agency (VOSA) referred to in the UK case study has developed a predictive tool to be able to identify the likelihood of an operator being non-compliant with the requirements of freight road transport vehicles. This tool, known as the Operator Compliance Risk Score (OCRS) was set up initially in 2006 to measure the risks related to certain operators in relation to roadworthiness and traffic enforcement:

- The road worthiness data includes test history information, data relating to when the fleet was checked and actual checks undertaken at the roadside.
- Traffic enforcement data is based on a score relating to the number of infringements relating to driver hours and the number of infringements relating to overloading and other infringements.

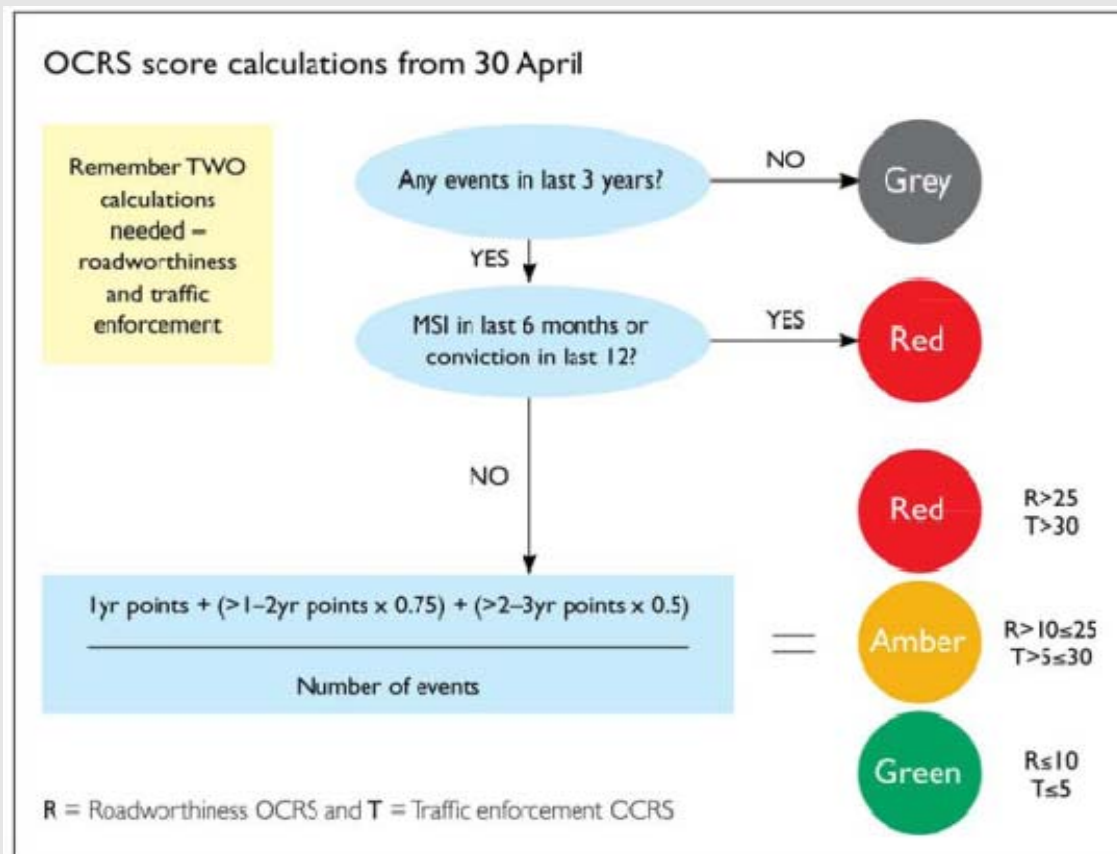
The OCRS is used primarily by VOSA roadside examiners to choose which vehicles to check and is based on information initially gathered in relation to vehicles and operator details and included into VOSA's Mobile Compliance system. This system allows VOSA staff to focus on non-compliant operators and reduce the number of checks on compliant vehicles. The scoring system that is used to identify the level of risk of an operator follows the standard "traffic light" approach:

- Green for an operator with low risk;
- Amber for operators with medium risk; and
- Red for operators that are believed to be high risk.

The system has worked well since its creation with the industry as a whole supporting its adoption and its workings, while acknowledging that there were some areas that could be deemed discriminatory that needed to be changed or updated. In particular these areas of improvement focused on how complicated the system was the manner in which the results of the scores were being used by the wider transport industry. In response to this, VOSA undertook a major review of the OCRS in 2012 and implemented the new changes in October 2012. The main changes introduced were:

- Removal of the predictive scoring system (where new operators were given a score prior to any encounter based on the general score of their comparable operators. This has now been removed and replaced by a new Grey band showing VOSA examiners that historical data is not available).
- Increase of the rolling period of enforcement record from 2 to 3 years (to ensure that there is a larger dataset to work from).
- Changes to the banding system (introducing the Grey band as mentioned above to bring the UK operators in line with non-UK operators).
- Weighting points to when the defect/offence occurred (allowing for older defects/offences to have less of an impact on the score than more recent ones).
- Straight to Red for serious offences (when the offence has been categorised as a "Most Serious Infringement" or the operator has been successfully prosecuted for an offence).
- Change in the number of points and penalties per defect (Points and penalties now relate to the severity of the defect/offence).

Figure A: OCRS system process



Source: OCRS Guidance Notes, VOSA (2012)<sup>21</sup>.

Finally, from the analysis undertaken resulted that despite the progress made towards further **cross-border co-operation** among EU Member States encouraged by the European Commission – an example of which are the procedures set by Directive 2006/22

<sup>21</sup> Provided to VOSA by the Freight Transport Association.

on enforcement of social rules – the exchange of information between MS is still too weak. This makes it difficult for the countries of establishment of road hauliers to impose infringements for violations of EU rules occurred abroad, as they need first to get information from the enforcement bodies of MS hosting cabotage operations. Moreover, there is not sufficient exchange of best practices and lessons learnt – a process that, at present, seems not to be effectively coordinated and appears to rely only on the willingness of each single enforcement body to share their information with similar bodies from other countries.

### 3.6 Further developments

Overall, our review of enforcement of EU cabotage rules indicates that there are substantial differences in the ways different MS enact sanctions for infringements of EU provisions in this area. These differences relate to **organisational** and **procedural** aspects – such as the way enforcement tasks are delegated to (one or more) national enforcement authorities, the efforts these bodies can put in place and how these can be coordinated – as well as the **type** and **level of sanctions**.

The analysis undertaken shows that the control of cabotage operations can often be too fragmented in Member States. The reasons for this fragmentation are twofold. First, national laws have extended the responsibility for roadside checks to a variety of bodies without planning for coordination at different institutional and geographical levels. Second, some functions are duplicated as MSs need to control both the implementation of international transport regulations and social legislation.

However there are examples of coordination, within single MSs, between different policing bodies (national and local) – such as the Italian *Centri Mobili di Revisione* – and different Ministries (Interior and Labour) – as in Poland – that should be viewed as good practices. Control bodies should also be given the necessary budget and focused training they need in order to tackle cabotage monitoring and infringements.

Some Member States have set sanctions that are ten times higher than the sanction imposed for the same type of infringements by other MSs. It is hard to say that regulations are effectively the same across the EU if corresponding sanctions vary so greatly. Moreover, the amount of roadside checks undertaken by enforcement bodies is not uniform across the EU, which implies that the risk of being caught is very different between MSs.

As mentioned in the previous chapter 1, the European Commission is required to present by the end of 2013 an assessment of the current situation of the road cabotage market in the EU and of the implementation of Regulation (EC) No 1072/2009; the EC is also considering presenting a legislative proposal amending existing rules based on the results of this assessment. It is the view of the authors of this study that in the presence of the enforcement issues set out above, it is questionable whether further market opening for cabotage operations, or indeed any other regulatory reform of Regulation (EC) No 1072/2009, would be effective without better enforcement. Indeed this chapter reports evidence showing that, in some cases, the effectiveness of the entry into force of the new cabotage regime in 2010 has been challenged by the weakness of the existing monitoring and enforcement procedures at national level.

Regardless of the discussion on liberalisation, further harmonisation of cabotage enforcement procedures, as well as of other legislative provisions ruling road transport, should be considered. This is a view put forward by almost all stakeholders as it would help to create a level playing field for road hauliers operators across the EU.

Recently the HLG suggested additional measures that could be adopted in coming years to cope with current shortcomings. A summary of these are set out in the box below.

**Box 8 : The High Level Group proposals on enforcement**

**Options for improving enforcement of road legislation in the EU**

The HLG indicates that the current regime for enforcement of road legislation needs to be improved as different enforcement practices lead to distortions in competition between hauliers who can be treated differently according to the countries in which they are operating.

The HLG suggests the following<sup>22</sup>:

- *the Commission extend its current target of achieving **common definitions of infringements** and **penalties** in the areas of working and driving time to other areas of regulation;*
- *the **targeting of controls** to take account of the risk of non-compliance of any particular operator to be introduced under Directive 2006/22/EC1 on enforcement of social rules in road transport with respect to driving and working times should also be extended to other areas of regulation;*
- ***mutual co-operation**, currently regulated under Directive 2006/22/EC, needs to be extended to remove concerns of operators with respect to discrimination, and operators themselves must appreciate that if they wish to operate in international or cabotage markets that a sharing of information is a sine qua non of such operations;*
- ***joint liability regimes** involving shippers and freight forwarders should be introduced to encourage compliance throughout the logistics chain. The co-responsibility of transport undertakings and drivers for infringements of driving time regulations are quoted as an example of how joint liability can work in practice.*

These options could be complemented by more specific measures that tackle certain shortcomings of the existing enforcement system of cabotage operations. For example, moving towards an OCRS-like system across the European Union is seen favourably by several stakeholders. Legislative efforts by the European Commission could move in this direction. In particular the entry into force of the "European Registers of Road Transport Undertakings" (ERRU)<sup>23</sup>, expected in 2013,, could provide a joined-up approach to information sharing and coordination practices. Competent authorities would be able to exchange more information in real time and better monitor the compliance of undertakings with the rules enforced, including cabotage. The extent to which the ERRU can contribute to the improvement of controls of cabotage operations is subject to a number of technical issues that might hinder its effectiveness. For example, to make this register work in a similar way to the OCRS system, information registered in the ERRU should be made available in real time to roadside inspection officers and should contain all the relevant data needed to perform the controls.

<sup>22</sup> See Bayliss et al. (2012), Report of the High Level Group on the Development of the EU Road Haulage Market, pages 25-27.

<sup>23</sup> Established by Regulation (EC) 1071/2009 and Commission Decision of 17 December 2009.



Other proposals could certainly be added to the list of possible improvements of enforcement procedures. However it is important to keep in mind that the choice of those to take forward should be assessed against criteria of cost-effectiveness to pick up those that can achieve the highest compliance to the EU rules at the lowest possible cost. In this respect the potential offered by enforcement systems able to dialogue with on board devices – such as GPS or tachograph – seem to have the highest potential.

### KEY FINDINGS

- The new Regulation has clarified the temporary nature of cabotage operations potentially making the monitoring and enforcement of cabotage regulations simpler.
- Each Member State has adopted a different approach to enforcement with sanctions ranging from a minimum fine of €100 in Hungary to a maximum fine of €200,000 in Germany. This leads to a different risk level associated with cabotage infringements in different Member States.
- In some Member States there are multiple authorities in charge of monitoring and enforcing the requirements of the Regulation that leads to **difficulties in coordination**. In addition, a number of stakeholders have explained that often the enforcement bodies across Europe lack to monitor and enforce the cabotage provisions effectively.
- In addition to the national coordination issues there is **little evidence of effective international cooperation** in enforcing the provisions.
- Statistics in Germany and the UK show that cabotage related infringements are not significant and have been identified in no more than **0.2%** of all roadside checks.
- The introduction of a system similar to that used in the UK (the OCRS) could facilitate enforcement within Member States.
- There are other potential improvements to enforcement that have been suggested by the High Level Group and other stakeholders. These need to be analysed in more detail and on a case-by-case basis to assess the cost-benefit of the impact of each proposal.





## **4. MARKET REVIEW**

### **4.1 Introduction**

This chapter presents updated statistical data concerning cabotage in the EU27 and analyses in detail the most recurrent issues and/or matters raised in different domestic markets. The analysis is mainly based on public information provided by Eurostat and, in some cases, it is supplemented by other national sources consulted during the course of this study. It is important to note that due to the manner in which cabotage data is collected there is some uncertainty around the values set out in statistics provided below.

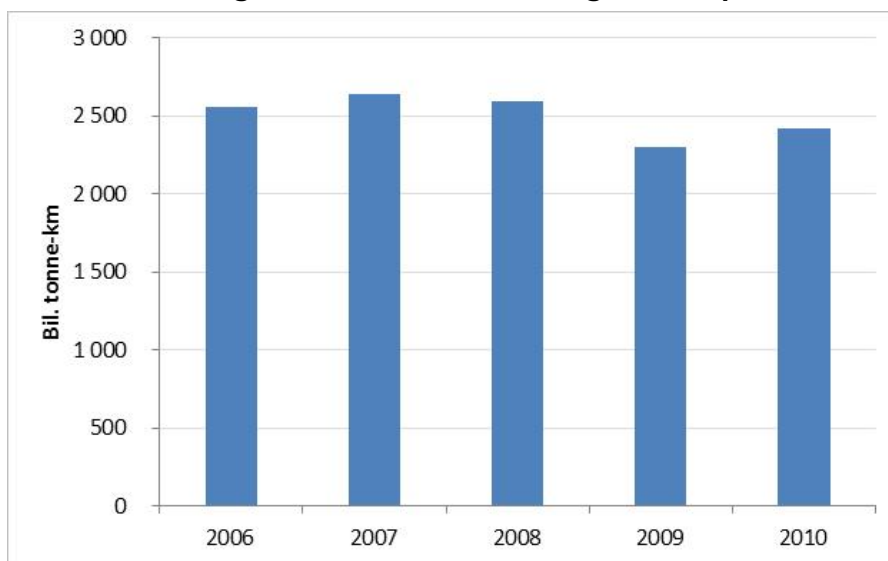
Eurostat road freight statistics are based on a compilation of data collected by the individual EU MS. Each MS reports the activities of its national fleet on the basis of data collected through sample surveys issued to owners of vehicles recorded in the national vehicle register. As with any statistic derived from a survey, it is likely that the data is over or under estimated. This might be due to the process followed to infer the behaviour of the whole market (e.g. all hauliers from a MS) starting from a small sample. It may also be due to the reliability of the data collected (i.e. the accuracy and “truthfulness” of the answers provided by national hauliers to the questionnaires they receive).

During the study we have encountered some inconsistency in the available statistics, the most common issue was the reporting of cabotage operations in a MS by hauliers from other EU MSs that in principle were not authorised to undertake them. These aspects question the reliability of the data, but there is no way of knowing for sure whether the whole dataset is reliable or not. Furthermore, to date this is the only statistical information available at EU level which are collected following an agreed methodology and, as such, is the only data that can be used for this comparison. Finally, it must be pointed out that in some cases there are some gaps in the data provided for single Member States (such as Malta and the UK).

### **4.2 Evolution of the road freight transport in the EU**

Figure 3 shows the evolution of the total inland freight market (including road, rail, inland waterways and pipelines) in the European Union. After a steadily increase between 2006 and 2007, total volumes within the EU experienced a drop due to the economic crisis started in 2008. The largest fall in inland freight transport volumes was registered in 2009. In 2010, the market for freight transport once again started to grow, but it did not fully recover its pre-recession volumes yet.

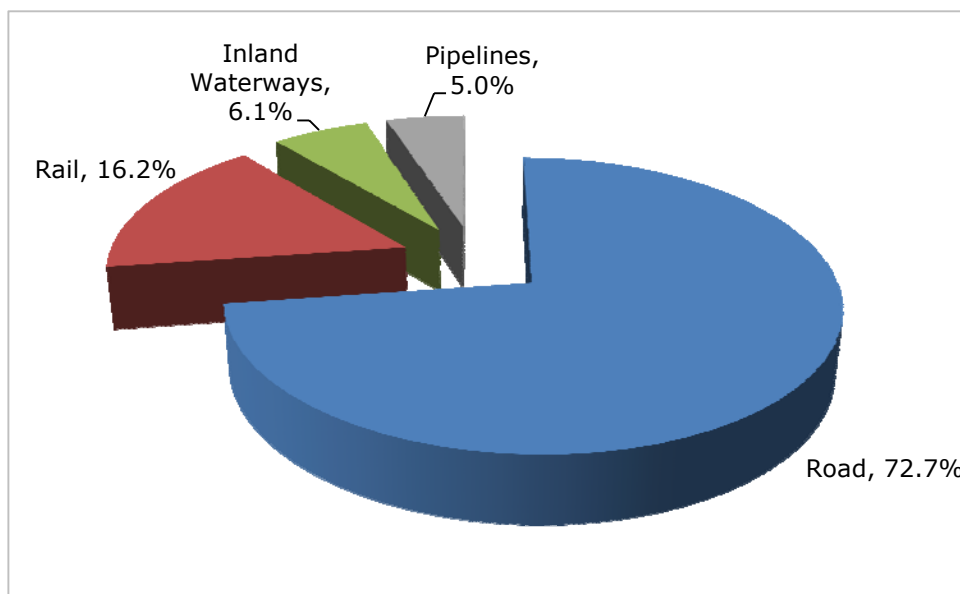
**Figure 3: Tonne-km generated in inland freight transport in the EU in 2010**



Source: SDG analysis of Eurostat data (2012).

In 2010, the dominant mode in freight transport was the road sector accounting for a market share of 73%, followed by rail with 16%. Volumes transported on inland waterways accounted for approximately 6%, and the remaining 5% were transported through pipelines.

**Figure 4: Share of inland modes in the total EU freight transport market in 2010**

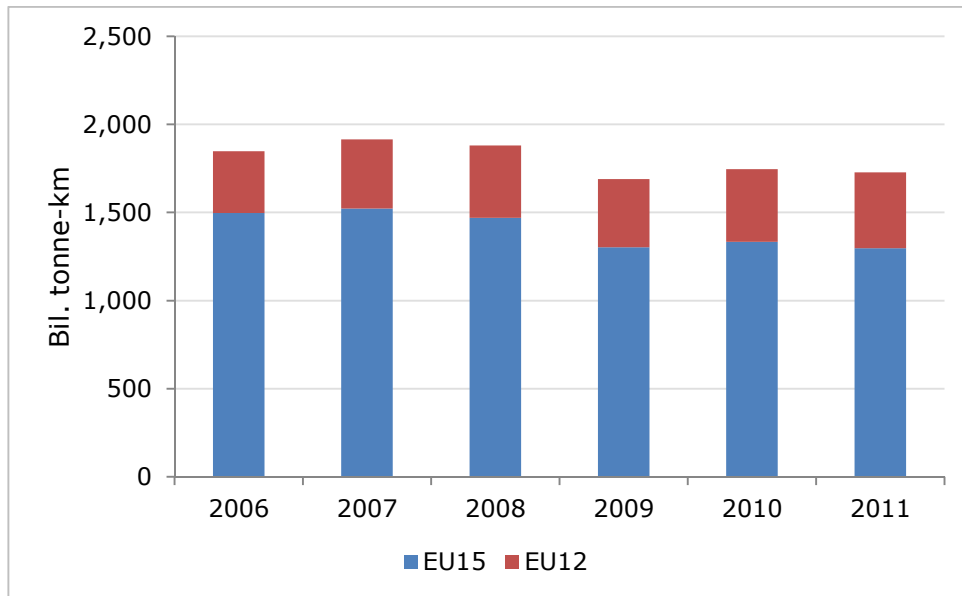


Source: SDG analysis of Eurostat (2012).

In line with the total market for freight in the EU, the market for road freight, as mentioned above, was strongly affected by the recession, decreasing in size by 10.1% between 2008 and 2009. Although the market for road freight slightly recovered in 2010, it decreased again in 2011. As a result, its volumes in 2011 were still 8.1% below those in 2008.

Figure 5 below sets out the evolution of the total market for road freight by country of registration of the vehicle.

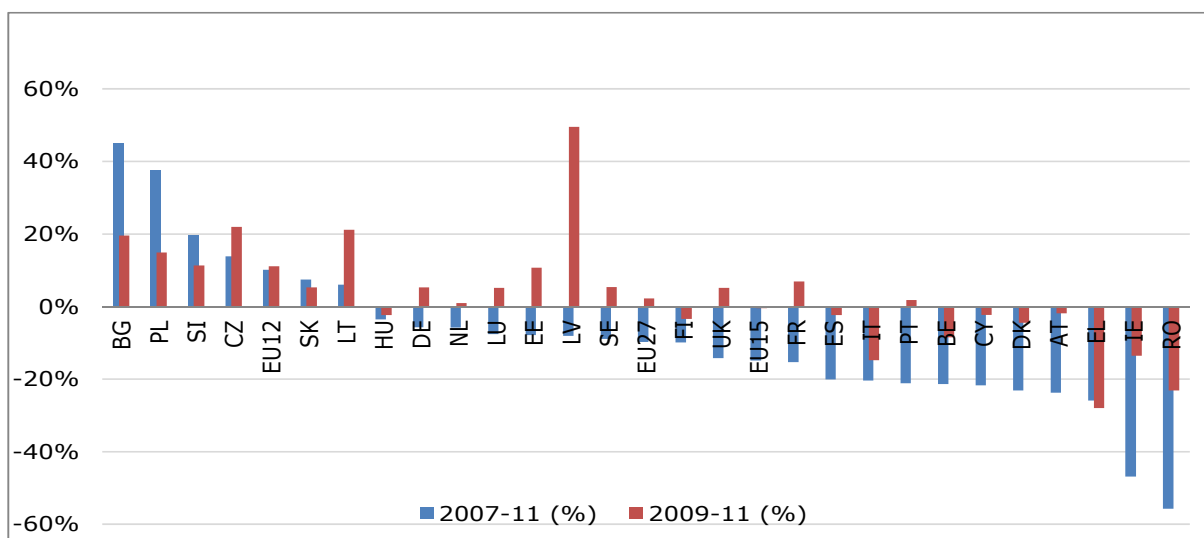
**Figure 5: Tonne-km generated in transports by road in the EU, by region where the vehicle was registered**



Source: SDG analysis of Eurostat (2012).

National specific data shows that the pattern of road freight transport activity was very different across the EU. As shown in Figure 6 below, between 2007 and 2011 the MSs that joined the EU in 2004 and 2007 have registered an increase in the road freight transport activity undertaken by their hauliers, due mainly to their increased share of the international transport market (discussed later in this chapter). By contrast, hauliers from EU15 MSs experienced a reduction over the same period.

**Figure 6: Evolution of road freight transport activity in tonne-km between 2009 and 2011 and between 2007 and 2011 by nationality of haulier**



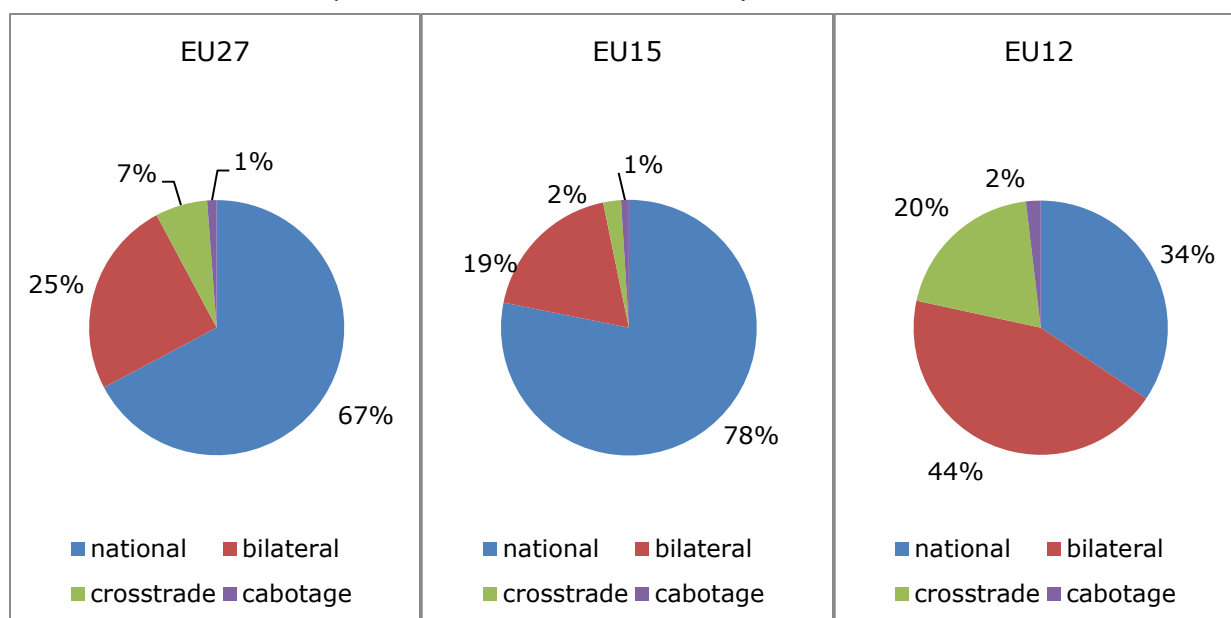
Source: SDG analysis of Eurostat (2012).

### 4.3 National versus international transport by EU hauliers

In 2011, national transport by domestic hauliers accounted for the majority of road freight transport in the EU with a share of 67.2%. The remaining share was split between the various types of international transport, more specifically bilateral international (24.9%), cross-trade (6.6%) and cabotage operations (1.2%)<sup>24</sup>.

As set out in Figure 7, the importance of the national domestic transport is significantly higher for hauliers registered in the EU15 than for those registered in EU12 Member States. EU15 transport activities of hauliers registered in these MSs are focused on national markets (78%) as opposed to hauliers from the EU12 MSs which are predominantly (66%) targeted at international operations (including cabotage).

**Figure 7: Share of national, bilateral international, cross-trade and cabotage transports by hauliers in the EU, the EU15 and the EU12 MSs (based on data in tonne-km)**

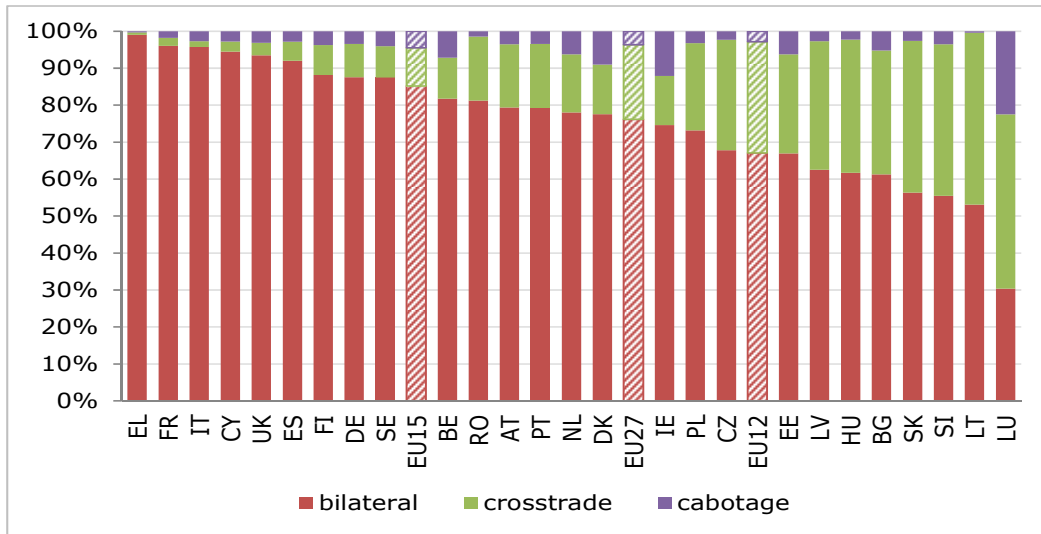


Source: SDG analysis of Eurostat (2012).

Moreover, as shown by Figure 8 below, there are some differences in the relative share of different international transport operations across EU MSs. In general the size of bilateral transport activities is directly correlated to the size of the country (and its import and export markets), while cross-trade and cabotage play a higher role in smaller countries/economies.

<sup>24</sup> See Box 1 in chapter 1 for a definition of operations.

**Figure 8: International road freight transport in 2011 by relation (share of international bilateral, cross-trade and cabotage transport in the activities of the hauliers from each Member State)**



Source: SDG analysis of Eurostat (2012).

#### 4.4 The role of road cabotage in the EU

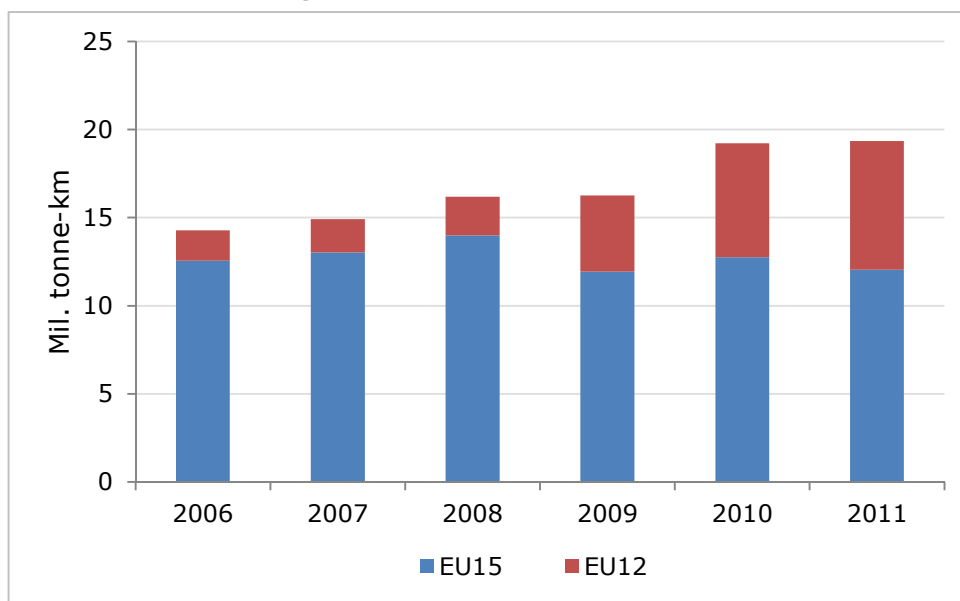
This section analyses the evolution of the road freight cabotage market across the EU looking at the trends registered in total volumes as well as key events in the different MSs. Particular attention is given to the discussion of the changes in the supply of, and demand for, cabotage operations since the opening of the market to EU12 MSs.

##### 4.4.1 Total volumes

Figure 9 shows that between 2006 and 2011, road freight cabotage increased from approximately 14 million tonne-km in 2006 to 19 million tonne-km in 2011. Although the market for cabotage is increasing, volumes are still small compared to the total EU road haulage market as discussed earlier in this Chapter.

In 2006, only a small percentage of cabotage operations, approximately 12%, was carried out by vehicles registered in one of the EU12 Member States. By 2011, this proportion increased to nearly 40%, while total cabotage volumes transported by vehicles registered in these countries increased more than fourfold. In contrast, cabotage volumes transported by vehicles registered in the EU15 Member States in 2011 were slightly lower compared to those in 2006.

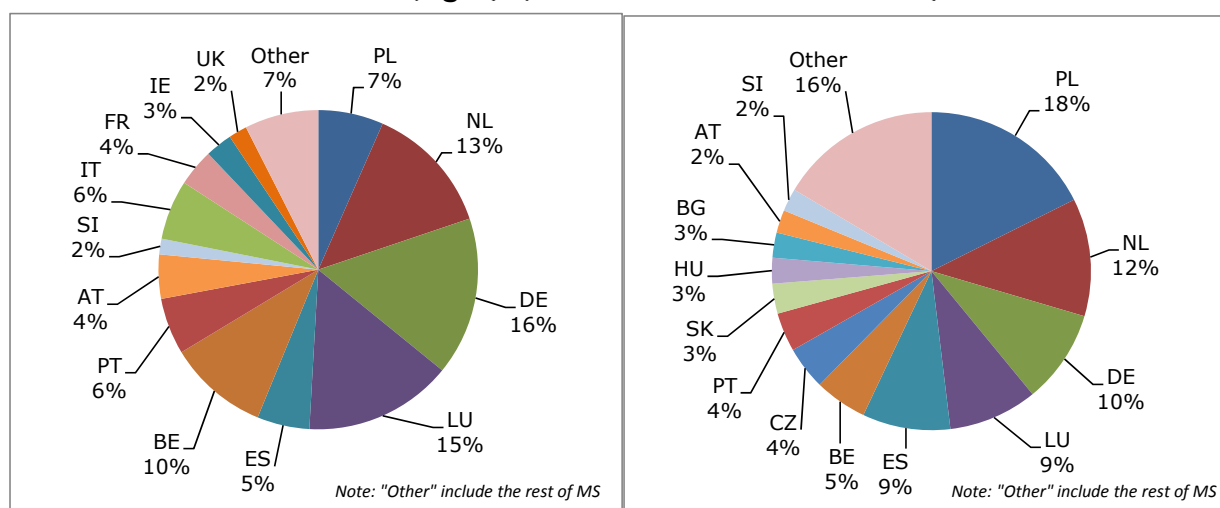
**Figure 9: Total volumes of cabotage carried out in the EU by country where vehicle is registered**



Source: SDG analysis of Eurostat (2012).

Detailed statistics by country show that the most active EU12 MSs were Poland and the Czech Republic. In 2011, vehicles registered in Poland carried out the largest share of cabotage volumes of all EU Member States with a share of 18% of total cabotage operations, compared to 7% registered in 2007. In the same period, the share of cabotage undertaken by Czech hauliers increased from 1 to 4%. Conversely, cabotage undertaken by EU15 hauliers has been decreasing. The share from Germany and the Netherlands, moved from 16% and 13% in 2007 to 10% and 12% in 2011 respectively.

**Figure 10: Origin of most active cabotage operators in the EU in 2007 (left) and 2011 (right) (based on data in tonne-km)**

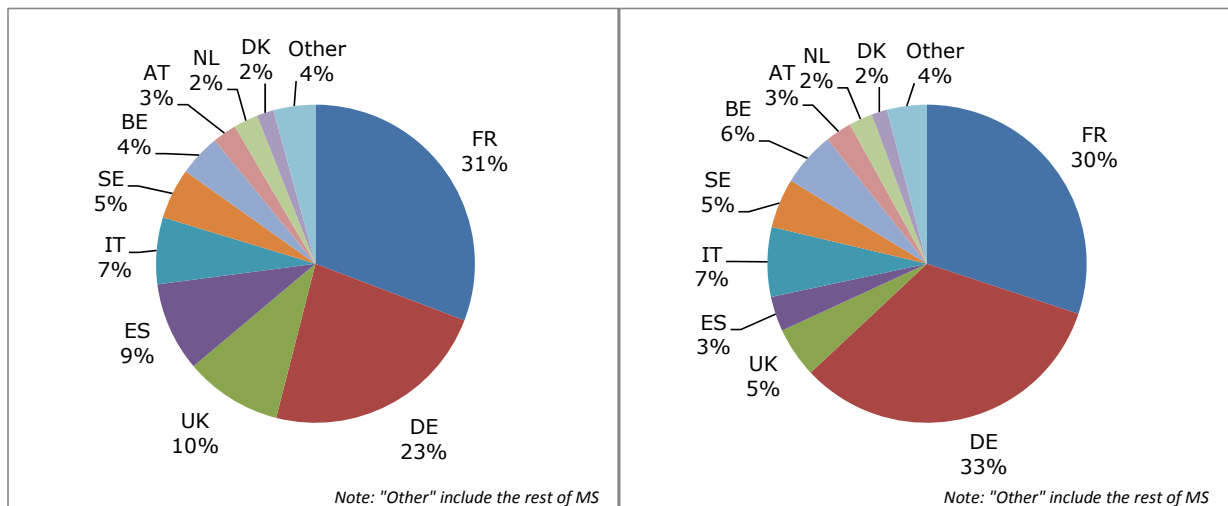


Source: SDG analysis of Eurostat (2012).

In reviewing the destination country for cabotage operations, Figure 10 sets out the volumes of cabotage carried out in the main host countries as a share of total cabotage carried out in the EU in 2007 and 2011.

It is interesting to note that both in 2007 and 2011 most cabotage operations take place in EU15 Member States, which indicates that the entry into the cabotage market of the EU12 has not led to substantial changes to the demand for these transport activities. The Czech Republic is the most important destination market for cabotage operations amongst the EU12 Member States with a share of 0.4% in all cabotage carried out in the EU in 2011, but it is ranked only 13 when the whole EU is counted.

**Figure 11: Main host countries for cabotage in the EU in 2007 (left) and 2011 (right) (based on tonne-km)**



Source: SDG analysis of Eurostat (2012).

In 2011, Germany and France were the countries where most cabotage operations took place: all of cabotage operations carried out in 2011, 33% took place in Germany and 30% in France. This is primarily as a result of the size of the German and French markets. The overall size of the economy also explains the role of Italy and the UK in hosting cabotage activities. Nevertheless it should be noted that the relative role of the UK as hosting country for cabotage activities halved between 2007 and 2011: this can be partially explained by a decreasing in the total number of cabotage operations undertaken in the UK in this period (that moved from about 1.539 Mil tonne-km in 2007 to 1.272 Mil tonne-km in 2010<sup>25</sup>) – in contrast to what happened in many other EU MSs. Though with a relative smaller economy, Belgium and the Netherlands play a strong role among the hosting countries of cabotage operations thanks to the presence of important ports (Antwerp, Rotterdam and Amsterdam) as well as to the full liberalisation of the cabotage market undertaken within Benelux countries after 1992. Finally Sweden hosts cabotage operations from many hauliers driving from other countries bordering the Baltic Sea.

<sup>25</sup> UK data for 2011 are not available and Eurostat statistics report 2010 values also for 2011.

**Box 9 : Cabotage operators in the top three host countries**

**Country of origin of hauliers carrying out cabotage in DE, FR and IT**

As set out in Figure 10, the most active hauliers in the cabotage market are based in Poland, the Netherlands, Germany, Luxembourg and Spain. This box gives a more detailed view on the main cabotage actors in the main host countries.

The largest players in the **German** cabotage market are hauliers from Poland with a share of 32%. This is not surprising given the close distance and the strong position of Polish hauliers in the total EU cabotage market. The largest cabotage providers following Poland are the Netherlands, Czech Republic, Austria and Luxembourg. Together with Poland, these countries account for 71% of the German cabotage market.

A similar situation can be observed in **France** where the most active cabotage operators are from bordering countries Spain (27%), Luxembourg (16%) and Belgium (13%). Polish hauliers are ranked fourth with a share of 11% even though there is no border between the two countries.

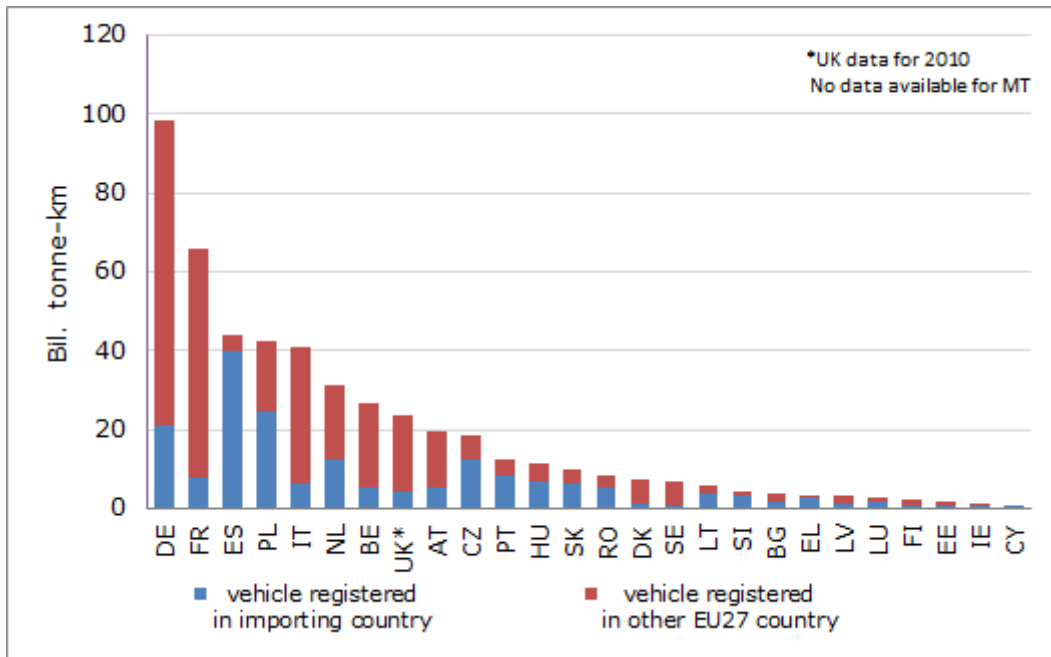
In contrast, the three main cabotage operators in the **Italian** market are based in countries that do not border with Italy – Germany (27%), Bulgaria (12%) and Poland (11%). The country of origin that is ranked fourth is Slovenia which does border with Italy. The strong presence of German hauliers in the Italian market can largely be explained by the strong trade relationship between these two countries.

The scope for cabotage operations is highly correlated to the degree of international transport between countries due to the requirement for cabotage to be linked to an international journey. However it also depends on the extent to which international transport operations are undertaken by foreign vehicles rather than domestic ones.

Figure 12 shows the road transport volumes for goods imported to a specific MS, and the share of vehicles registered in this country carrying out these transport operations. The figure clearly shows that the vast majority of imports in Germany and France are carried out by hauliers from other EU27 MSs. This observation is consistent with Germany and France being the two countries where most cabotage takes place.



**Figure 12: Tonne-km generated in 2011 for international transports by road between EU27 countries, by country where the vehicle was registered**



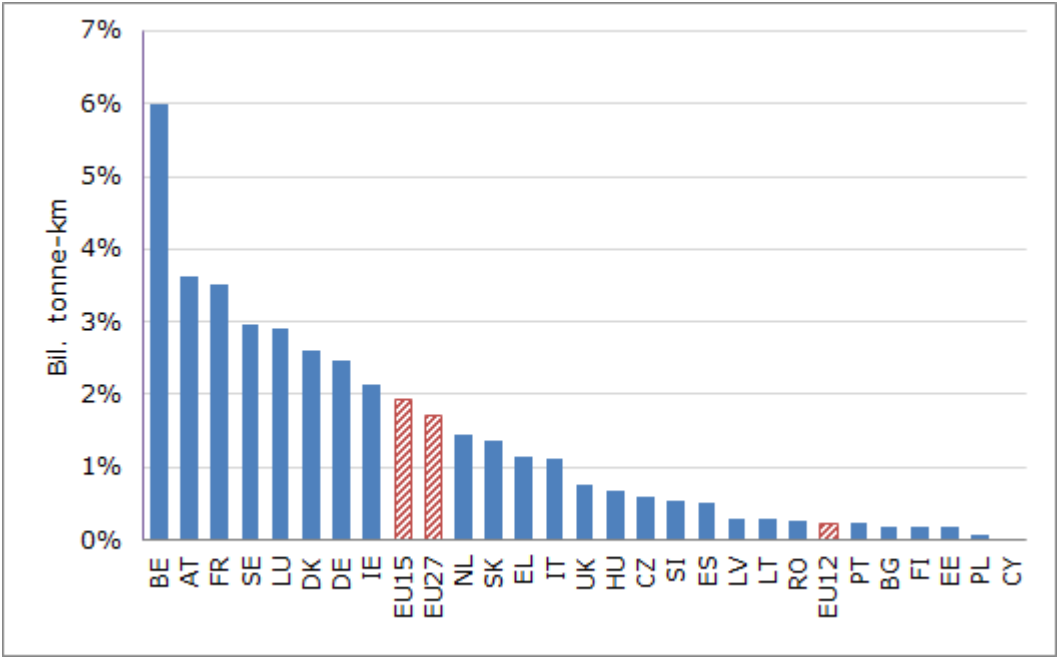
Source: SDG analysis of Eurostat (2012).

#### 4.4.2 Penetration rates

The extent to which cabotage operations contribute to the supply of road freight transport services within a country differs across the EU. This can be assessed looking at the cabotage penetration rate, which is defined as the share of cabotage in the total national market for road haulage in a given country.

Figure 13 sets out the cabotage penetration rates in all 27 EU Member States with the exception of Malta. It confirms that all Member States with a penetration rate above the EU average are EU15 countries. The Member States with the highest penetration rates are Belgium, and Austria with 6.0% and 3.6%. Germany and France, the countries in which most cabotage takes place, also have penetration rates higher than the average.

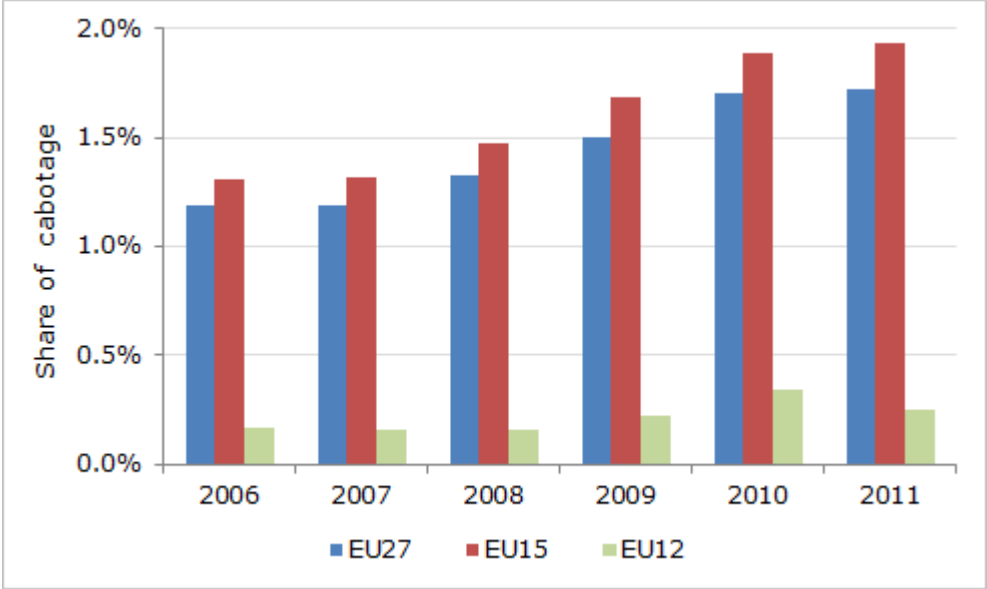
**Figure 13: Cabotage penetration rates in 2011 relative to the national road haulage market (based on data in tonne-km)**



Source: SDG analysis of Eurostat (2012).

Overall, since 2006 the cabotage penetration rate has increased across the EU: it moved from 1.2% in 2006 to 1.7% in 2011. In the EU15 the share of cabotage increased from 1.3% to 1.9% between 2006 and 2011, while in the EU12 it remained broadly constant over the same period, however at a significantly lower level of 0.2%.

**Figure 14: Trend of cabotage penetration rate in EU27, EU15 and EU12**

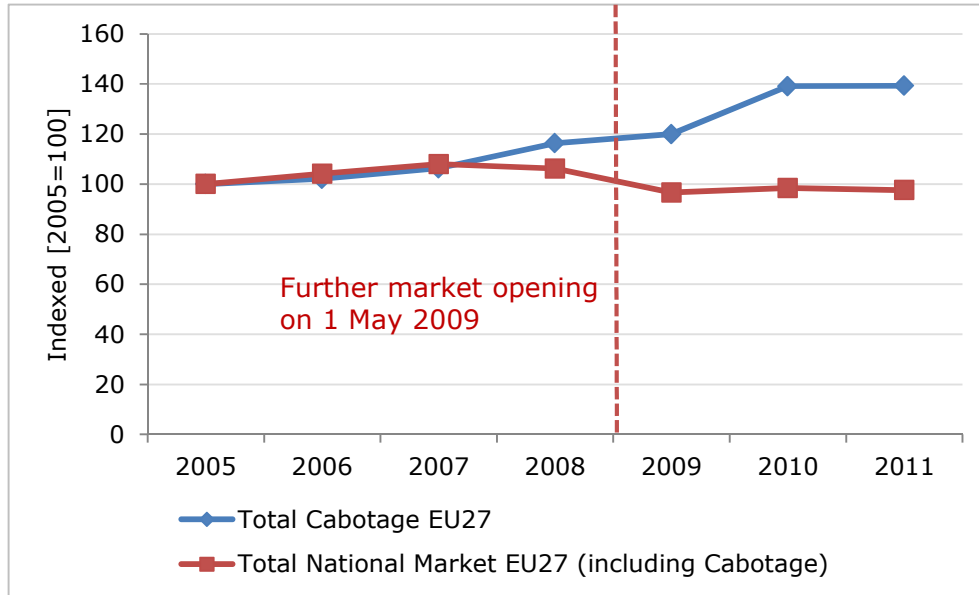


Source: SDG analysis of Eurostat (2012).

As mentioned above, the increase in cabotage has occurred notwithstanding the fall in the volume of goods transported nationally. Before the opening of the cabotage market to a number of EU12 Member States on 1 May 2009, the growth of cabotage and of the national

market as a whole were broadly in line. This was no longer the case from 2009 as shown in the figure below. Particularly in 2010 when cabotage operators benefited disproportionately from market recovery, at the expense of domestic hauliers, especially in EU15.

**Figure 15: Evolution of total cabotage volumes compared to the total national market**



Source: SDG analysis of Eurostat (2012).

#### 4.4.3 Net cabotage

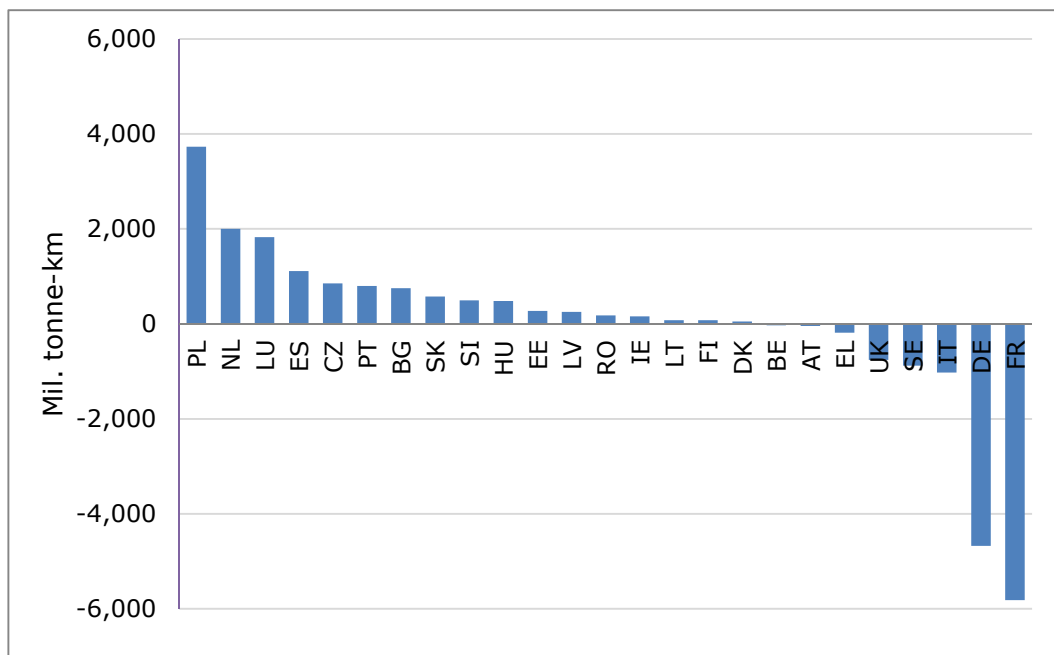
The extent to which MSs are net importers or net exporters of cabotage also helps to understand the stance taken by stakeholders in different Member States. This is assessed through the use of the net cabotage indicator, which is defined as the total cabotage volumes carried out abroad by vehicles registered in a given country minus the total cabotage volumes taking place in this country.

Figure 16 below reports the net cabotage volumes registered by EU countries in 2011.

Once again, Poland is the highest net exporter of cabotage, but four other EU12 MSs rank in the top ten of net exporters. In contrast, the top eight net importers of cabotage are EU15 Member States.

As set out in more detail in Chapter 5, this phenomenon is primarily driven by the lower cost base of EU12 MS hauliers.

**Figure 16: Net cabotage volumes in 2011 in the EU (based on data in tonne-km)**



Source: SDG analysis of Eurostat (2012).

### KEY FINDINGS

- Following the full opening of the market to new EU MSs on 1 May 2009 – with the exception of Bulgaria and Romania - the pattern of road freight **cabotage decoupled** from total **national road freight** markets.
- Between 2006 and 2011 there was a substantial **increase in cabotage** carried out **within in the EU15**, which is due to the growing activity of vehicles registered in EU12 MSs. Overall the proportion of cabotage operations undertaken by vehicles registered in one of the EU12 Member States increased from 12% in 2007 to nearly 40% in 2011.
- Close to two thirds of all cabotage volumes in the EU are carried out in **Germany** and **France**. Belgium and Austria are the countries with the highest cabotage penetration rates.
- 18% of cabotage volumes are transported by vehicles registered in **Poland**, while less than 1% of cabotage is carried out in Poland. This makes Poland the **largest net exporter** of cabotage. In contrast, 30% of cabotage volumes are transported in **France**, whilst only 1.5% of cabotage is carried out by vehicles registered in France making France the **largest net importer** of cabotage.

## 5. SOCIO-ECONOMIC IMPACTS OF FURTHER LIBERALISATION OF ROAD CABOTAGE

### 5.1 Introduction

Any analysis of the potential socio-economic impacts of further liberalisation of road cabotage must start from a recognition of what the various impacts have been to date in different Member States as a result of the measures introduced to date. This chapter provides a summary of the evidence on socio-economic impacts gathered from the selected case studies (10), presents a thematic review of the main findings and sets out the potential impacts of the proposed legislative changes at a European level. This analysis is not an impact assessment of the possible implications of full liberalisation or of other policy options that could be introduced to further open this market. This exercise would require a specific study based on the standard methodology used for impact assessment of EU regulation<sup>26</sup>, which was not within the scope of this study.

### 5.2 Evidence from case studies

The following summary sets out a review of the socio-economic impacts of cabotage as has emerged from the case study research. The full version of each case study is available in ANNEX A.

#### 5.2.1 Austria

The Austrian road freight market has long been exposed to international competition, given its location at the heart of Europe. Historically, most cabotage operations have been carried out by hauliers from Germany, the Netherlands and Luxembourg. Slovenian hauliers entered the market in 2004 and have gained substantial market shares given that, on average, they have a cost base which is 20% lower than Austrian companies<sup>27</sup>.

The recession in 2009 caused a drop in total road traffic volumes as well as in cabotage volumes. From 2010 however, cabotage volumes in Austria increased at a higher rate than the total Austrian domestic market. This suggests that hauliers from new Member States have benefited disproportionately from market recovery in 2010 and 2011.

Meanwhile, the total number of heavy goods vehicles registered in Austria has continued to decrease. Stakeholders have suggested that a number of Austrian companies have set up subsidiaries in the so-called "flags of convenience" (FOC) countries, registering trucks where business and labour costs are lower. In parallel, they set up freight-forwarding divisions in Austria which in turn hire drivers' crews from FOC Member States. This system, known as flagging-out, is fuelled by the consignees' drive to reduce costs and it is estimated to be used by 50% of Austria's large hauliers<sup>28 29</sup>.

<sup>26</sup> [http://ec.europa.eu/governance/impact/key\\_docs/key\\_docs\\_en.htm](http://ec.europa.eu/governance/impact/key_docs/key_docs_en.htm)

<sup>27</sup> See Case Study Austria.

<sup>28</sup> Hans-Joachim Schramm (2012). *Impacts of Deregulation on International Road Haulage*. Institute for Transport and Logistics Management Secretary General of Verband der Tarifeure (IVT), Vienna.

<sup>29</sup> See also Dieplinger M., Furst, E. and Lenzbauer, S. *Flagging Out as a Popular Strategy of Road Freight Transport Companies. Evidence of Three Consecutive Research Projects in Austria*. European Transport Conference, 2010 Proceedings.

### 5.2.2 France

France is one of the countries where most cabotage operations take place (as discussed in previous chapters). France is also one of the countries in Europe where labour costs in the road transport sector are the highest. This creates a cost differential with other economies such as with neighbouring Spain (where labour costs have fallen substantially) and Poland (where labour costs have been structurally lower since accession to the EU). Moreover France is one of the MSs with stricter social legislation for road transport. For example French rules on driving times do not allow any distinction between driving and waiting time.

The total annual cost of a French driver has been estimated by the Comité National Routier in 2011 to be 1.3 times higher than the cost of a Spanish driver and 2.4 higher than a Polish driver spending 3 weeks/month outside their respective domestic market<sup>30</sup>. The same study estimates that based on annual driving times and for the same scenarios, the cost per driving hour is €28.7 in France, €18.7 in Spain and €12.0 in Poland. As a result, the competitiveness of French businesses is significantly lower than some of its European counterparts. By contrast, in recent years, profitability of the French road freight sector has suffered. The Bank of France estimated in a 2011 study<sup>31</sup> that over 25% of French road freight transport businesses were making a loss.

Stakeholders from the road cabotage industry all agree that “market prospects in France are bleak”. They also all share the view that the French road freight market is one of the most vulnerable to the potential full liberalisation of cabotage in Europe, because of its social legislation. Legislative efforts to extend these rules to foreign hauliers operating in France often fail because of operators finding ways to cheat the system.

### 5.2.3 Germany

The German market is very attractive for cabotage operations: in 2011 Germany registered the highest volumes of road freight cabotage. The opening up of the German market to the EU12 has resulted in greater cabotage activity by hauliers from the neighbouring MSs of Central and Eastern Europe. However the domestic industry has been more resilient than that of many other EU15, not least because of the presence of some barriers to entry. For instance there is a requirement that hauliers effecting road transport operations in Germany hold liability insurance against the damage of goods carried amounting to no less than €600,000 for each claim, and no less than €1.2 million for a year. The haulier has to guarantee that a certificate of this insurance is carried by the driver while carrying out transport operations.

Nevertheless, hauliers from EU12 Member States significantly increased their participation in the German market from 0.3% in 2006 to 1.5% in 2011.

Cabotage has also indirectly influenced the national road haulage market. Freight forwarders that can subcontract both foreign cabotage operators (often German subsidiaries relocated in FOC countries) and domestic road hauliers, exert downward pressures on prices. This has driven German hauliers to achieve greater efficiency and some stakeholders report that, over time, cost differences are gradually decreasing. According to BAG estimates, hauliers from Bulgaria and Romania retain approximately a 50% cost advantage on labour costs compared to their German counterparts. Due to the high efficiency of German hauliers, the advantage in total operational costs decreases to

---

<sup>30</sup> Etudes internationales Comité National Routier (2011).

<sup>31</sup> Banque de France (2011). Économie et financier du transport routier en France 2006-2010.

approximately 30%. Prices have generally gone down; however domestic companies are still able to charge a premium given their higher quality, reliability and punctuality.

#### 5.2.4 United Kingdom

The progressive opening of the cabotage market introduced by EU rules since 1998 in the UK has led to an increase in the activity of EU hauliers. In particular, the introduction of the new cabotage provisions laid down by Regulation (EC) No 1072/2009 has ensured that several return journeys are carried out in a more efficient manner and with a full load.

Cabotage operations have also increased competition in the domestic market and reduced prices with the main source of competition coming from Irish drivers. This has had a downward pressure on wages and contributed to improve the international competitiveness of UK hauliers that – according to Eurostat data - between 2009 and 2010 increased by 98% the volume of cabotage activities, mainly undertaken in the Irish market. Domestic companies have expressed concern that some operators are taking advantage of the cabotage provisions and not adhering to the legal provisions although it has been acknowledged that the work of VOSA is clamping down on such practices.

Stakeholders feel that there is a need for renewed focus on monitoring and enforcement within the UK as there is a concern that some cabotage operators are not as focused on safety (with vehicles operating below EU standards) as domestic hauliers leading to higher risks on Britain's roads. Some high profile accidents have come to light which have been caused by foreign drivers/hauliers whose vehicles may not have been maintained in an appropriate manner or where drivers may not have been following working time limitations. The greatest concern in the UK is not related to wage levels of foreign hauliers, rather it relates to ensuring that vehicles that are entering UK are adhering to appropriate safety standards.

#### 5.2.5 Hungary

The share of cabotage by Hungarian hauliers has grown since market opening. Drivers' wages are comparatively lower in Hungary than Western European ones; however they are slightly higher than e.g. Slovakian and Polish wages.

This lower cost base has attracted between 20 and 30 large European road freight companies to establish their subsidiaries in Hungary. While the presence of these companies is a large contributing factor to the growth of cabotage by Hungarian hauliers, it poses two main challenges for the national sector:

- Smaller, national companies find it difficult to grow and compete with the international conglomerates in the domestic market. The road haulage sector in this country is very fragmented, with 84% of companies employing less than five workers, and it is exposed to international competition from lower-cost neighbouring MSs.
- Experienced drivers are increasingly attracted to work in international operations outside Hungary. The movement of drivers abroad, coupled with the increase in the age limit for which drivers attestations can be issued, is likely to lead to a shortage of drivers in the coming years.

#### 5.2.6 Italy

The crisis in Italy makes it difficult to evaluate the impact of cabotage in isolation. Nonetheless, a regional focus on the border region of Friuli Venezia Giulia reveals that strong competition from neighbouring Slovenia has had an effect on the market since 2004.

It is apparent that the lower-cost companies (those on the Slovenian side) have rapidly gained a large market share in North-Eastern Italy. Between 2004 and 2009, the number of road transport enterprises in the Friuli region has fallen by 20.8%, greater than the national average, compared to an increase of 218% in Slovenian hauliers crossing the border in the area.

The growth of cabotage in Italy has triggered a renewed focus by the industry's main players on the competitiveness of the Italian road sector. Not only are Italian drivers more expensive than drivers from EU12 countries, but also labour costs make up a large share of total costs (between 40% and 60%). Fuel prices are one of the highest in Europe, the size of companies is very small on average and geographic fragmentation increases costs further. Under the pressure of cabotage, industry associations have been lobbying the Italian government to enact the necessary regulatory changes that would enhance the sector's competitiveness. Meanwhile, they have brought a case to the regional court (TAR) against the imposition of "minimum costs" for safety standards. While acknowledging that these fixed costs reduce market competition, the TAR has referred the matter of compatibility with EU law to the European Court of Justice.

Stakeholders have also mentioned that the black economy presents a strong problem for the sector (for instance, 50,000 enterprises registered in Italy do not appear to possess any vehicles). In addition, trade unions state that cabotage rules are circumvented in Italy by aggressive "out-flagging" and fictitious sub-contracting agreements with EU12 drivers. They are in favour of a review of cabotage rules, as long as this would ensure compliance with national legislation on wages, social security, national level of transport tariffs and transportation costs. For example, they highlight the need for a thorough application of the Posted Workers Directive: at the moment, this applies to salary requirements, but not to social contribution levels paid by companies.

### **5.2.7 Lithuania**

The Lithuanian market has not proven to be attractive for foreign hauliers despite the gradual opening of the cabotage market, given the small size of the internal market and intense cost-competition among domestic hauliers. Only some hauliers from neighbouring Latvia perform cabotage operations in Lithuania.

By contrast Lithuanian hauliers are active in the rest of Europe, primarily in Germany and France, Lithuania's main trading partners. Lithuanian carriers are able to offer lower prices due to lower labour costs (drivers and support staff) compared to EU15 carriers. However Lithuanian drivers working abroad are not protected by unions and working conditions can be very poor.

### **5.2.8 Netherlands**

Historically, Dutch hauliers have been very active cabotage operators across Europe, the Netherlands being the logistics base for much of the trade activities of the EU. Research by the Dutch Institute for Transport Policy (KiM)<sup>32</sup> has shown that the single most important factor driving road freight volumes in the Netherlands in the past decade has been the "internationalisation" of the economy, measured in terms of imports and exports. This factor explains 35% of the growth in transport volumes in the Netherlands.

The link between trade and cabotage has weakened in recent years though: for instance Polish and Slovakian hauliers are more active in the Netherlands than would be expected

---

<sup>32</sup> <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2012/11/16/mobiliteitsbalans-2012-jongeren-gebruiken-minder-vaak-de-auto.html>



from the trade relations between the countries, a fact that can be partially explained by the cost competitiveness of these hauliers vis-à-vis Dutch ones.

Full liberalisation of cabotage occurred in 1991 between the Netherlands, Belgium and Luxembourg, which lead positive long-term economic benefits to the Dutch economy: for example, hauliers gain a higher revenue per truck by being able to reduce empty runs. The presence of a harmonised socio-economic environment between the Benelux countries is an important factor of the success of the initiative.

In 2010 environmental benefits have also been estimated by the KiM<sup>33</sup> in what is, to date, the largest study to date on the environmental impacts of liberalising cabotage in EU: in the event of full liberalisation of road cabotage at the EU level, it was forecasted a reduction of empty trips between 0.7% and 1.9% vehicle-km, leading to a reduction of between 0.5% and 1.6% in CO<sub>2</sub> emissions (as a percentage of total road transport CO<sub>2</sub> emissions) at the EU level.

By contrast, in recent years, many stakeholders claim that the opening of the cabotage market to new EU MSs has led to a deterioration of the profit margins of Dutch companies as suppliers try to cut costs by resorting to foreign cabotage operators. Some also argue that there could be a shortage of skilled drivers in the near future because the massive influx of foreign operators in recent years has reduced the number of Dutch skilled drivers. A recent study commissioned by the Dutch Ministry of Industry and Environment<sup>34</sup> argues that these concerns could be particularly challenging given current restrictions on cabotage are to be eased in the European Union. The study claims that an easing of current cabotage restrictions will not be favourable for the Dutch road haulage sector: such a measure is expected to lead to strong price competition between Dutch hauliers and companies using vehicles registered in lower wage countries, that may force some Dutch companies into bankruptcy and put pressure on employment and working conditions in the Netherlands. Moreover, according to the study, there is also the risk of a negative effect on the environment as road transport would become more competitive.

However, according to Dutch hauliers, at the moment in the Netherlands the main problem is the lack of a proper regulatory regime for cabotage.

### 5.2.9 Poland

The road transport sector in Poland has expanded in recent years, with 10% growth in employment levels in the industry between 2009 and 2010 alone. The growth of international transport activity and cabotage in particular, is a key determinant of this growth. As shown in chapter 4, 18% of cabotage volumes in the EU are transported by vehicles registered in Poland: this is due to the cost advantage of Polish hauliers as well as to their relative proximity to big cabotage markets.

Polish companies have a significant advantage in terms of labour costs over most EU Member States. Despite a gradual increase in the salary levels in the Polish road haulage industry, labour costs are estimated to be to be in the range of 50%-60% of those in Germany, France or Italy. The increase in remuneration levels will lead to an improvement of the social conditions of Polish drivers, albeit it may also cause Polish hauliers to be less competitive in comparison to drivers from other Member States, such as Bulgaria and Romania which have cabotage access since 2012.

<sup>33</sup><http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2010/06/08/cabotage-and-co2-reduction.html>

<sup>34</sup> Ministry of Industry and Environment (2013). *The impact of untightening of cabotage*.

### **5.2.10 Spain**

Road freight activity in Spain has suffered from a sharp contraction in volumes in recent years. The number of company licences in 2012 was back to the same levels of 1999 and, in 2010 alone, 8.600 enterprises left the Spanish market. There was an 11% reduction in the number of authorisations requested by road hauliers. Cabotage operations have also been declining in line with the national market.

Spain can be viewed as an example of the link between cabotage and trade activities. Over time, Spanish hauliers have exploited their competitive advantage over their French counterparts and have gained substantial market share across the Pyrenees, coupling cabotage with cross-border trade. On the other hand, the increase in cabotage activity by Polish hauliers in Spain is a reminder that cabotage might not be directly linked to transport activity between neighbouring MSs.

The practise of out-flagging is regarded as illegal employment by Spanish stakeholders. The sector is pressing for more stringent controls on companies' practices and accounts to tackle what is perceived as "widespread illegality" in the sector.

## **5.3 Summary of findings by socio-economic theme**

This section discusses the key evidence that has emerged from the case study analysis. Most of the findings relate to the effects identified across the EU because of the opening of road cabotage to EU12 MSs, rather than specifically to the provisions in Regulation (EC) No 1072/2009 as this has actually been the major driver of the change in total cabotage operations across the EU.

The introduction of the Regulation has also had some impact on the sector, but these impacts relate more to the analysis of the clarity of the rules and the manner in which the rules are enforced (as discussed in detail in chapters 2 and 3) rather than the implications for further liberalisation. Nevertheless, the fact that the stricter rules came into force with the opening of the market has ensured that there are clearer requirements to all operators and have limited the potential for old MSs to apply *ad hoc* barriers against new entrants from the newer Member States.

### **5.3.1 The impacts of the recession**

The gradual liberalisation of cabotage has coincided with a general decline in road transport activity during the 2008-2009 recession in Europe. These effects are difficult to decouple from the reforms to cabotage Regulation, although some impacts can be identified.

At the trough of the downturn, commercial road activities were low across Europe as a result of a dramatic decline in industrial production and consumer confidence. Thus many of the traditionally strong markets such as Italy, France and Spain became less attractive to foreign hauliers. At the same time, other MSs such as Poland were less affected by the downturn and saw their domestic companies grow.

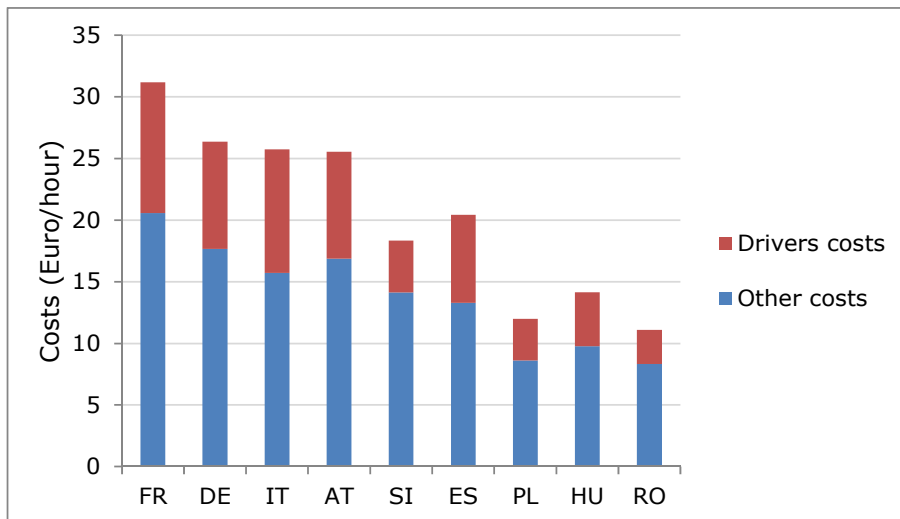
While road freight transport volumes have not yet recovered from the economic crisis that started in 2008, two main trends have been identified. Firstly, companies from EU15 MSs have intensified the practice of flagging-out to exploit the favourable labour cost differences and regain competitiveness. Secondly, companies from EU12 MSs have made greater use of cabotage opportunities offering cheaper alternatives to European consignees looking to reduce their costs.

Market entry by EU12 cabotage operators has exposed the inefficiencies of road freight markets in many MSs affected by the recession; this is after all what liberalisation is supposed to do – increasing the competitiveness of the EU economy as a whole. The presence of cheaper and more efficient hauliers has increased competitive pressures and led the main industry associations to request the necessary changes to the Regulation and taxation levels for their national markets. These requests have come in parallel with lobbying efforts to improve the effectiveness of controls on foreign hauliers.

### 5.3.2 Operating costs

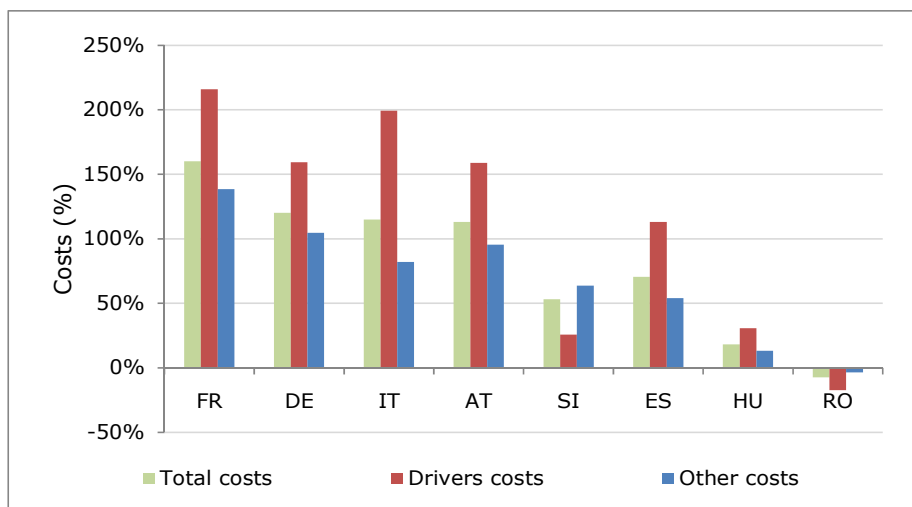
Our review of trends in cabotage activities across Europe has confirmed that severe imbalances exist in the operating costs of the industry. For instance, fuel costs vary widely across Europe, especially in relation to the different levels of taxation. The figures below illustrate the operating costs of cabotage operations in a selection of MSs and also the relative cost advantage of Polish road hauliers which has been discussed in various sections of this Report.

**Figure 17: Operating costs of cabotage operations (€/h)**



Source: SDG elaboration on HLG Report (2012) and Centro Studi Sistemi di Trasporto (2008).

**Figure 18: Ratio between labour costs (€/h) in a selection of MSs and Polish ones**



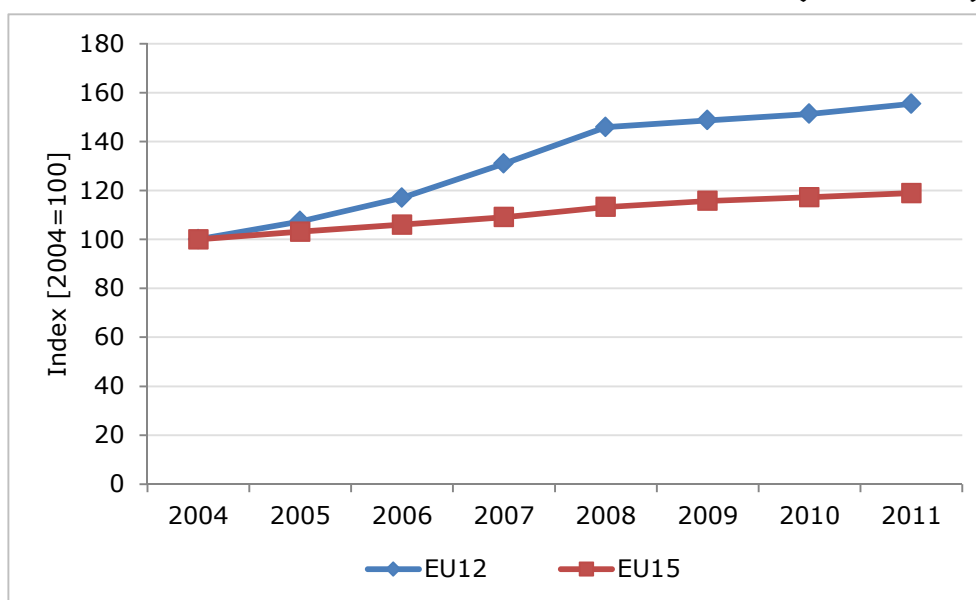
Source: SDG elaboration on HLG Report (2012) and Centro Studi Sistemi di Trsporto (2008).

Labour cost differences also persist with a large divide between EU15 and EU12 Member States. However differences also exist between these two geographical blocks. Labour costs in the road transport sector in Spain are lower than those in France; and Bulgarian companies can enjoy a lower cost of labour than Hungarian ones.

However, the competitive pressures exerted by cabotage and the internationalisation of the sector in general result in an overarching trend in remunerations identified in the case studies: growing salary levels in the EU12 as opposed to stable or even declining levels of remuneration in the EU15.

This process could lead to a convergence of labour costs in the sector in the long term. At present, it is perceived very differently by stakeholders. In the EU12, governments view it as an indication of improving social standards while companies fear that growing salaries could hinder their competitiveness in foreign markets. In the EU15, it is feared that a downward spiral in operating costs can reduce service quality and reliability. The problem would be a transitory one in any case: the adjustments of labour market demand and supply will lead to a levelling of labour costs between EU12 and EU15, a process which is already on-going across the EU, as shown by the figures below.

**Figure 19: Evolution of the labour costs index in the EU (2004-2011)**



Source: SDG elaboration on Eurostat (2012).

However it is not possible to forecast how long the transitory period will be. As labour costs are determined by the sum of wages and taxes, much will depend on the speed to the different MS will align their labour taxations systems. Moreover external factors could affect this process: for example the 2009 economic crisis modified the pattern of labour costs variation both in the EU12 and EU15 MSs and it is difficult to predict how the trend will evolve in coming years.

### 5.3.3 Social legislation

Operating costs do not just depend on salary levels: a large share of costs is also determined by regulatory requirements imposed by the host Member States in the field of social legislation.

Social legislation includes, inter alia, the application of Directive 96/71/EC on the posting of workers and Directive 2002/15/EC on working times and conditions. The growth of cabotage operations (and labour market opening more widely) has triggered specific legislation in some MSs such as Austria and France. The existing insurance requirements in Germany also represent a legislative measure that effectively increases costs for any cabotage entrants.

One of the impacts of cabotage liberalisation has thus been more stringent application of social legislation. Even in MSs where this has been enacted, however, illegality in the sector has become a widespread issue. The challenge posed by a mobile and highly internationalised road transport sector remains the harmonisation of social standards and enforcement practices across the European Union.

#### **5.3.4 Labour market impacts: drivers**

The growth of cabotage is having a variety of impacts on the labour market of drivers across the EU. In some MSs such as Poland and Slovakia there has been a considerable growth in employment in this sector, with positive consequences on the national economy. Conversely the number of workers has reduced significantly in EU15 MSs such as Italy and Spain.

A key consequence of cabotage is enhanced labour mobility. This is viewed as a positive aspect when it addresses the mismatch of labour demand and supply in many MSs. However this reallocation is also perceived as a threat in many national markets.

In the Netherlands, industry associations are concerned that the influx of Polish drivers in recent years is preventing young people in the country to enter the profession. Should foreign drivers return to their home countries in light of higher salary levels – because of the salary convergence discussed above – the Netherlands would suffer from a structural drivers shortage. Similarly in Hungary, national shippers are concerned that more and more drivers are attracted by the opportunities offered in international transport and continue to leave the domestic market.

In general, road transport jobs are not considered to be very attractive because they demand flexible working times, high physical effort and carry a high risk of accidents and fatalities in return of a low average wage. Cabotage increases the burden on drivers by requiring additional geographical mobility and increasing the legal responsibilities of drivers. Often these higher burdens are not compensated by higher pay, but rather they are accompanied by difficult working conditions (e.g. sleeping in the vehicle, driving longer hours in search of free parking spaces) in foreign environments. This is true not only with regard to road transport, but also other sectors of the economy where some jobs are no longer desirable by EU15 citizens making the influx of foreign workers the only way of filling the lack of supply.

#### **5.3.5 Road transport efficiency**

Some cases of full liberalisation of cabotage already exist within the EU. The Benelux region represents an example of successful market opening in the presence of a harmonised socio-economic environment. National governments have repeatedly prolonged this agreement given its efficiency benefits, which include higher revenues per truck, greater economic integration of national businesses and a reduction in empty runs although set on the backdrop of three countries with a similar level of economic activity.

Another practical example of liberalisation beyond current EU rules that led to efficiency savings is offered by the special derogations obtained by Ireland in relation to the automotive car industry. As passenger cars are registered at the start of the year, there is a peak in the number of cars sold and transported. As the national sector cannot cater for this seasonal peak in demand, Ireland has requested and obtained a relaxation of cabotage rules during these periods. This example shows that cabotage can be a solution to the temporary mismatch of supply and demand in MSs.

### **5.3.6 Environmental considerations**

Economic efficiency is in turn linked to environmental efficiency. As the analysis of Eurostat data by the European Commission and the KiM show<sup>35</sup>, restrictions on cabotage appear to be limiting efficiency by contributing to unnecessary empty running. Current rules force hauliers to leave the host country within 7 days. However due to imbalances in trade flows and the mismatch of haulage demand with available supply, loads are not necessarily available for the entirety of return trips.

This leads to 22% of all vehicle-km in the EU being empty runs. Empty running levels are higher in own account transport operations (30.6%) than in hire or reward ones (21.4%). Moreover they are particularly high in domestic transport (27.3%) and lower in international transport (13.6%)<sup>36</sup>. A reduction in empty runs has been witnessed in traffic flows to and from the UK as well as across the Benelux countries thanks to cabotage, although there is no data relating to the actual amount of reduction.

A consequence of the reduction in empty runs is a lower environmental impact of the road sector through a decrease in vehicle emissions for those trips that do not need to be made any longer. However, depending on the future rules relating to cabotage, increased movements may actually lead to increased emissions and potentially to some traffic switching from rail to road (although this is likely to be small) leading to a further increase in emissions.

### **5.3.7 Safety and congestion impacts**

The opening of the cabotage market results in a greater number of foreign vehicles and foreign drivers circulating across the EU. This aspect of cabotage has raised concerns with respect to safety and accidents. Stakeholders from some MSs (including the UK, Germany and the Netherlands) are keen that a reduction in operating costs does not result from lower safety standards resulting in greater risk for all road users in host countries.

We have found no statistical evidence to support the view that foreign hauliers are involved in a greater number of accidents than domestic ones. Likewise, it is currently not possible to quantify the impacts of cabotage on other aspects such as road congestion.

## **5.4 The current debate on further liberalisation of the cabotage market**

As mentioned above in this study the legislative provisions introduced by Regulation (EC) No 1072/2009 were thought to be “transitory” and the Commission was asked to review the features of the cabotage market in 2013 to understand if further market opening was feasible in the existing socio-economic conditions. This was the result of a compromise between those that supported further market opening of the road haulage market in light of

---

<sup>35</sup> <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2010/06/08/cabotage-and-co2-reduction.html>

<sup>36</sup> European Commission (2011). Road freight transport vademecum.

the establishment of a common transport policy and those that claimed further harmonisation of the framework conditions under which hauliers from different countries operate to be introduced first.

This debate is still on-going. The need for further market integration at the EU level is being pushed by several EU institutions. With reference to the transport market, this is a recurring issue in European transport strategies and many actions have already been taken to address it across the different transport modes (air, rail, road, maritime). However, as highlighted in the 2011 Transport White Paper<sup>37</sup>, there is still a need to remove remaining barriers to entry. Cabotage is one of the crucial topics listed in the outstanding questions of the transport liberalisation agenda: this is proved by a recent position expressed by the Commission that indicated the opening of cabotage as a key priority for improving market performance<sup>38</sup>. Further liberalisation in the road transport market is also on the agenda of the European Parliament that - however - puts great attention first on the need to understand whether framework conditions (effectiveness of controls, evolution of employment conditions, social and safety legislation, etc.) have evolved in such a way that *“further opening-up of domestic road transport market, including the removal of remaining restrictions on cabotage, could be envisaged”*<sup>39</sup>.

From the analysis undertaken the reasons behind the current claims of further liberalisation in the cabotage market are twofold. Firstly, there is the need to improve the efficiency of the market by reducing empty runs and contributing to optimization of load factor. Secondly, there is the overarching goal of creating a European Single Transport Area where road hauliers from different MSs are free to get access to the transport profession in different countries as well as to undertake transport operations across the EU. It is clear that the two issues, empty running and full market integration, have a different standing in the EU policy debate. Moreover, although they are linked to each other, it appears that they need to be tackled in a different way and also have different timeframes.

As shown above (5.3.6), the issue of empty running is usually higher in national transport rather than in international flows and certainly more critical for own account transport than hire or reward. Cabotage is often quoted as a measure that can help addressing this issue. Indeed optimizing the load of vehicles running international carriage by allowing them to undertake cabotage operations in the countries they cross can certainly contribute to this cause. However, it would need to be accompanied also by other actions targeted specifically at the segments where most inefficiency occur, such as the “own account transport” sector, or at promoting new technological solutions that optimize the usage of vehicle fleets. It could also be argued that if cabotage is linked predominantly to ensuring the efficiency of road transport, then it is appropriate to limit when it is allowed to when it is linked to international transport, as set out by existing EU rules, as this way it would allow foreign hauliers delivering international cargo to optimize their return trips.

By contrast if cabotage is seen as a mean to liberalise the road freight market to achieve the overarching goal of full integration, then its provisions should be ruled in a different way. For example there is no reason why it should be linked to international operations: this would actually constitute a barrier to the free movement of road hauliers. At the same time a fully integrated EU road freight market would need further harmonised framework

<sup>37</sup> Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system; COM(2011) 144 of 28.03.2011

<sup>38</sup> State of the Single Market Integration 2013 - Contribution to the Annual Growth Survey 2013; COM(2012) 752 of 28.11.2012. In particular, section 2.3 EC lists among the policy priorities: -allow more cabotage opportunities for foreign road hauliers.

<sup>39</sup> European Parliament resolution on Single European Transport area adopted on 15 December 2011. P7 TA(2011) 0584 on 15.12.2011, par. 29



conditions. Indeed as pointed out by the ITF such harmonisation of socio-economic-legal conditions is complementary to liberalisation and a prerequisite for fair competition<sup>40</sup>.

When drafting its conclusions on future developments of the cabotage market, the HLG clearly had in mind the two different perspectives set out above. For this reason the HLG proposed to separate the provisions relating to **linked cabotage**, which they structured as a tool to promote the technical operational efficiency of road cargo, from those governing **non linked cabotage**, which they outlined in terms of policy options that could gradually lead to a full liberalisation of the road haulage market<sup>41</sup>.

Indeed, any review of existing cabotage rules would benefit from the introduction of a distinction of these two perspectives. This would help to identify the amendments that should be made to current legislative provisions. For example, to address the need to tackle empty runs, a refinement of current provisions could probably be sufficient to optimize the usage of international carriage. Some of the amendments already listed in Chapter 2 to clarify Regulation (EC) No 1072/2009 – such as the removal of the maximum number of operations to be undertaken in 7 days, the possibility to start cabotage operations even if international cargo has not been fully unloaded or to undertake more than one cabotage operation in MS different from the one where the international carriage has been unloaded – could help address this. To be effective they would need to be accompanied by an improvement of enforcement of the Regulation as already discussed in Chapter 3.

On the other hand, the move towards further integration of the market needs to be properly assessed, taking into account all the likely socio economic impacts. In particular great attention should be given to any situation that could pose the question of unfair competition among hauliers from different Member States. In this respect there is the serious risk that - given the striking differences in social legislation (and associated costs) present in different countries - what would determine the success of road hauliers in an open and competitive market would not be their relative economic efficiency, but rather their ability to get access – legally or illegally – to the most favourable labour provisions. Such a risk should not be a deterrent for further market opening, but rather suggests the need for a gradual, governed process where liberalisation and harmonisation of the rules come together. A first step to be done is to make sure that none of the actors seek to “cheat” - which can be incentivised by ensuring appropriate enforcement and ensuring that the entire supply chain is liable for any illegal activity (as is already the case in some Member States). If a common ground is established, the opening-up of the road haulage markets could lead to efficiency improvements that will allow the industry purchasing transport operations to gain from lower costs, benefiting their profitability but also the whole economy. The possibility given to the EU12 MSs to enter the EU road cabotage market is an example of a gradual and partial opening of the market between countries with very heterogeneous socio-economic conditions. This has led to positive outcomes – such as the reduction in transport costs experienced in several EU15 MSs or the new business opportunities raised for EU12 hauliers. It has also led to some drawbacks such as reduced profitability of EU15 operators, safety concerns, the risks of driver shortages, etc.

For the future, the approach of a gradual and flexible opening of the road cabotage market accompanied by further harmonisation of social legislation and enforcement procedures indicated by the HLG seems to be the correct one. The policy options and measures to be chosen to implement it needs to be selected carefully though and reflect the short/medium and long term goals agreed and set on the agenda of the EU in the coming years.

---

<sup>40</sup> ITF (2009). *The construction and operation of the road freight market in Europe*. Forum Paper 2009-1.

<sup>41</sup> See Chapter 2 for a detailed description of the HLG proposal on linked and non linked cabotage.



## KEY FINDINGS

- The **main driver** of changes in the road cabotage market in recent years has been the **opening of the market to EU12 MSs**. The introduction of Regulation (EC) No 1072/2009 has also had some impact on the sector, but these impacts relate more to the clarity and enforcement of the rules rather than the implications for further liberalisation.
- The gradual opening and liberalisation of cabotage has coincided with a **general decline in road transport activity** during the **2008-2009 recession in Europe**. These effects are difficult to decouple from the reforms to the cabotage Regulation and EU enlargement, although some impacts can be identified.
- The possibility given to EU12 MSs to enter the EU road cabotage market has led to positive outcomes including: the **reduction in transport costs** experienced in several EU15 MSs and **new business opportunities** for EU12 hauliers. It has also led to some drawbacks such as **reduced profitability** of EU15 operators, **safety concerns** and potential **driver shortages** to name three.
- From the analysis undertaken it seems that the need for further market opening are driven by: the need to reduce **empty runs** and the overarching goal of creating a **European Single Transport Area** where road hauliers from different MSs are free to get access to the transport profession in different countries as well as to undertake transport operations across the EU.
- Any **review** of existing **cabotage rules** would benefit from the introduction of a distinction between the **two** goals mentioned above. This would help to identify the changes that should be made to current legislative provisions.
- The proposal put forward by the HLG report to distinguish between linked and non-linked cabotage operations goes in this direction.
- A fully integrated EU road freight market would also need **more harmonised framework conditions**: such as the harmonisation of socio-economic-legal conditions and rules which can be complementary to liberalisation.
- Looking forward, a **gradual and flexible opening** of the road cabotage market accompanied by **further harmonisation of social legislation** and **enforcement procedures** indicated by the HLG seems to be the ideal approach. The policy options and measures to be chosen to implement it need to be selected carefully and reflect the short/medium and long term goals agreed and set in European Transport Policy.



## 6. CONCLUSIONS AND RECOMMENDATIONS

### 6.1 Conclusions

The EU road cabotage market has experienced significant changes in recent years as a result of: the entrance into the market of hauliers from EU12 MSs and the introduction of a new regime for cabotage operations, laid down by Regulation (EC) No 1072/2009.

Any future review of the internal market in road freight transport should be based on the lessons learnt from these changes.

The adoption of Regulation (EC) No 1072/2009 has removed national interpretations of the previous rules and thus increased certainty in the sector. The new Regulation has clarified the temporary nature of cabotage by introducing quantitative criteria (the "3 operations in 7 days" rule) to define the scope for this type of operation, potentially making the monitoring and enforcement of cabotage rules simpler. This has also been facilitated by linking international cabotage to international carriage operations (not included in previous rules). Finally, it harmonised the requirements for documentation that were previously very diversified across the EU and in some cases represented a high barrier to entry for hauliers from foreign MSs.

It is generally agreed however that improvements can still be made to the Regulation in particular in relation to the interpretation of current rules and enforcement. The first of these is needed as there are areas, such as in relation to partial unloading of cabotage operations (multidrops), which are dealt with differently in different MSs. On enforcement, each MS has adopted a different approach to monitoring, enforcing and sanctioning infringements which make illegal cabotage operations more or less risky depending on the country where it is undertaken. For example, fines can vary from a minimum fine of €100 in Hungary to a maximum fine of €200,000 in Germany. In addition, a number of stakeholders complained that often the enforcement bodies across Europe lack the resources to monitor and enforce the cabotage provisions effectively, not least because there is little national and international cooperation among the authorities in charge of monitoring and enforcing the requirements of the Regulation.

As mentioned throughout the study, EU enlargement in 2004 had a significant impact on cabotage operations across Europe as it gave the possibility to hauliers from new MS to compete with those of EU15 MS. Pre-accession treaties limited their ability to perform cabotage operations in EU15 Member States by means of a system of temporary restrictions, most of which were lifted in 2009 for those that entered in the EU in 2004. By contrast, Bulgarian and Romanian hauliers were not allowed to perform cabotage in most countries until 1 January 2012.

While it is not possible to assess the exact impact of the Regulation on cabotage trends, it is clear that the opening up of the market to new MSs was one of the major causes of the changes in cabotage volumes across the EU. This can be seen in the data relating to cabotage following the 2009 recession, where cabotage operations carried out by EU12 MSs increased substantially compared to activities of EU15 hauliers.

The entrance of the new Member States into the EU cabotage market introduced new providers of cabotage operations: in 2011 Polish road hauliers carried out the most cabotage operations, surpassing the volumes of German and Dutch hauliers, which used to

be among the most active operators before EU enlargement. Overall the proportion of cabotage operations undertaken by vehicles registered in any of the EU12 Member States increased from 12% in 2007 to nearly 40% in 2011.

By contrast, EU enlargement did not alter the main destination countries for cabotage. The MSs with the highest penetration rates of cabotage activities are still Belgium and Austria, while in terms of total volumes the main destinations are the biggest EU15 economies: Germany, France, Italy and the UK.

The increased activity of EU12 hauliers, especially Polish ones, in the recent years can be partially explained by the fact that they can offer lower prices thanks to the lower labour costs in comparison to most EU15 MSs. This cost advantage is attributable to different wage levels (that over the long term should level out), but also to different social protection systems that impose different labour costs on firms from new and old MSs. This poses a crucial question that needs to be addressed in light of any future liberalisation: is it fair in an open and competitive market that the success of firms is (predominantly) driven by their ability to get access to more favourable labour market provisions? Competition seeks to ensure total economic efficiency which should not focus exclusively on labour market and social security provisions.

The EU Posting of Workers Directive has been used to minimise the differential in labour costs between EU MSs. However the analysis undertaken in this study reveals that there is no uniform application of this Directive in the cabotage market and that it does not address differences in national social insurance regimes.

Other regulatory issues challenge the smooth functioning of this market. For example, the extent to which clients of road haulage operations are co-responsible for potential infringements by cabotage operators or the insurance requirements imposed on vehicles circulating on the national networks. Both of these areas are interpreted differently in different MSs and a harmonisation of these issues would benefit the market as a whole.

It is difficult to decouple the effects of recent reforms to cabotage rules from the effects of the wider economic downturn in Europe. Nevertheless, the analysis undertaken reveals that the presence of such heterogeneous conditions across the EU has had different socio-economic effects in different countries. The analysis in this study shows that, overall, cabotage has put downward pressure on transport costs in several EU15 MSs and has created new business opportunities for EU12 hauliers. This has however been counterbalanced by the reduced profitability of EU15 operators, safety concerns and the potential of driver shortages going forward. All these factors are likely to be amplified in the short term with further market opening unless the liberalisation is carried out in a gradual manner and it is accompanied by stronger enforcement regimes at a national level.

## 6.2 Recommendations

The two main factors that are driving further liberalisation are further **reducing empty running** and **creating a European Single Transport Area**. Each of these factors needs to be addressed separately to ensure that the overall goal of increasing the efficiency of the road transport market is achieved. The proposal put forward by the HLG report that distinguishes between linked and not linked cabotage operations seeks to do just this.

A fully integrated and correctly functioning EU road freight market would also need further **harmonised framework conditions** including the harmonisation of socio-economic-legal

aspects. An example of lack of harmonisation is given by the different application of the Posting of Workers Directive in the cabotage market across the EU.

Looking forward, the most appropriate approach seems to be a **gradual and flexible opening of the road cabotage market** which is accompanied by further harmonisation of social legislation and enforcement procedures. The policy options and measures that are applied to ensure this need to ensure that they reflect the short/medium and long term goals set out in European Transport Policy.

To ensure efficiency and reduce empty running a different approach to the "3 in 7" rule could be considered through the removal of the maximum number of cabotage operations (3) allowed in 7 days and/or a revision of the provision that requires the full unloading of international carriage before a cabotage operation.

Enforcement could be facilitated if the start of cabotage operations were linked to border crossing rather than unloading, something that will be easier to monitor thanks to on board equipment such as GPS or road user charging devices. A number of further measures could be introduced to improve the effectiveness of enforcement: the introduction of a system similar to that used in the UK (the OCRS) could facilitate enforcement within Member States; greater cooperation and exchange of information between national and international bodies responsible for enforcement of road legislation would also facilitate this. There are other potential improvements to enforcement that have been suggested by the High Level Group and other stakeholders. All these measures need to be analysed in more detail and on a case-by-case basis to assess the cost-benefit of the impact of each proposal.

The goal of achieving a fully integrated European Transport Area requires a detailed Impact Assessment of the socio-economic effects of different options that could be put in place and of their timing implications, given the great imbalances that still exist between different the framework conditions (in particular labour aspects) in different MSs. In this respect, and in addition to the enforcement aspects mentioned above, it seems clear that a decision needs to be taken on whether or not to further harmonise labour laws applying to the cabotage sector as well as the way companies commissioning haulage operations are responsible for their haulage choices (co-responsibility) before full opening of the market is implemented.

## KEY FINDINGS

- Improving the efficiency of the road haulage market through the twin goals of reducing empty running and that of creating a Single European Transport Area should be addressed through **separate measures**.
- The proposal put forward by the **HLG report** – that distinguishes between cabotage operations linked to international carriage from those not linked to it - goes in the right direction to separate the two goals mentioned above.
- In relation to **reducing empty running**:
  - (i) a different approach to the “3 in 7” rule currently in force could be considered. Examples are the removal of the maximum number of cabotage operations (3) allowed in 7 days and/or a revision of the provision that requires the full unloading of international carriage before a cabotage operation;
  - (ii) enforcement could be facilitated by linking the start of cabotage operations to border crossing rather than unloading, as this will be easier to monitor thanks to on board equipment such as GPS or road user charging devices;
  - (iii) there is scope for the adoption of other complementary enforcement measures – such as the introduction of more innovative control systems or better inter-institutional cooperation between MSs - though an analysis of their potential cost-benefit impacts is recommended before any decision regarding their implementation is taken forward.
- As for the overarching goal regarding the **creation of a Single European Road Transport Area**:
  - (i) **further opening-up** of the market needs to be accompanied by **deeper harmonisation** of the socio-economic and legal conditions across the EU;
  - (ii) enforcement practices, labour provisions applying to road cabotage operations and the way different actors of the logistics chain are responsible for infringements of cabotage rules, seem to be the areas where further harmonisation is required with more urgency;
  - (iii) as a result of the existing imbalances between framework conditions in different MSs, the most appropriate approach seems to be **a gradual and flexible opening** of the road cabotage market;
  - (iv) it is recommended that a detailed **Impact Assessment** is undertaken of the socio-economic effects of different options that could be put in place and of their timing implications.

## REFERENCES

- BAG (2012), *Marktbeobachtung Güterverkehr - EU Osterweiterung, Mögliche Auswirkungen der Kabotagefreigabe für Bulgarien und Rumänien zum 1 Januar 2012 auf den deutschen Güterverkehrsmarkt*, Germany;
- Banque de France (2011), *Économique et financier du transport routier en France 2006-2010*, France;
- Bayliss, B.T. et alt. (2012), *Report of the High Level Group on the Development of the EU Road Haulage Market*, June 2012;
- Bende, Z. (2011), *Billentik a mérleget, Working Paper of the Hungarian Association of Road Hauliers*,  
[http://www.mkfe.hu/dokumentumok/pdf/billentik\\_a\\_merleget\\_bende\\_zoltan\\_2011\\_03\\_21.pdf](http://www.mkfe.hu/dokumentumok/pdf/billentik_a_merleget_bende_zoltan_2011_03_21.pdf);
- Bundesgesetz über Gesundheits- und Krankenpflegeberufe (GüKG), Road Haulage Act, Germany;
- Bundesverband Güterkraftverkehr Logistik und Entsorgung (BGL) (2012), *Jahresbericht 2011-2012*, Annual Report, October 2012, Germany;
- Camera dei Deputati, XVI legislatura, *Bollettino delle Giunte e delle Commissioni Parlamentari, Trasporti, Poste e Telecomunicazioni (IX)*, 17 December 2009, Italy;
- CNR - Comité National Routier (2011), *Etudes internationales*, 2011, France;
- *Code du Travail*, 2013, France;
- Commissione per la sicurezza stradale nel settore dell'autotrasporto (2012), *Attività di controllo della Polizia Stradale*, Italy;
- Cross Ministerial document (2009), *Protocollo d'intesa tra il Ministero dell'Interno e il Ministero delle Infrastrutture e dei Trasporti per il potenziamento e la semplificazione dei controlli di legalità nel settore del trasporto stradale di merci*, Italy;
- Das Bundesgesetzblatt für die Republik Österreich (BGBl.), *Arbeitsvertragsrechts-Anpassungsgesetz (AVRAG)*, BGBl. Nr. 459/1993, latest amended by BGBl. I Nr. 100/2002, Labour Contract Law, Austria;
- Das Bundesgesetzblatt für die Republik Österreich (BGBl.), BGBl. Nr. 218/1975, latest amended by BGBl. I Nr. 98/2012, Austria;
- Das Bundesgesetzblatt für die Republik Österreich (BGBl.), BGBl. I Nr. 794, Austria;
- Das Bundesgesetzblatt für die Republik Österreich (BGBl.), BGBl. I Nr. 3976, Austria;
- Das Bundesgesetzblatt für die Republik Österreich (BGBl.), BGBl. I S.42, Austria;
- Das Bundesgesetzblatt für die Republik Österreich (BGBl.), BGBl. I S.602, Austria;
- Das Bundesgesetzblatt für die Republik Österreich (BGBl.), *GütbefG*, BGBl. Nr. 593/1995, latest amended by BGBl. I Nr. 153/2006, Austrian Road Freight Transport Act, 31 August 1995, Austria;
- Das Bundesgesetzblatt für die Republik Österreich (BGBl.), *Kabotagekontrollverordnung*, BGBl. II Nr. 132/2007, Austrian Cabotage Monitoring Ordinance, 18 June 2007, Austria;

- Das Bundesgesetzblatt für die Republik Österreich (BGBl.), *BGBl. I Nr. 24/2011*, Wage and Social Dumping Combat Act, Austria;
- *Decree of the State Council No 2010-389*, 19 April 2010, France;
- Dieplinger M., Furst, E. and Lenzbauer, S. *Flagging Out as a Popular Strategy of Road Freight Transport Companies. Evidence of Three Consecutive Research Projects in Austria*. European Transport Conference, 2010 Proceedings.
- *Directive 2008/17*, 5 October 2008, France;
- Dutch Ministry of Infrastructure and Environment (2013). *The impact of untightening of cabotage*.
- ECORYS and E&Y (2006), *Study on Road Cabotage in the freight transport market*, DG TREN, March 2006;
- European Commission (2005), *Commission Interpretative Communication on the temporary nature of road cabotage in the movement of freight*, Official Journal of the European Union, 26 January 2005;
- European Parliament resolution on Single European Transport area adopted on 15 December 2011. P7 TA(2011) 0584;
- Eurostat database 2012
- *Government Decree No 156/2009. (VII. 29)*, 29 July 2009, Hungary;
- [http://www.corriere.it/economia/12\\_gennaio\\_25/di-vico-2000-tir-dimezzano-prezzi\\_6bee0d22-471f-11e1-8fa7-b2a5b83c8dfe.shtml](http://www.corriere.it/economia/12_gennaio_25/di-vico-2000-tir-dimezzano-prezzi_6bee0d22-471f-11e1-8fa7-b2a5b83c8dfe.shtml);
- [http://www.fntr.fr/sites/default/files/cnr\\_competitivite-pavillon-francais-2011.pdf](http://www.fntr.fr/sites/default/files/cnr_competitivite-pavillon-francais-2011.pdf);
- Institut national de la statistique et des études économiques (INSEE) (2010), [http://www.insee.fr/fr/themes/detail.asp?reg\\_id=0&ref\\_id=esa-transport-2010](http://www.insee.fr/fr/themes/detail.asp?reg_id=0&ref_id=esa-transport-2010);
- International Road Transport Union (2011), *Road Transport Regulating and Enforcement Bodies*, September 2011, Hungary, <http://www.internationaltransportforum.org/IntOrg/road/ctrlbodies/rdhungary.pdf>;
- International Transport Forum (2009), *The construction and operation of the road freight transport market in Europe*, Forum Paper 2009-1;
- Zreszenie Międzynarodowych Przewoźników Drogowych w Polsce (ZMPD), *Jakie zabezpieczenie finansowe? ZMPD interweniuje*, Retrieved 18/12/2012, Poland, [http://zmpd.zmpd.pl/aktualnosc.php?akt\\_id=2378](http://zmpd.zmpd.pl/aktualnosc.php?akt_id=2378);
- Kennisinstituut voor Mobiliteitsbeleid (2012), *Mobiliteitsbalans*, Institute for Transport Policy, November 2012, Netherlands, <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2010/06/08/cabotage-and-co2-reduction.html>;
- *Law No 2005-882*, 2 August 2005, France;
- *Law No 2009-1503, Article 33*, 8 December 2009, France;
- *Legislative Decree 286*, 21 November 2005, Italy;
- *Ley de Ordenación de los Transportes Terrestres (LOTT) - Ley 16/87*, July 1987, Spain;
- *Loi d’Orientation des Transports Intérieurs (LOTI) – Loi 82-1153*, 30 December 1982, France;



- *ORDEN FOM/2181/2008*, Ministerial Order, July 2008, Spain;
- Ministero delle Infrastrutture e dei Trasporti (2012), *Conto Nazionale delle Infrastrutture e dei Trasporti (2010/2011)*, 11 July 2012, Italy;
- Ministero delle Infrastrutture e dei Trasporti - Direzione Territoriale Nord Est (2010), *Protocollo d'intesa Friuli Venezia Giulia*;
- Monika WRZESINSKA (2011), *Six years of road freight growth lost to the crisis*, Eurostat,  
[http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-SF-11-012/EN/KS-SF-11-012-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-11-012/EN/KS-SF-11-012-EN.PDF);
- *MT Regulation 89/1988. (XII. 20.)*, Hungary;
- OTEP (2010), *Sixth Report of the Cross-Border Observatory between Spain and Portugal*;
- Ryszard Gałczyński, *Efekt Budziska*. In "Przewoźnik ZMPD", Retrieved 18/12/2012, Poland,  
[http://przewoznik.zmpd.pl/aktualnosc.php?akt\\_id=259](http://przewoznik.zmpd.pl/aktualnosc.php?akt_id=259);
- Statistik Austria (2012), *Österreichische Verkehrsstatistik, 2011*;
- United Nations (1956), *Convention on the Contract for the International Carriage of Goods by Road*;
- *Ustawa o transporcie drogowym z dn. 6 września 2001 r. z późniejszymi zmianami. Dz. U. 2001 Nr 125 poz. 1371*, Road Transport Act, Poland;
- Van Hoek and Houwerzijl (2011), *Comparative study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union*, March 2011;
- Verkehrs Rundschau: Das Portal für Spedition, Transport und Logistik,  
[http://www.verkehrsrundschau.de/oesterreich-fraechter-fordern-streng-kabotage-kontrolle-943218.html#Szene\\_1](http://www.verkehrsrundschau.de/oesterreich-fraechter-fordern-streng-kabotage-kontrolle-943218.html#Szene_1);
- VOSA (2012), *Moving on, Issue 40*, September 2012.



## **ANNEX : SUMMARY OF INFORMATION RELATING TO SELECTED MEMBER STATES**

### **EXECUTIVE SUMMARY OF CASES STUDY**

#### **Summary for Austria**

Before the entry into force of Regulation (EC) No 1072/2009, the Cabotage Monitoring Ordinance regulated the requirements and the necessary documentation to be carried during cabotage operations in Austria. Following the entry into force of the Regulation this ordinance is no longer applicable, and lack of clarity existed about the documentation necessary to be carried during cabotage operations up to February 2013, when the Austrian Ministry of Transport adapted national regulations to the provisions of Regulation (EC) No 1072/2009 with an amendment of the Austrian Road Freight Transport Act. Of particular interest to cabotage operations are amendments of Articles 7 and 17 in this law. In addition, Austria has exercised the right to apply the Posting of Workers Directive to cabotage operations. Therefore, cabotage is subject to the provisions of Austrian labour laws.

In practice, controls mostly take place at the roadside and are carried out by the local police. There is no distinct unit exclusively responsible for monitoring compliance with road haulage legislation. However, the Austrian Commercial Chamber claims that the abolition of the requirement to carry cabotage control sheets (regulated by national law) makes checks difficult. In Austria, the organisation contracting transport services is required to request proof of compliance with provisions of Austrian labour laws from the contracted haulier. If it does not request proof, it is also liable for any infringement by the haulier.

After the opening of the domestic market to hauliers from the 2004 Accession countries in 2009, the share of non-domestic hauliers experienced a strong increase, from 2.7% in 2008 to 3.6% in 2011. Since its peak in 2006, cabotage operated by Austrian hauliers abroad has shown a gradual decrease. As a result, in 2011 Austria switched to being a net-importer of cabotage operations.

The Austrian Chamber of Commerce claims that Austrian road freight hauliers face serious competition. Since the main criterion for contracting hauliers is price, Austrian hauliers have a substantial disadvantage in competition against hauliers from new Member States. Although in Austria the Posting of Workers Directive applies to cabotage, the Chamber of Commerce believes that foreign hauliers largely do not comply with its provisions. This is mainly due to the administrative burden in combination with a lack of control. Furthermore there is the suggestion that foreign hauliers carry out three cabotage operations on a single day, leave the country, only to return the next day, and to carry out legally three more further cabotage operations.

#### **Summary for France**

France is the second largest market in Europe for cabotage operations as a result of its location making it an important transit country in Europe. Some French operators also carry out cabotage operations in neighbouring countries. The Regulation is in force according to its requirements and there is a specialised control body in place that has undertaken a large number of checks in recent years. These checks have identified, more than anything, infringements of social legislation rather than infringements relating to the cabotage provisions.

High social security costs and stringent working condition requirements have led to French hauliers becoming less competitive when compared to companies from other Member States. This largely explains the high level of cabotage operations by foreign hauliers in France, and the small share of cabotage undertaken by French hauliers abroad, coupled with the geographic location of the country being at the cross-roads of Western Europe, and the structure of the French economy, centred on domestic demand with a foreign trade deficit.

## Summary for Germany

The ordinance on International Road Haulage and Cabotage (GüKGrKabotageV) of 2008 anticipated the entry into force of Regulation (EC) No 1072/2009. This ordinance established the requirements to carry out cabotage in Germany and the documentation necessary to carry on the vehicle. After the entry into force of the Regulation, the German Road Haulage Act was amended by a list, setting out in detail infringements against the Regulation and applicable fines. No major amendments of German law were necessary, as most provisions of the Regulation had already been in force.

A particularity in German legislation, stated in the Road Haulage Act (GüKG), is the requirement for hauliers wanting to carry out domestic transport services (including cabotage) to hold liability insurance of €600,000. According to foreign hauliers and the Federal Office for Goods Transport this forms an important barrier to entry in the German market. In addition, the contracting party is required to request information from the haulier on the availability of the required documentation. The contracting organisation can be made responsible and charged with a fine if this was not the case.

The German Federal Office for Goods Transport (BAG) check compliance with the laws related to road haulage. Monitoring compliance mainly takes place by means of roadside checks. However, both the Federal Office and industry stakeholders mentioned that monitoring compliance with the current law is not straightforward and infringements against certain requirements, e.g. empty entry, are almost impossible to monitor. This appears to be an EU-wide issue given that stakeholders from various Member States mentioned this concern.

Between 2005 and 2011, the total market for road haulage in Germany increased by 12%. In contrast, the share of cabotage in the market for 'hire and reward' proved to be more dynamic and increased from 2% to 3% over the same period. In addition, and especially after 2008, German hauliers lost substantial parts of their cabotage volumes transported abroad. As a result, cabotage volumes transported in Germany in 2011 were three times as high as cabotage carried out by German vehicles abroad.

Despite the existence of barriers to enter the German domestic road haulage market (e.g. the requirement to hold liability insurance against goods damage), hauliers from the 2004 Accession countries significantly increased their participation in the German market from 0.3% in 2006 to 1.5% in 2011. Stakeholders claim that this is mainly due to significant lower staff costs in these countries. After the further opening of the market to hauliers from Bulgaria and Romania in 2012, industry associations expect a strong entry into the German domestic market, given staff costs in these countries are approx. 50% lower those in Germany. In contrast, the BAG believes that a further opening will not have a significant impact on the domestic market, as high barriers exist and German freight forwarders preferably contract domestic hauliers rather than dealing with uncertainties related to contracting east European hauliers. However, freight forwarders do apply pressure on German hauliers in order to keep prices low.

## Summary for the United Kingdom

Cabotage operations in the UK have developed substantially in recent years and, apart from Irish hauliers, there has been a shift in the origin of the operators that are carrying out the cabotage operations with more cabotage being undertaken by Eastern European hauliers.

Monitoring of cabotage in United Kingdom is carried out by VOSA which also monitors compliance with other HGV, road related requirements (such as road worthiness). Its roadside checks are carried out both on foreign operators and on domestic operators; the share of foreign operators that are checked is about 47%. VOSA has also developed a system to monitor compliance with all road related laws, the OCRS. This system is a risk based tool that provides VOSA with an assessment of the probability that an operator will infringe one of the laws. This system was recently updated to improve its functionality.

The main concern in the United Kingdom is not related to wage levels of foreign hauliers as competition is seen as a good thing for the sector, the greater concern relates to ensuring that the vehicles that are entering United Kingdom are adhering to the appropriate safety standards.

## Summary for Hungary

The entry into force of Regulation (EC) No 1072/2009, led to a number of changes in Hungary including no longer having a centralised database monitoring cabotage activities in the country, as the former "cabotage report" was found to be contrary to the Regulation. This has led to a number of difficulties in monitoring and enforcing cabotage across the country as a result of the number of authorities involved under the new regime. These difficulties have made enforcement very difficult and there is no evidence that any penalties have been issued in relation to cabotage in Hungary.

Eurostat statistics, however, show that the ratio of cabotage carried out on Hungarian territory is remarkably low, ranging from 0.056% to 0.21% of annual road freight traffic. Representatives of the industry have stated that the number of cabotage operations performed by Hungarian road haulage companies abroad is also very low, and they occur mainly as linked cabotage.

The opinion of the Ministry, the National Transport Authority and the industry seems to be fairly uniform on the matter of further market liberalisation. That is that under the present state of social and economic conditions, the cabotage operations enabled under Regulation (EC) No 1072/2009 are adequate and appear to ensure the right level of freedom in road freight transport. The Hungarian Road Transport Association would like to see the Regulation simplified by removing the provision regarding the maximum number of cabotage operations, but would leave the constraint of 7 days unchanged.

## Summary for Italy

The European cabotage rules were already being applied in Italy before the entry into force of Regulation (EC) No 1072/2009, given that the previous national rules (Italian Transport Ministry Decree of 3 April 2009) were similar to the EU Regulation. However the new Regulation has raised the number of operations that hauliers can carry out within the 7 days limit from 2 to 3. The Ministry has also laid out a set of sanctions which vary depending on the type and recurrence of cabotage infringements. Vehicles can be impounded if drivers fail to pay fines on the spot.

Cabotage activities have grown in Italy by more than 100% between 2000 and 2010. The main contribution to this growth has come from EU12 hauliers, and in particular Slovenia and Poland. At the same time, the Italian market for road freight transport has been suffering since the onset of the economic crisis in 2008: the number of HGV registrations in 2012 was among the lowest in Europe and heavy traffic was still below its 2000 levels.

As a result, the industry is concerned about the growing market share of foreign hauliers in Italy. The analysis of traffic flows in one of the regions most exposed to competition, Friuli Venezia Giulia, shows a sharp increase in foreign traffic together with a significant decline in the number of local companies. Local authorities and national governments have promoted more coordination of the control bodies in recent years to improve the effectiveness of enforcement procedures, focusing on legal/language training and regional cooperation.

In addition, wage and working conditions mean that Italian hauliers are not very competitive abroad. They suffer from high labour costs, high fuel costs, as well as geographical and economic fragmentation. Cabotage might be responsible for some of the erosion of domestic companies' market shares, especially in bordering regions. In light of this, it seems that lower fiscal and bureaucratic burdens, together with industry consolidation, are the most effective solutions to reinstate the competitiveness of Italian hauliers in the long-run.

The analysis above shows that several stakeholders believe there is a need to review the EU and national rules related both to cabotage and to wider road transport competitiveness. As for EU legislation on cabotage, stakeholders claim that there is a need for greater enforcement of existing rules before considering any other amendment to current legislation. In particular they believe there is a need to harmonize the different social and working conditions of drivers from different Member States before any further opening of the market is taken forward.

As for national rules, a series of provisions have undergone further scrutiny as a result of the introduction of the new cabotage regime in 2010, such as the rules on "minimum costs for freight transport". The National Logistics Plan has also incorporated several proposals to improve the effectiveness of enforcement actions in the near future.

## Summary for Lithuania

In Lithuania there were no legal national acts were passed or changed as a result of the entry into force of Regulation (EC) No 1072/2009. Road cabotage is regulated by this Regulation and penalties for infringements related to all documentation (including cabotage) are set by the Code of Administrative Infringements of Republic of Lithuania. We have been informed that there are no specific procedures for control of road cabotage in Lithuania. Cabotage operators are checked in the same way as any other freight carriers – that is they are all subject to random checks. During roadside checks carried out by the Road Transport Vehicle Inspectorate, officers check all documents related to vehicle and goods carriage and also compare cargo transportation documents with rest and driving period data.

Although the contribution of Lithuanian hauliers to cabotage operations in other EU Member States grew by 78% between 2006 to 2011 when measured in tonne-km, the involvement of Lithuania in the EU cabotage market is rather low. According to Eurostat data, in 2011 Lithuanian road hauliers accounted for about 0.33% of the cabotage market in other EU Member States. Regulation (EC) No 1072/2009 has also had little impact on the Lithuanian freight market as the market is too small for foreign operators to be interested in carrying out cabotage operations there. Furthermore, the scope of entry for foreign hauliers – especially EU15 ones - is rather limited as they face strong competition from internal freight

hauliers that are able to offer lower prices due to lower labour costs (drivers and support staff). Lithuanian freight hauliers have a competitive advantage in road cabotage due to salaries, related taxes as well as social security. However we have been told that Lithuanian drivers working abroad are not protected by Lithuanian professional unions nor by foreign professional unions therefore actual working conditions of drivers can be very poor.

Representatives of the Ministry of Transport and Telecommunication of Lithuania and the State Road Transport Inspectorate under the Ministry of Transport and Communications stated that further clarification is necessary at the EU level on specific details of the cabotage rules provided in the Regulation especially related to monitoring (how to make sure that it is actually road cabotage and whether it is the first or fourth operation). Also it was suggested from Lithuanian stakeholders that a more appropriate approach would be to set a maximum period for cabotage without setting the number of cabotage operations and allow road cabotage in cases of partial delivery (multi-drop) without having the requirement to unload all goods transported internationally to optimise transportation costs and reduce empty running.

### **Summary for the Netherlands**

In the Netherlands, the cabotage regime is currently being reformed and the new Road Transport Act will be passed by the national Parliament in 2013. The industry associations are expecting some significant changes especially to the control and enforcement system and the related sanctions. At present, the authorities tasked with enforcement (the ILT Inspectorate and the road police) lack the necessary powers to impose fines and intensify controls due to the legislative vacuum and recent budget cuts.

Dutch hauliers have traditionally had a dominant market position across the EU thanks to the flow of goods from its ports and airports and the presence of large haulage companies. Dutch operators are the second most active cabotage service providers with a 12% market share at EU level, however hauliers registered in Poland and Slovakia have increased their market presence both in the Netherlands and abroad, in competition with Dutch hauliers.

The combined impact of the recession and of market entry by EU12 hauliers has contributed to changing attitudes towards cabotage. Industry associations, including those who were once in favour of full liberalisation, are calling for the government to intervene in order to limit the negative socio-economic effects of cabotage, such as illegal contracting by shippers, companies being forced to close down and drivers' shortages. In this respect, the Dutch Association of Transport and Logistic (TNL) recently declared that it is against any EU action targeted at further liberalising the cabotage sector and that a further harmonisation and enforcement of current rules is first necessary to level the differences between old and new EU Member States.

On the other hand, it must be pointed out that the full liberalisation of cabotage in the Benelux region represents an example of successful market opening in the presence of a harmonised socio-economic environment. The national governments have repeatedly prolonged this agreement given its benefits, which include a reduction in empty runs and CO2 emissions, as well as greater economic integration.

### **Summary for Poland**

Poland was excluded from the EU cabotage market due to interim restrictions for new Member States between 2004 and 2009. Regulation (EC) No 1072/2009 came into force soon



thereafter, in May 2010. The Polish road haulage market is policed by its own enforcement agency, and there is a clear system of sanctions for violating the cabotage rules written into the Road Transport Act, which governs commercial road transport activities.

Whilst there has not been much growth in the cabotage market within Poland itself, Polish hauliers have taken over a large proportion of cabotage markets in the EU15 Member States, and are now the largest providers of cabotage services in the EU.

Polish stakeholders are broadly content with the scope of the current regulation. Whilst they are not against further liberalisation of the rules governing this sector, they are keen to shift the focus of the EU on the harmonisation of the implementation and enforcement of the existing rules.

Polish road haulage companies continue to be very competitive abroad, thanks to low labour costs in comparison with the EU15 Member States. Given the continued growth of the Polish economy throughout the economic crisis, this will drive the demand for Polish road haulage services both in international and cabotage traffic. Whilst the continued economic growth will lead to a gradual increase in the salary levels within the Polish road transport industry, increased competition from Romanian and Bulgarian drivers may keep Polish salary levels in check.

## Summary for Spain

In 2008, Spain adopted cabotage provisions very similar to those contained in Regulation (EC) No 1072/2009, with the Ministerial Decree ORDEN FOM/2181/2008. The entry into force of these provisions was needed to clarify the existing regulations in Spain which, prior to 2008, only referred to Community law at a high level with no detailed provisions. The government ensured, in consultation with stakeholders, that such provisions would be in line with the forthcoming European rules.

The responsibility for controls lies with the Ministry of Fomento, in coordination with policing bodies. However several enforcement problems exist in Spain. These include the issue of coordination between regional police and national authorities, as well as the difficulty to identify so called "ghost companies". A general fine of €4,601 has been set for cabotage infringements; however this is a lower sanction than in many other MSs.

Cabotage activities in Spain are not as wide-spread as in other EU15 Member States. Most cabotage is undertaken by Portuguese hauliers which enjoy a lower cost base and dominate cross-border trade activities, while Spanish companies are in turn more competitive in the French market. The Spanish market has become less attractive to foreign hauliers in recent years, particularly given the continued recession and the collapse of the construction sector. The whole industry is downsizing, with the number of certified licences in 2012 on the same levels as 1999. However a less attractive domestic market, together with higher cabotage activity by Spanish operators abroad, have resulted in positive net cabotage volumes for Spain.

A general reform of the road transport sector is going to be introduced by the Spanish government in 2013. Legislative changes will focus on increasing the competitiveness of the sector by reducing the number of authorisations needed and implementing an online system to speed-up bureaucracy.

Cabotage will also be under review, considering that it was listed as the second most important area of reform in the 2012 National Inspection Plan consultation of stakeholders. In particular, industry associations advocate for improved controls in the Spanish territory and



suggest that a larger share of controls should take place in the form of company inspections rather than road checks. These measures are advocated primarily to tackle illegal practices that industry groups claim are taking place regarding Spanish companies who delocalise to Eastern Europe and then operate under the cabotage regime in Spain, exploiting more favourable fiscal and labour laws abroad.

The Spanish government is currently not supportive of further market opening at the European level. Legislative efforts are currently focused on improving the effectiveness of controls and promoting harmonisation of rules and sanctions within the existing regulatory framework.



## A.1. CASE STUDY AUSTRIA

Austria has a population of approximately 8.4 million inhabitants. It shares borders with Switzerland, Liechtenstein, Germany, Czech Republic, Slovakia, Hungary, Slovenia and Italy. The Austrian road network comprises 1,719 km of motorways and 466 km of dual carriageways.

According to Eurostat figures for 2009, there are a total of 51,782 workers in the Austrian road haulage industry employed by a total of 6,824 companies. This value is considerably lower than the value for 2007 and 2008.

### A.1.1. Legislative Background

In Austria, road cabotage is ruled by Regulation (EC) No 1072/2009, in force since 14 May 2010. Currently the Austrian domestic road haulage market is open to hauliers from all other EU and EEA states, within the scope identified in the above mentioned Regulation.

With accession of new Member States to the EU, Austria exercised its right to temporarily exclude from the provisions of the regulation hauliers from EU12 countries: Table A. 1.1 summarises the timeline for the opening of the Austrian market to newer Member States.

In Austria, road cabotage is ruled by Regulation (EC) No 1072/2009, and now the Austrian domestic road freight market is open to hauliers from all other EU and EEA states.

**Table A. 1.1 Market opening to new Member States in Austria**

Country	Date cabotage allowed
Bulgaria	1 January 2012
Czech Republic	1 May 2009
Estonia	1 May 2009
Latvia	1 May 2009
Lithuania	1 May 2009
Hungary	1 May 2009
Poland	1 May 2009
Romania	1 January 2012
Slovenia	1 May 2004
Slovakia	1 May 2009

Source: SDG research.

The Cabotage Monitoring Ordinance (Kabotagekontrollverordnung)<sup>42</sup> of 18 June 2007, in force from 18 July 2007 to 13 May 2010, regulated the documentation necessary to carry out cabotage operations in Austria. In particular it defined the content of the inspection sheet (Kontrollblatt) issued by the Ministry of Transport (BMVIT). Further to this it stated that this sheet had to be carried at all times on vehicles used for cabotage. Finally it stated that the inspection sheet was only valid in combination with a valid community licence. The Cabotage Monitoring Ordinance is no longer applicable following the entry into force of Regulation (EC) No 1072/2009.

Article 7 of the Austrian Road Freight Transport Act (GütbefG)<sup>43</sup> of 31 August 1995 established exemptions from the general prohibition to carry out cabotage operations in Austria. The act stated that hauliers wanting to carry out cabotage in Austria in accordance with Regulation (EEC) No 3118/93 were authorised to do this for a maximum of 30 days within a period of 60 days in a calendar year. This rule applied to the whole company rather than a single vehicle. Therefore the vehicles used for cabotage services were required to leave the Austrian territory at least once every calendar month. Following the entry into force of Regulation (EC) No 1072/2009, this Article is no longer valid.

#### **A.1.1.1 New EU rules on road haulage (Regulation (EC) No 1072/2009)**

In April 2010, the Austrian Ministry of Transport issued a letter to the Governors of the Austrian regions stating that the relevant national law can no longer be applied where it is in conflict with the applicable European law as well as stating that the Cabotage Monitoring Act is no longer valid. Further to this, Article 7 of the Austrian Road Freight Transport Act is only applicable for the provisions relating to the carrying out of cabotage operations without permission.

In February 2013, the Austrian Ministry of Transport adapted national regulations to the provisions of Regulation (EC) No 1072/2009 with an amendment of the Austrian Road Freight Transport Act<sup>44</sup>. Of particular interest to cabotage operations are amendments of Articles 7 and 17 in this law.

Several provisions of Article 7 have been changed to reflect the fact that cabotage is now regulated in its entirety by provisions of Regulation (EC) No 1072/2009. The powers that were still currently in force relating to the control sheets mentioned above have been deleted. In response to complaints from various stakeholders where it was alleged that there is no effective control mechanism, Article 7 now states that more detailed provisions regarding the necessary documentation to be carried shall be published in a subsequent decree issued by the Minister of Transport. Article 17, which required operators to carry the necessary documentation, has also been cancelled. In addition, the changes also affect the provisions for self-employed truck drivers.

Austria exercised the possibility provided in recital 17 of Regulation (EC) No 1072/2009 to apply the posted workers Directive 96/71/EC to cabotage operations<sup>45</sup>. Therefore in Austria, cabotage operations are considered to be postings of workers and are subject to the provisions of the Austrian Law Amending the Labour Contract Law (AVRAG)<sup>46</sup>. According to Article 7b of the latter, postings of workers, and therefore also cabotage operations, are only permitted if a notice of this posting is submitted to the responsible authority (Ministry of

---

<sup>42</sup> BGBl. II Nr. 132/2007.

<sup>43</sup> BGBl. Nr. 593/1995, latest amended by BGBl. I Nr. 153/2006.

<sup>44</sup> BGBl. I Nr. 32/2013.

<sup>45</sup> BGL (2012), *Jahresbericht*, Annual Report, October 2012.

<sup>46</sup> BGBl. Nr. 459/1993, latest amended by BGBl. I Nr. 100/2002.

Finance) at least 1 week in advance of start of operations. The 1 week notice is not applicable to cabotage operations carried out at short notice. In this case it is sufficient to give notice before start of operations.

Up to 30 April 2011, hauliers intending to carry out cabotage operations in Austria were additionally required to obtain a “confirmation of posting” notice, issued by the Austrian Public Employment Service. On 1 May 2011 this requirement, established by Articles 18 and 32 of the Employment of Foreign Nationals Act<sup>47</sup>, ceased to apply to workers from EU and EEA Member States, with the exception of Bulgaria and Romania. Workers from these states now have freedom of movement and can take on any job under the same conditions as Austrian citizens.

To prevent wage and social dumping as a result of the opening of the labour market on 1 May 2011, to guarantee domestic labour conditions and to ensure fair competition, the following additional requirements for companies sending staff abroad (to Austria) were established in the Wage and Social Dumping Combat Act.

Obligation to comply with the wage levels set out in Austrian legislation including classification criteria (basic pay, including overtime base salary but excluding extra payments, allowances, bonuses, premiums and individual contractual overpayments);

- Obligation to carry all wage related documents in German on the vehicles during cabotage operations.

The provisions of this law amended the Employment of Foreign Nationals Act (AuslBG) and the Austrian Law Amending the Labour Contract Law (AVRAG), both of these also apply to cabotage.

#### **A.1.1.2 The degree of enforcement of new and old rules and their impact on the EU road haulage market**

In Austria, the responsible body for monitoring compliance with cabotage regulations is the Ministry of Interior. In practice, controls mostly take place at the roadside and are carried out by the local police. Table A. 1.2 gives an overview of the responsible bodies in different road transport related issues.

Article 9 of the Austrian Road Freight Transport Act (GütbefG) applies when an infringement of cabotage regulations is identified. This article states that in the case of infringements against Article 7 of this act, or against applicable European law in general, local authorities have to prohibit the continuation of the journey. In addition, Article 23 of the Austrian Road Freight Transport Act states that the fines vary from €1,453 to €7,267.

In accordance with Article 29a of the AuslBG, the organisation contracting transport services is required to request proof of compliance with provisions of AVRAG/AuslBG from the contracted haulier. If the contracted haulier does not provide the necessary documentation, the contracting organisation has to give immediate notice to the Ministry of Finance. In the event that the contracting organisation does not comply with these requirements, it is fully liable for the proper employment of the posted worker in its country of origin (only non-EU and non-EEA Member States with the exception of Bulgaria and Romania), the compliance with Austrian wage levels and working conditions, and the issuing of the EU confirmation of posting.

<sup>47</sup> BGBl. Nr. 218/1975, latest amended by BGBl. I Nr. 98/2012.

In the event of infringements against provisions of the AVRAG/AuslBG, an administrative penalty of between €1,000 and €10,000 can be levied for up to three posted workers, and €2,000 to €20,000 in the event of repeat offences. When more than three posted workers are involved, the fine increases to between €2,000 and €20,000 for first time offenders, and between €4,000 and €50,000 for repeat offences. In addition, the competent authority can prohibit further cabotage operations by the foreign operator for a period of at least one year. A violation of this prohibition leads to a fine of between €2,000 and €20,000.

**Table A. 1.2 Road Transport – Control Authorities in Austria**

Items to be controlled	State police	Local police	Customs	Transport Ministry	Road Admin.
Traffic regulations and driving licences		x			
Authorisations for international road transport		x	x		
Special authorisations for carriage of passengers and other related documents		x	x		
T1 documents or TIR Carnets			x		
Weights and dimensions		x			
Certificate for carriage of perishable foodstuff		x			
Documents on veterinary and phytosanitary control		x			
Road user charges					x
Technical conditions of motor vehicles		x			
Regulations on driving hours and rest periods		x		x	
Regulations on transport of dangerous goods		x			

Source: Adapted from IRU (2011).

According to the Austrian Chamber of Commerce, in practice it is almost impossible for the authorities to check compliance with the current law. In particular the abolition of the requirement to carry cabotage control sheets (regulated by national law) makes checks difficult. It is very difficult for the responsible authorities to determine whether hauliers carry out cabotage legally or how long they have been carrying out cabotage operations for.

In addition, only the Financial Police is entitled to carry out controls in relation to monitoring compliance with the Posting of Workers Directive. Given that the local police is responsible for carrying out controls at the roadside, no cases of infringement have been reported.

### A.1.1.3 The need for a review of the rules

In preparation of the new legislative provisions recently adopted, the Ministry of Transport asked several stakeholders and the Austrian Regional Governors to comment on the draft. The Austrian Trade Union Federation (ÖGB) and several other stakeholders criticised in particular the cancellation of the Cabotage Monitoring Ordinance, on the grounds that it made the monitoring of cabotage almost impossible. Furthermore, the cancellation of Article 17 creates substantial uncertainty relating to the documents that need to be carried during journeys.

Austrian stakeholders believe there has been an improvement after the entry into force of Regulation (EC) No 1072/2009, especially due to the disappearance of the numerous different national provisions. However, the Austrian Chamber of Commerce claimed that there is still a lack of clarity regarding the documentation that needs to be carried. They further stated that although the Regulation envisages that cabotage is carried out in a temporary manner, in practice hauliers easily avoid these restrictions by leaving Austria, and coming back the day after with an empty truck. Even if they return with a full load and are within the requirements of the Regulation, these stakeholders state that this has a negative impact on the Austrian market and as such there needs to be a limit on the number of cabotage operations carried out during a month or a year.

A further weak point mentioned by stakeholders was the lack of a possibility to monitor compliance with the Regulation, and in particular in Austria with the Posting of Workers Directive.

### A.1.2. Data analysis

With a share of almost 90% in terms of transported tonnes, road haulage was the dominant mode in the Austrian domestic freight market in 2011. While rail freight had a share of almost 10%, the remaining 1.6% was largely transported on waterways<sup>48</sup>.

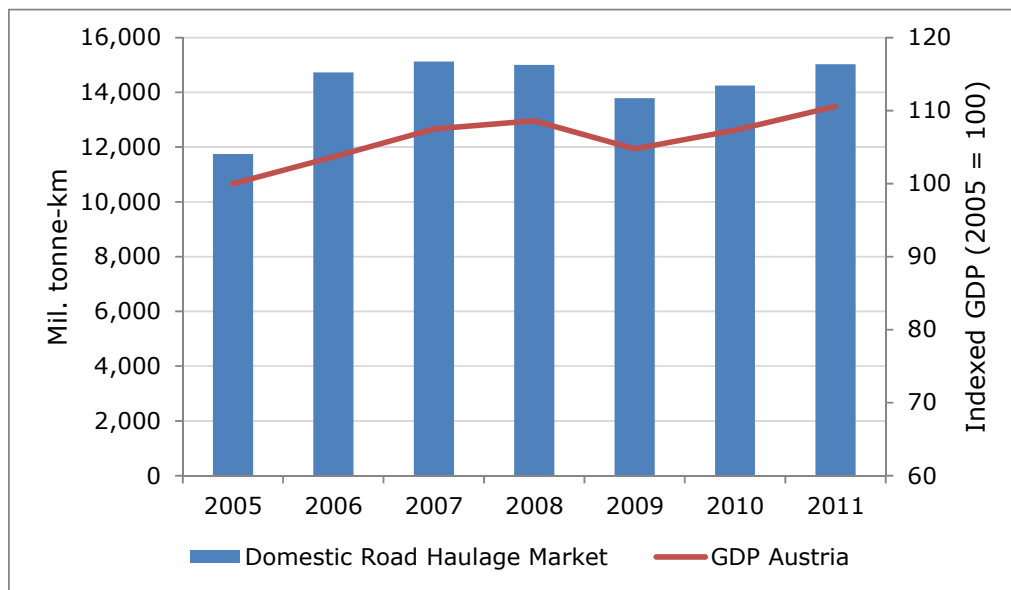
In cross-border traffic, the share of alternative modes is substantially higher. In this market segment, road haulage still accounts for the majority (57%) of transported volumes, but the share of rail, (38%), is significantly higher than in the domestic market.

Taking a closer look at the domestic road haulage market, there is a strong link between transported goods in terms of tonne km and economic growth in Austria, as set out in Figure A. 1.1. Following a significant increase between 2005 and 2008, the domestic road haulage market decreased in 2009 in response to the economic downturn. The market subsequently picked up after 2009.

As in most other Member States, the share of cabotage operations is small (less than 5%). In recent years however, and in particular in line with the improved macroeconomic situation after 2009 and the opening up of the market to hauliers from new Member States, the share of non-domestic hauliers increased from 2.7% in 2008 to 3.6% in 2011.

<sup>48</sup> Statistik Austria (2012), *Österreichische Verkehrsstatistik*, 2011.

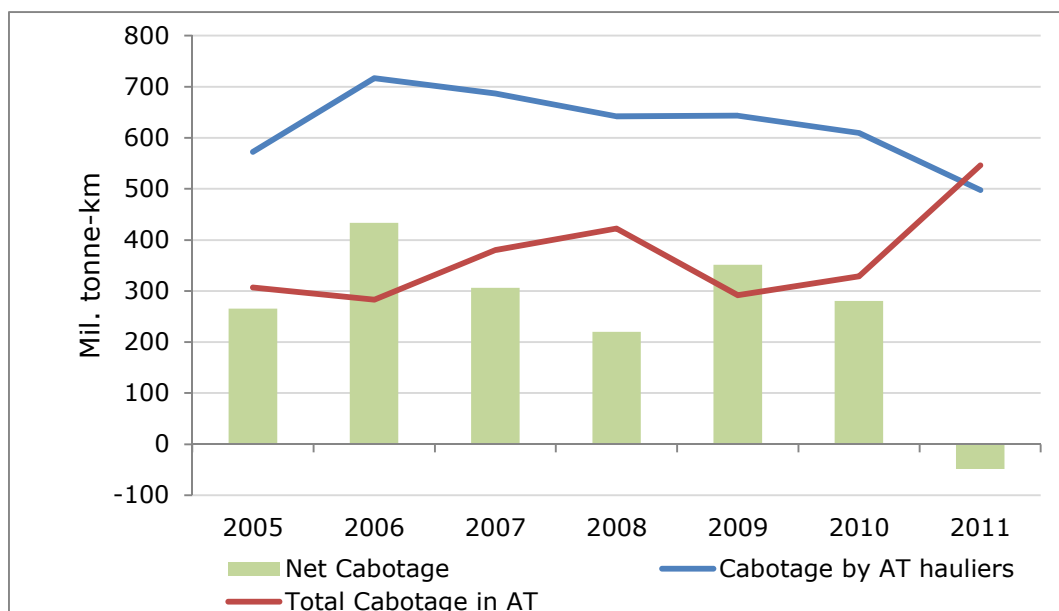
**Figure A. 1.1 Evolution of the Austrian domestic road haulage market and GDP**



Source: SDG analysis of Statistik Austria data.

Figure A. 1.2 shows the volume of cabotage carried out by Austrian hauliers abroad compared to cabotage carried out in Austria (net cabotage volume). Since its peak in 2006, cabotage operated by Austrian hauliers abroad has shown a gradual decrease, while cabotage operated in Austria has increased slightly. In 2011, cabotage volumes transported in Austria for the first time exceeded cabotage volumes carried out by Austrian hauliers abroad.

**Figure A. 1.2 Net cabotage volume in Austria**



Source: SDG analysis of Statistik Austria and Eurostat data.

A summary of further relevant data at the national level is provided in Table A.1.3 below.



**Table A. 1.3 Key statistical data – Road transport in Austria**

Year	2006	2007	2008	2009	2010
Length of motorway network (km)	1,678	1,696	1,696	1,696	1,719
No. of Community licences issued			4,371	4,123	
No. of Community licence certified copies issued			33,949	36,666	
National road haulage (billion tonne km, vehicles >3.5t)	14.4	14.7	14.6	13.5	13.9
International Road haulage by vehicles registered in Austria (billion tonne km, vehicles >3.5t)	24.8	22.7	19.7	15.6	14.7
Cabotage on Austrian roads (billion tonne km, vehicles >3.5t)	0.284	0.382	0.422	0.296	0.329
No. of goods road transport enterprises registered	7,147	7,384	7,080	6,824	
No. of employees of goods road transport enterprises	53,910	54,073	54,338	51,782	

Source: Eurostat (2012).

### A.1.3. Economic and social impacts

At present, cabotage represents only a small proportion of total domestic road haulage market in Austria (3.6% in terms of tonne km in 2011). However, the Austrian Chamber of Commerce claims that road freight hauliers based in regions bordering neighbouring Member States to the north, east and south face strong competition from foreign operators. Given the administrative burden of applying for a confirmation of posting and the lack of controls relating to having received this document, the Austrian Chamber of Commerce believes that a large part of hauliers carrying out cabotage in Austria do not have this confirmation and as such do not pay salaries in accordance with Austrian labour laws.

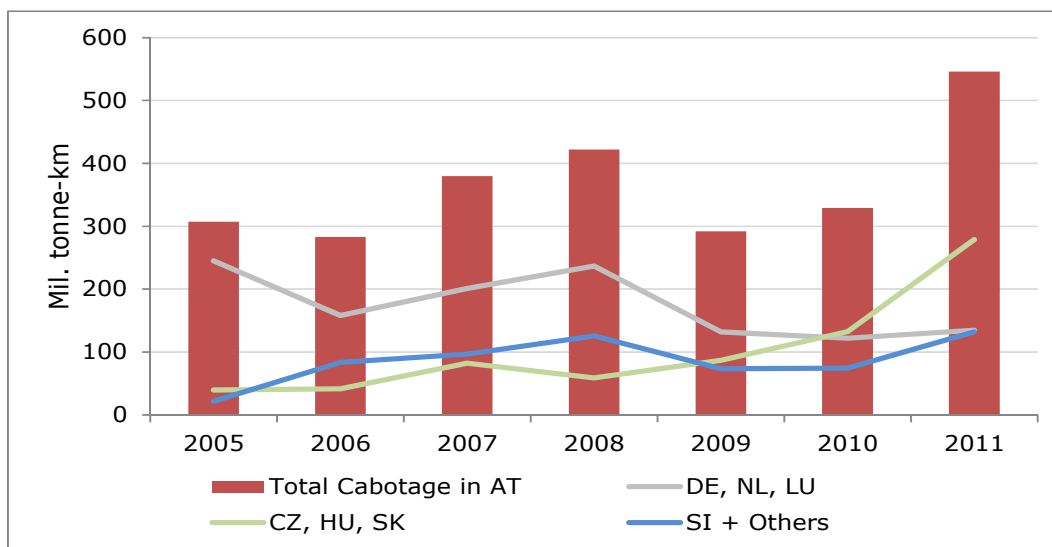
Since the main criterion for contracting hauliers is price, Austrian hauliers have a substantial disadvantage in competition against hauliers from new Member States. The Austrian Chamber of Commerce has told us that this threatens the continued existence of hauliers from these border regions<sup>49</sup>.

The following figure shows how hauliers from low wage countries benefited from market liberalisation in Austria. Before the opening of the domestic market to hauliers from new Member States, and before Austria was affected by the recession, hauliers from Germany, the Netherlands, Luxembourg, and Slovenia were the main players in the Austrian market for cabotage. The economic downturn led to some of these Western European hauliers leaving the market. The decrease in market volume in 2009 coincided with the opening of the Austrian domestic road freight market to hauliers from New Member States. Given their significantly lower operating costs they immediately gained market share compared to

<sup>49</sup> Verkehrs Rundschau: Das Portal für Spedition, Transport und Logistik, [http://www.verkehrsrundschau.de/oesterreich-fraechter-fordern-strengere-kabotage-kontrolle-943218.html#Szene\\_1](http://www.verkehrsrundschau.de/oesterreich-fraechter-fordern-strengere-kabotage-kontrolle-943218.html#Szene_1)

hauliers from the old Member States, and even increased their volumes from 2008 to 2009. As the transport market recovered in 2010 and 2011, hauliers from the Czech Republic, Hungary, and Slovakia benefited from the market growth, whereas hauliers from the EU15 Member States were not able to return to pre-crisis levels.

**Figure A. 1.3 Evolution of cabotage carried out in Austria by country in which vehicle is registered**



Source: SDG analysis of Statistik Austria and Eurostat data.

In addition, Slovenian hauliers increased their participation in the Austrian cabotage market substantially in the years after 2009. While in 2009, they were transporting 35 million tonne-km, they could increase these volumes to 94 million tonne-km in 2011. However, Slovenian hauliers have been traditionally strong in the Austrian domestic market, reaching its pre-recession peak in 2008, transporting 81 million tonne-km.

According to research carried out by the Austrian Chamber of Commerce, gross salaries for truck drivers in Slovenia range between €850 and €2,200 per month. The total costs for the employer range between €990 and €2,550 and are generally paid 13 times a year. In contrast, the minimum gross salary for truck drivers in Austria is €1,390, and the cost to the employer is about €1,830. According to the applicable collective labour agreement, this salary has to be paid 14 times a year. Assuming a gross salary of €1,320 per month for a Slovenian driver, the annual costs for the haulier are still 20% lower compared to the costs for an Austrian haulier paying the minimum salary. The daily allowances are in the same range for both, Austrian and Slovenian hauliers.

Although on 1 May 2009 the cabotage market was opened to hauliers from a range of new Member States, in this year cabotage volumes decreased more than the whole domestic market. Particularly in 2009, the year in which transported volumes were most affected by the recession, Austrian hauliers were able to maintain their share and even strengthen their position in the decreasing market. From 2010 however, cabotage volumes in Austria increased at a higher rate than the total Austrian domestic market, as set out in Figure A.1.4.. This suggests that hauliers from new Member States benefited disproportionately from the recovering market in 2010 and 2011.

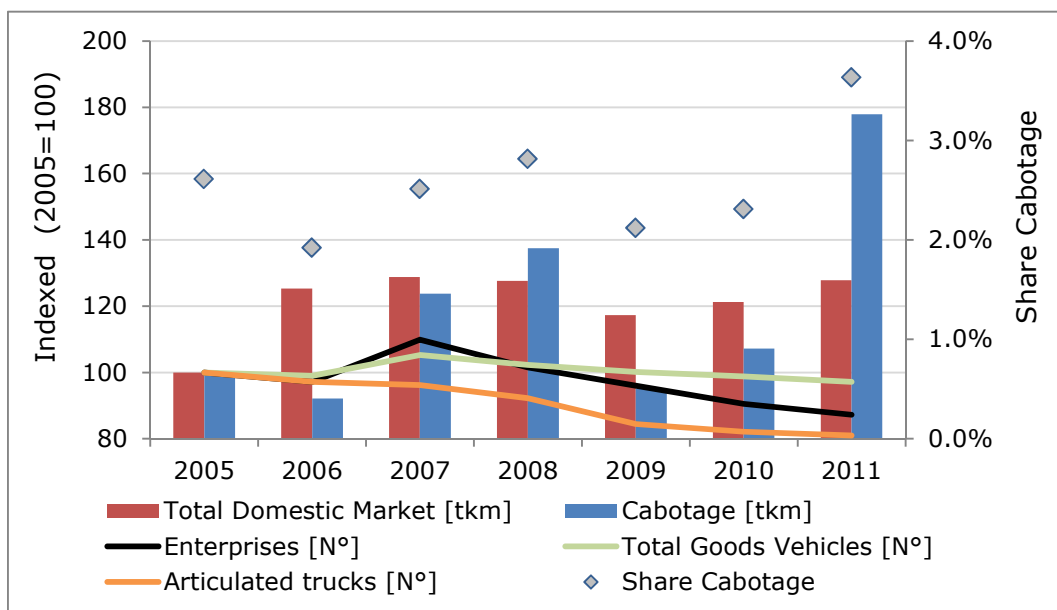
A closer look at the evolution of the number of road hauliers in Austria and the total number of goods vehicles registered in Austria confirms the latter statement. During the economic

upturn from 2005 to 2007, the number of Austrian road hauliers increased roughly in line with the total domestic market. After 2007, still in line with the evolution of the total market, the number of Austrian hauliers decreased in a similar manner. Although the market recovered in the years after 2009, the total number of Austrian hauliers continued to decrease. The number of heavy goods vehicles registered in Austria, used for transport operations in competition with hauliers from abroad, significantly decreased over the course of the last 7 years.

As a result, the share of cabotage in the Austrian domestic market in terms of tonne-km experienced strong growth in recent years, from 2.1% in 2009 to 3.6% in 2011, exceeding its pre-recession peak of 2.7% in 2008.

According to the Austrian Chamber of Commerce, Austrian hauliers have a substantial competitive disadvantages compared to hauliers from their Eastern neighbouring states, and that there are still large differences in wage levels. They further suggest that cabotage is largely used to ensure a permanently competitive advantage over domestic hauliers, rather than to operate temporarily in Austria.

**Figure A. 1.4 Evolution of cabotage in Austria compared to the total domestic market, share of cabotage, and structural data**



Source: SDG analysis of Statistik Austria and Eurostat data.

Within this context it is worth noting that industry associations confirm that shippers and clients are primarily concerned about the lowest price and do not always pay full attention to the details of existing legislation.

The Austrian Chamber of Commerce is strongly against any further market liberalisation, unless it is accompanied by a further harmonisation of economic and labour conditions. In particular, they mention a further alignment of wage levels and licensing requirements, with special attention also placed on ensuring more effective controls.

#### A.1.4. Summary for Austria

Before the entry into force of Regulation (EC) No 1072/2009, the Cabotage Monitoring Ordinance regulated the requirements and the necessary documentation to be carried during

cabotage operations in Austria. Following the entry into force of the Regulation this ordinance is no longer applicable, and lack of clarity existed about the documentation necessary to be carried during cabotage operations up to February 2013, when the Austrian Ministry of Transport adapted national regulations to the provisions of Regulation (EC) No 1072/2009 with an amendment of the Austrian Road Freight Transport Act. Of particular interest to cabotage operations are amendments of Articles 7 and 17 in this law. In addition, Austria has exercised the right to apply the Posting of Workers Directive to cabotage operations. Therefore, cabotage is subject to the provisions of Austrian labour laws.

In practice, controls mostly take place at the roadside and are carried out by the local police. There is no distinct unit exclusively responsible for monitoring compliance with road haulage legislation. However, the Austrian Commercial Chamber claims that the abolition of the requirement to carry cabotage control sheets (regulated by national law) makes checks difficult. In Austria, the organisation contracting transport services is required to request proof of compliance with provisions of Austrian labour laws from the contracted haulier. If it does not request proof, it is also liable for any infringement by the haulier.

After the opening of the domestic market to hauliers from the 2004 Accession countries in 2009, the share of non-domestic hauliers experienced a strong increase, from 2.7% in 2008 to 3.6% in 2011. Since its peak in 2006, cabotage operated by Austrian hauliers abroad has shown a gradual decrease. As a result, in 2011 Austria switched to being a net-importer of cabotage operations.

The Austrian Chamber of Commerce claims that Austrian road freight hauliers face serious competition. Since the main criterion for contracting hauliers is price, Austrian hauliers have a substantial disadvantage in competition against hauliers from new Member States. Although in Austria the Posting of Workers Directive applies to cabotage, the Chamber of Commerce believes that foreign hauliers largely do not comply with its provisions. This is mainly due to the administrative burden in combination with a lack of control. Furthermore there is the suggestion that foreign hauliers carry out three cabotage operations on a single day, leave the country, only to return the next day, and to carry out legally three more further cabotage operations.

## A.2 CASE STUDY FRANCE

France borders with Belgium, Luxembourg, Netherlands, Switzerland, Italy, Spain and Andorra. Due to its location all international road transport from Spain and Portugal must transit through France. It has a population of approximately 65 million inhabitants. The country's road network is 1,050,714 km long, including around 11,163 km of motorways.

The number of workers employed in road freight transport activities accounted for around 364,216 employees (with 80% being drivers), equivalent to 302,200 Full-Time Equivalents (FTE) in 2010 (INSEE, 2010). There were around 37,607 enterprises active in the transport of goods by road in 2010 (INSEE, 2010<sup>50</sup>). Road freight transport activities generate about €43 billion of revenue.

### A.2.1. Legislative Background

Road cabotage in France is ruled by the Regulation (EC) No 1072/2009, applied from 19 April 2010. As shown in Table 1 below, the French road cabotage market is currently open to hauliers from all EU MS (but not Switzerland) as all restrictions previously applying to new Member States established in the adhesion treaties have been lifted (the last ban removed was the one applied to Bulgarian and Romanian hauliers in force up to 31 December 2011).

**Table A. 2.1. : Market opening to new Member States in France**

Country	Date cabotage allowed
Bulgaria	1 January 2012
Czech Republic	1 May 2009
Estonia	1 May 2009
Latvia	1 May 2009
Lithuania	1 May 2009
Hungary	1 May 2009
Poland	1 May 2009
Romania	1 January 2012
Slovenia	1 May 2004
Slovakia	1 May 2009

Source: SDG research.

The introduction of Regulation (EC) No 1072/2009 replaced Regulation (EEC) No 3118/93 and related national legislative provisions. Regulation (EEC) No 3118/93 liberalised road cabotage

<sup>50</sup> Institut national de la statistique et des études économiques (INSEE) (2010), [http://www.insee.fr/fr/themes/detail.asp?reg\\_id=0&ref\\_id=esa-transport-2010](http://www.insee.fr/fr/themes/detail.asp?reg_id=0&ref_id=esa-transport-2010).

in France and the rest of the EU (at the time 15 Member States) from 1 July 1998. It stated the temporary nature of road cabotage, the requirement for hauliers to have in their possession a community licence, and that the implementation of cabotage was subject in a number of areas to national provisions.

Before the introduction of Regulation (EC) No 1072/2009, road cabotage was regulated in France by Law No 2005-882 of 2 August 2005. Cabotage operations were subject to a double limit: no more than 30 consecutive days and no more than 45 days over a period of 12 months (as defined in articles 6.1 and 6.2 of the Loi d'Orientation des Transports Intérieurs (LOTI). The law also set maximum fines of €15,000 and 1 year imprisonment for infringements as well as the possibility of a 1-year ban for the hauliers in the case of non-respect of the legislation.

In terms of administrative requirements, non-French hauliers previously had to adhere to difference requirements depending on the agreements entered into between France and the relevant Member State. The Law of 2 August 2005 No 2005-882 also stated that French social protection laws were mandatory for employees of transport companies performing cabotage operations in France and in particular the provisions relating to posted workers.

Cabotage operators were required to ensure that they were compliant with all French laws relating to employment. In addition each employee seconded to France (for cabotage operations) had to be registered with the French social security system<sup>51</sup>. In road transport activities, French social rules are a lot more restrictive for employees than many Member States in the rest of the EU.

#### **A.2.1.1 New EU rules on road haulage (Regulation (EC) No 1072/2009)**

Article 33 of Law No 2009-1503 of December 8, 2009 "relating to the organization and regulation of rail transport and Miscellaneous Provisions transport" is in accordance with Regulation (EC) No 1072/2009 adopted on 21 October 2009 in Europe.

French legislation on road freight transport cabotage is governed by Articles L 3421-3 to L 3421-10 of transport code and by Decree of the State Council No 2010-389 of 19 April 2010 relating to cabotage in road and river transport which was published in the French Official Journal of 21 April 2010. Taking the basic principles of the Regulation, the Law of 8 December 2009 defines the limits of cabotage in France:

- Cabotage operations may only be carried out as part of an international journey;
- The cabotage operation must be carried out with the same truck as was used for the international transport journey or with the same tractor unit for a combination of vehicles;
- When the final destination of the international journey is France, road cabotage operations are allowed once all of the freight being transported internationally has been unloaded. A maximum of three cabotage operations, with three separate waybills, are allowed.

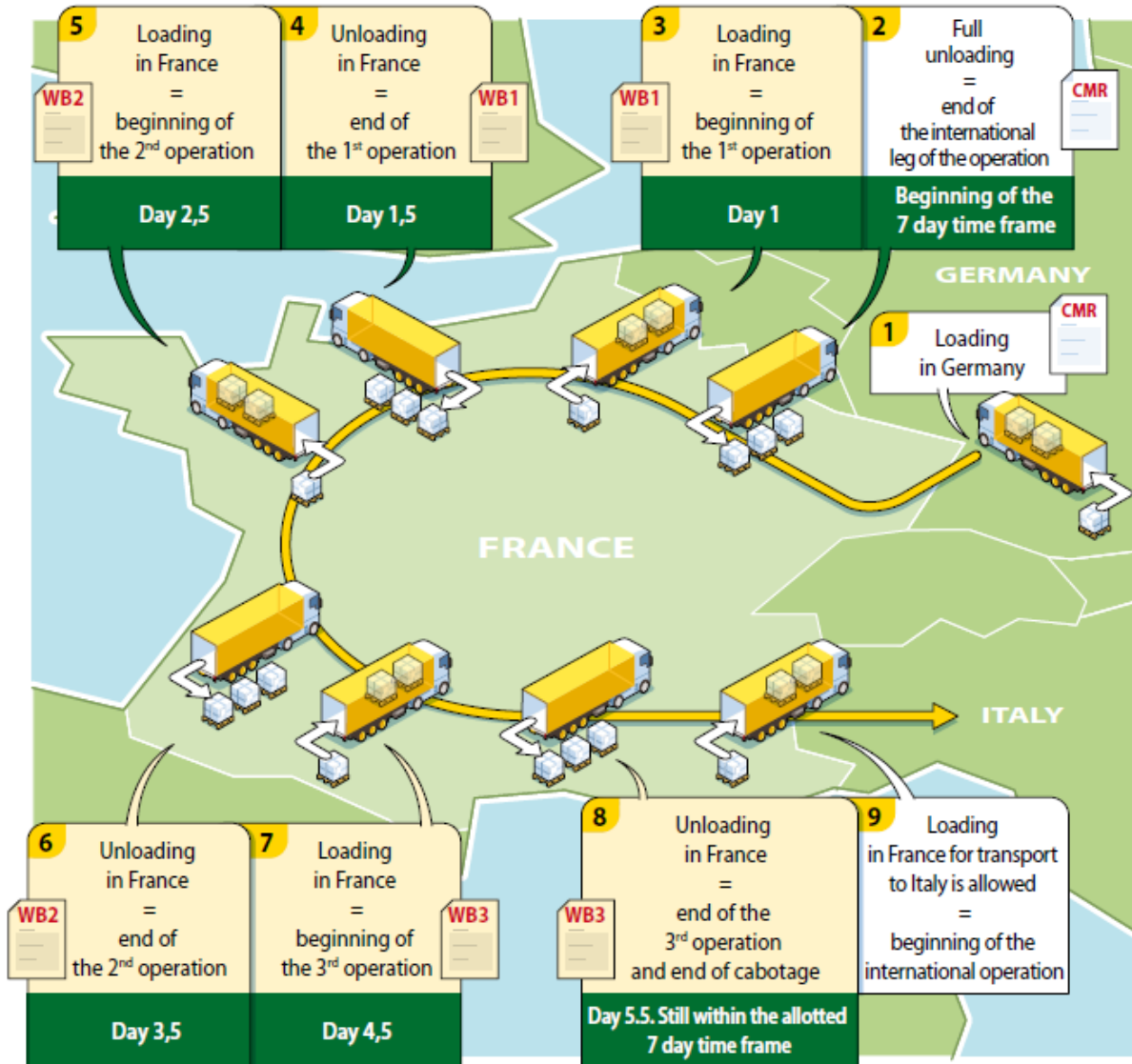
---

<sup>51</sup> However we understand that the Executive Decree for this law was never published. This is because the process of drafting the decree of the Council of State was interrupted in May 2007 following the publication by the European Commission, a proposal to amend the regulations relating to cabotage rendered obsolete the legislative framework established by Articles 93 and 94 of Law 2005-882.

- The three cabotage operations must be done within seven days (the relevant Ministerial Circular states that the permitted period ends at midnight on the 7th day) from the unloading of the internationally transported freight.

For clarity, this has been illustrated by the Ministry of Transport as displayed in Figure A. below.

**Figure A. 2.1 : International Transport with France as final destination**

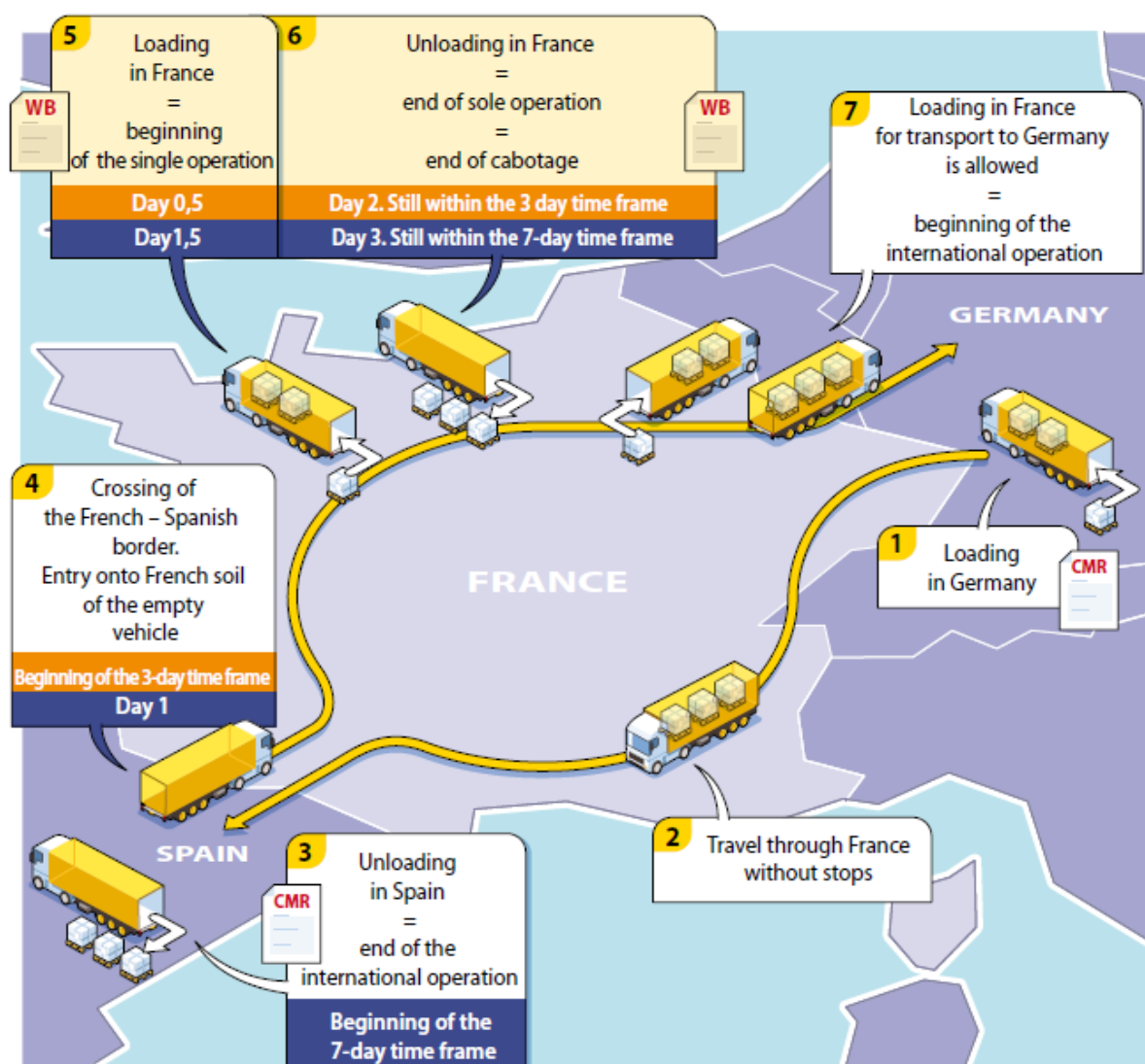


Source: MEDDTL/DITM, 2012.

Additionally, if the final destination of the preceding international journey is a country other than France, a maximum of one cabotage operation in France is authorised within the three days following entry of the empty vehicle into the country. The cabotage operation must be completed within seven days from the unloading of the internationally transported freight. This is illustrated below.



Figure A. 2.2. : France as transit country in international transport



Source: MEDDTL/DITM, 2012.

Transport companies established outside France whose employees perform cabotage operations in France are subject to the rules of posting under the Labour Code (Articles from L 1261-1 to 1263-2 and from R 1261-1 L to R 1264-3) as per Directive 2008/17 of 5 October 2008 on posting rules. The Decree of 19 April 2010 softened the rules of prior notification of posting foreseen by the Labour Code. Prior notification of posting is required only when the driver works in France for a period of at least 8 consecutive days. Most of the road haulage companies posting employees in France to carry out cabotage operations will not have to fill this notification.

The specific documents that are required to be in the possession of drivers for any cabotage operation, in addition to all other documents required under the legislation (such as copy of community licences, driving licence, etc.) include:

- An international waybill (CMR) for the preceding international journey, which qualifies the vehicle to carry out a cabotage operation;
- A waybill (WB) for each cabotage operation carried out.



In addition to the standard compulsory information, each of the aforementioned documents must include the date when the freight was unloaded and the registration number of the vehicle used for the cabotage operation. Road freight transport cabotage activity is also checked through verification of the information recorded in the tachograph and information regarding the freight loading.

#### A.2.1.2 The degree of enforcement of new and old rules and their impact on the EU road haulage market

Law No 2009-1503 of 8 December 2009 specifies controls and sanctions. Cabotage rules were written to ensure that the freight forwarders were also co-responsible for the enforcement of transport rules: for instance there exists an offense of a company requesting a service from a road haulier that would require more than three cabotage operations with one motor vehicle within a period of 7 days. The law specifies administrative and criminal sanctions. Criminal sanctions include:

- Company vehicles that fail to abide by the cabotage regulation may be impounded until infringement has ceased and may be liable for a fine of €15,000.
- Failure to show the required documents or failure to show documents without all of the necessary information is punishable by a class 5 fine (up to €1,500).
- Hauliers from countries that are not authorised to undertake cabotage operations may face up to a one-year prison sentence.

Administrative sanctions can lead to cabotage ban on the whole of the French territory for up to a year. The French authorities explained that there are no issues with the recovery of fines because when driver is fined, it is impounded until the fine is paid. The enforcement of cabotage rules in France is overseen by the Ministry of Transport in coordination with policing bodies, as shown in Table A.2.2.

**Table A. 2.2. : Road Transport – Control Authorities in France**

Items to be controlled	Police/ Gendarmerie	Customs	Transport Ministry(*)	Labour Ministry
Traffic regulations and driving licences	x	x	x	
Highway code, weights and dimensions	x		x	
Technical conditions of motor vehicles	x		x	
Authorisations for international road transport	x	x	x	
Regulations on transport of dangerous goods	x		x	
Regulations on driving hours and rest periods	x	x (limited)	x	x
Workers regulations			x (specific areas only)	x
Economic regulation of the sector		x (specific areas)	x	x

(\*) Controllers of road transport.

Source: SDG analysis.

In France, the Ministry of Transport has a specialised control body of around 500 “road transport controllers” who carry out roadside checks as well as checks in depots. All road transport controllers received specific training on the cabotage legislation in 2010 following the introduction of the legislation. Their role is to ensure the adequate safety of vehicles, the proper implementation of European social regulations, regulations on free circulation, and those provisions relating to the organisation of the profession and fair access to the road transport market. Controls carried out on behalf of the Ministry of Labour are done by two different supervisory bodies (DIRECCTE and DREAL). France is also a member of Euro Contrôle Route (ECR) and participates in border controls in partnership with the Spanish and German authorities.

Following the introduction of Law No 2009-1503 of 8 December 2009 and in order to address the concerns of French hauliers, the Ministry of Transport announced in June 2009 that cabotage checks would be strengthened, and the total number of annual checks increased by 20,000. Whilst no specific data on the exact number of roadside checks on cabotage operations is available, we have been informed that total roadside checks actually increased by 14,000 in 2009 and remained at that level in 2010.

Information provided by the French authorities for this study and based on monthly roadside checks carried out in 2010 and early 2011 show that:

- 6% of foreign registered vehicles were undertaking cabotage operations, whereas 94% of them were undertaking international transport operations;
- infringements of rules were identified in 7% of road controls targeted at the verification of the respect of rules for cabotage operations.

However the roadside checks also revealed to the authorities a large number of cases of infringement of the posting of workers regulations which is being investigated further. As France has a high standard of social protection, companies are employing drivers from “low-cost” countries in order to undertake transport activities on the French territory.

In November 2012, a program of controls against the abuse of workers’ rights in key economic sectors was announced and included for the first time the road freight goods sector.

#### **A.2.1.3 The need for a review of the rules**

The French authorities do not believe that the rules need to be reviewed. Instead they strongly believe that market harmonisation needs to be completed before any changes are made to the cabotage regime. Further opening the cabotage market would reinforce the current imbalances between Member States which they state are not acceptable according to the principle of European law.

The increasing scale of social fraud has now become a major economic factor of international transport activities and requires a coordinated approach at a European level. Additionally the French authorities would also like to encourage other Member States in their efforts against social dumping and social fraud. They emphasized that European coordination was required for controls which cover several Member States.

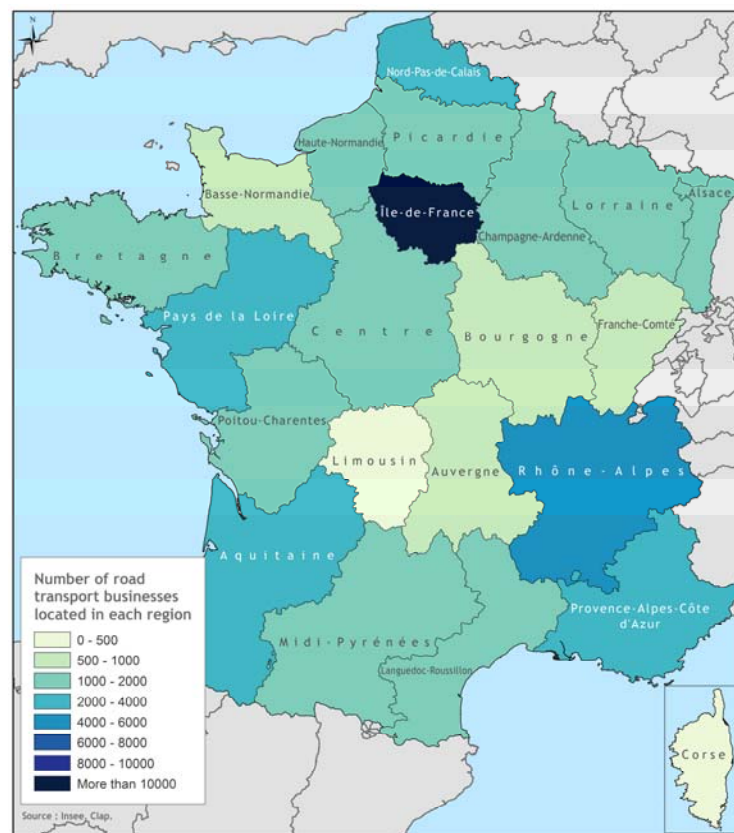
Before any change to the current rules of cabotage, the French authorities would like to consider whether Member States are in a position to enforce the existing rules in these times of budget austerity. They recommend that the Commission focusses on the harmonisation of control and monitoring activities.

## A.2.2. Data analysis

In France, road freight transport had the largest market share (85%) of all transport modes in 2010. The sector is highly correlated to national economic activity. In 2010, domestic freight transport grew by 3.3% in tonne-km, but this increase comes after an unprecedented fall in 2009 (-13.6%) and in 2008 which reduced the inland transport of goods to its level of a decade ago. Furthermore, transport volumes are still lower than the 2007 value. In 2012 the sector also recorded an increase in the number of business going bankrupt.

Latest INSEE data shows that there were around 37,607 enterprises active in the transport of goods by road in 2010 (only 16% of them with more than 10 employees), employing around 302,200 Full Time-Equivalents in the sector. As shown in Figure 3, the number of enterprises is higher around Paris, close to the Italian, Belgian and Spanish.

**Figure A.2.3.: Location of road transport businesses in France (2011)**



Source: SDG map of INSEE data.

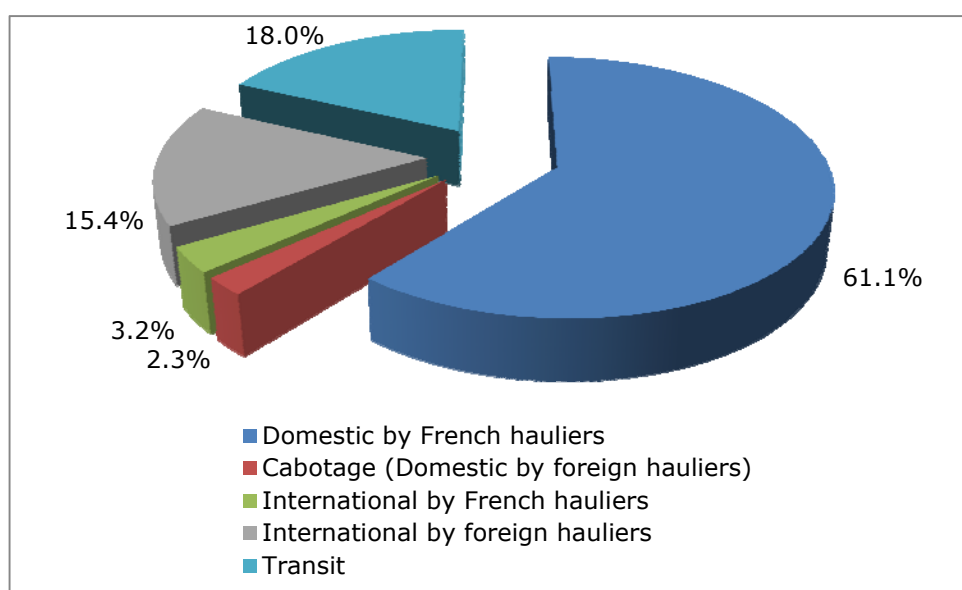
Road cabotage activities have grown steadily in recent years and now account for 6.1 billion tonne-km (2011). Cabotage increased by 214% (or +12% per annum) in France between 2000 and 2010. This was by far the strongest growth of all sectors of freight transport by road (for instance domestic traffic by French hauliers only grew by 5% overall in the same period). If the share of cabotage activities in France still remains small, representing 3.6% of the domestic market in 2010 and 2% of the entire French market, it is significantly higher than the EU average of 1.74%<sup>52</sup>. Trade associations estimate that in some French regions the market share may reach up to 10% and the same source stated that France is the EU country where the most cabotage is undertaken with 33% of the European cabotage market.

<sup>52</sup> Source: [http://www.fntr.fr/sites/default/files/cnr\\_competitivite-pavillon-francais-2011.pdf](http://www.fntr.fr/sites/default/files/cnr_competitivite-pavillon-francais-2011.pdf)

According to transport statistics, foreign hauliers' imports exceeds by 22.5% foreign hauliers' exports (or by 12.1 billion tonne-km in 2011). According to the French authorities, the difference between the empty capacity of foreign-hauliers and the volumes currently carried in cabotage indicate that, all other things being equal, increased efficiency in transport haulage could lead to a doubling of cabotage in France.

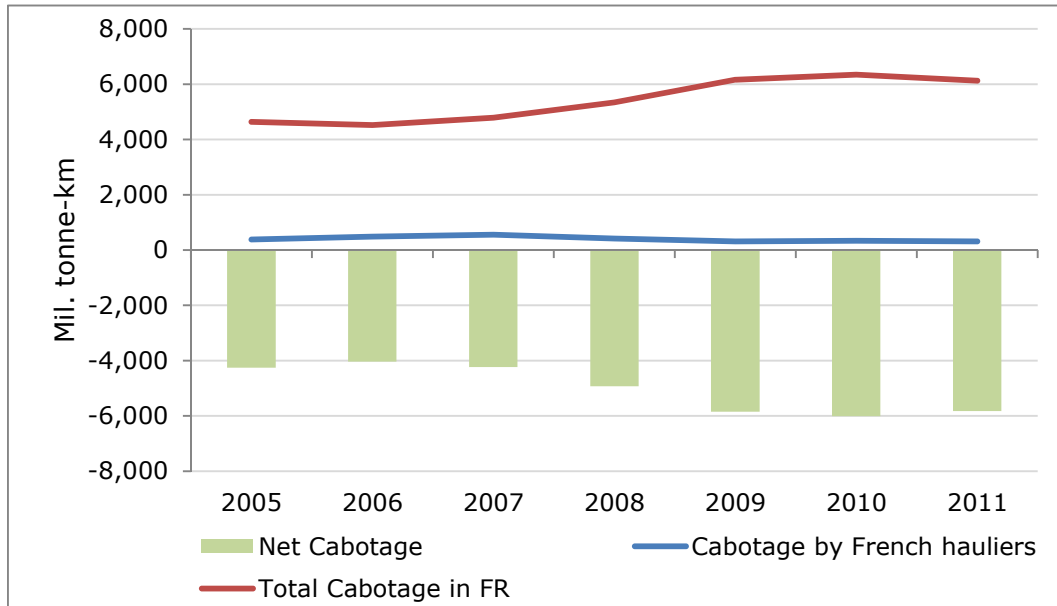
Cabotage operations in France are carried out (in order of amount undertaken) by hauliers from Spain, Luxembourg, Belgium, Poland and Germany. Hauliers from these countries account for 75% of the market. The French Ministry of Transport also noted that since the opening of the cabotage market to Eastern Europe, the market share of Polish hauliers had increased to the detriment of hauliers from the Benelux. Given its location, transit also accounts for a large share (around 20%) of the French market.

**Figure A. 2.4.: Road Transport – Freight transport by road in France**



Source : SDG analysis of SOeS data, 2010.

The market share of French hauliers on international transport has collapsed over the last 20 years, and particularly since 2000. In 1990, 50% of international traffic in France was carried by French hauliers; by 2011 it had fallen to 2011. French hauliers market share in the EU is also very limited with an estimated 3% of international tonne-km in 2010 (Source Eurostat) or 0.3% in 2011 according to the French Ministry. The cabotage activities of French hauliers have nearly halved since 2006, from 624 million tonne-km to 347 million tonne-km in 2010. Since 2004, it has decreased by -7.4% per annum. Cabotage operations represent only 0.2% of the total tonne-km of French hauliers and 1.9% of their international tonne-km. French hauliers undertaken cabotage primarily in those Member States closest to France, that is the United Kingdom (by far the largest) followed by Italy, Belgium, Germany and Spain.

**Figure A. 2.5.: Evolution of French Net Cabotage Volumes**

Source: SDG analysis of Eurostat data.

As a result, France is second in the list of countries with the highest share of cabotage (30.2%), behind Germany (33.4%), but ahead of Italy (7.0%), Belgium (5.6%) and the United Kingdom (5.2%) according to figures from the French Transport Ministry. The same source also states that 97.2% of cabotage operations take place in EU15 Member States.

**Table A. 2.3.: Cabotage statistics in France (in millions of tonne-km)**

	2004	2005	2006	2007	2008	2009	2010
Cabotage of French hauliers	624	421	523	569	419	333	347
Cabotage in France	4,586	4,648	4,521	4,792	5,380	6,162	6,266
Penetration of Cabotage in France	2.56%	2.62%	2.47%	2.50%	2.96%	3.95%	3.81%
Cabotage market share in France	2.99%	3.06%	2.91%	2.88%	3.41%	4.57%	4.45%
CAGR of French haulier cabotage	-7.4%						

Source: Comité National Routier quoting Eurostat as its original data source.

A summary of the relevant data at the national level is provided in Table below.

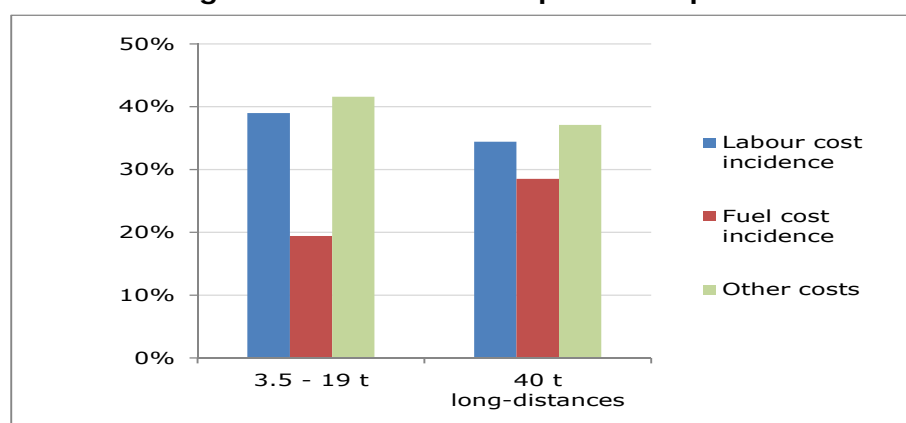
**Table A. 2.4.: Key statistical data – Road transport in France**

Year	2006	2007	2008	2009	2010
Length of motorway network (km)	10,848	10,958	11,042	11,163	-
National road haulage (billion tonne km, vehicles >3.5t)	211.45	219.21	206.30	173.62	182.19
International Road haulage by vehicles registered in France (billion tonne km, vehicles >3.5t)	28.7	27.8	24.4	17.6	17.9
Cabotage on French roads (billion tonne km, vehicles >3.5t)	4.5	4.8	5.3	6.2	6.4
No. of road transport enterprises	-	35,230	-	-	-
No. of employees of transport enterprises	-	365,038	-	-	-
No. of roadside checks	-	-	74,297	88,698	87,441

Source: All Eurostat (2012), except number of road checks on lorries (French Ministry of Transport, 2012).

### A.2.3. Economic and social impacts

It is difficult to evaluate the economic and social impacts of cabotage in isolation to the rest of the French road freight sector. Analysis based on the average cost components for road transport enterprises as provided by the Comité National Routier also suggests that labour costs have a high impact on total costs. Fuel costs also have a negative effect of the competitiveness of French enterprises.

**Figure A. 2.6.: Average costs for road transport enterprises in France – 2011**

Note: "long-distance" refers to operations where the driver is not able to return daily to his/her home

Source: SDG analysis of data from Comité National Routier (2011).

France is one of the countries in Europe where labour costs are the highest which creates a cost differential with other economies such as Spain (where labour costs have been impacted by the crisis) or Poland. The total annual cost of a French driver has been estimated by the

*Comité National Routier* in 2011 to be 1.3 times higher than the cost of a Spanish driver and 2.4 higher than a Polish driver spending 3 weeks/month outside their respective domestic market<sup>53</sup>. Moreover, French rules on driving times are restrictive in that no distinction is made between driving and waiting time. As a result the competitiveness of French businesses is significantly lower than some of its European counterparts. The same study estimates that based on annual driving times and for the same scenarios, the cost per driving hour is €28.7 in France, €18.7 in Spain and €12.0 in Poland.

In recent years, profitability of the French road freight sector has suffered. The Bank of France estimated in a 2011 study<sup>54</sup> that over 25% of French road freight transport businesses were making a loss.

Stakeholders from the road cabotage industry all agree that “French prospects are bleak”. They also all share the view that the French road freight market is one of the most vulnerable European markets to potential full liberalisation of the cabotage industry because of its high social costs. High social costs in France are imposed on all French businesses equally and do not create as such a market distortion. However cabotage of non-French businesses in France against French businesses with high social costs creates a substantial competitive disadvantage.

#### **A.2.4. Summary for France**

France is the second largest market in Europe for cabotage operations as a result of its location making it an important transit country in Europe. Some French operators also carry out cabotage operations in neighbouring countries. The Regulation is in force according to its requirements and there is a specialised control body in place that has undertaken a large number of checks in recent years. These checks have identified, more than anything, infringements of social legislation rather than infringements relating to the cabotage provisions.

High social security costs and stringent working condition requirements have led to French hauliers becoming less competitive when compared to companies from other Member States. This largely explains the high level of cabotage operations by foreign hauliers in France, and the small share of cabotage undertaken by French hauliers abroad, coupled with the geographic location of the country being at the cross-roads of Western Europe, and the structure of the French economy, centred on domestic demand with a foreign trade deficit.

---

<sup>53</sup> Etudes internationales Comité National Routier, 2011.

<sup>54</sup> Banque de France (2011), *Économique et financier du transport routier en France 2006-2010*.





## A.3. CASE STUDY GERMANY

Germany has a population of approximately 81.9 million inhabitants (2011) and a density of 229 inhabitants per km<sup>2</sup>. It shares borders with nine countries (Denmark, Netherlands, Belgium, Luxembourg, France, Switzerland, Austria, Czech Republic and Poland).

The road network comprises approximately 12,800 km of motorways and 39,700 km of national roads. Approximately 20% of all traffic on motorways is heavy vehicles – though this is higher than the national share, with heavy vehicles accounting for less than 10% of vehicles across the entire German road network.

In 2010 there were more than 50,000 road transport enterprises in Germany employing a total of 586,000 staff. These companies were responsible for running approximately 367,000 light and heavy trucks<sup>55</sup>. The majority (about 57%) of all operators are small enterprises with no more than 5 employees, while about 14% of these have more than 20 employees.

### A.3.1. Legislative Background

In Germany road cabotage is ruled by Regulation (EC) No 1072/2009, in force since 14 May 2010. Currently the German domestic road haulage market is open to hauliers from all other EU and EEA states, within the scope identified in the above mentioned Regulation.

Following accession of new Member States to the EU, Germany exercised its right to temporarily exclude hauliers from the majority of EU12 countries from the provisions of the regulation: Table A. 3.1 summarises the timeline for the opening of the German market to newer Member States.

Prior to the entry into force of Regulation (EC) No 1072/2009, cabotage in Europe was regulated by Regulation (EEC) No 3118/93. This stated that every holder of a community licence was entitled to operate cabotage operations on a temporary basis. However, the meaning of 'on a temporary basis' was not further specified.

In 2008 (and prior to Regulation (EC) No 1072/2009), the German government introduced a rule allowing hauliers from other Member States to undertake 3 cabotage operations within 7 days, following the transportation of a cross-border load to Germany which involved the full or partial unloading of the vehicle. This rule, also known as the '3 in 7 rule', came into force on 14 May 2008 and was established by an amendment<sup>56</sup> of Article 17a of the Ordinance on International Road Haulage and Cabotage (GüKGrKabotageV) of 22 December 1998<sup>57</sup>. The same Article further established the documentation necessary for carrying out cabotage in Germany, furthermore it stated that this documentation must be carried on journeys at all times during cabotage operations as well as on its preceding cross-border journey. The documentation required to provide the following information, and anticipated the provisions of Regulation (EC) No 1072/2009:

- Name, address and signature of both sender and haulier,
- Name and address of the consignee, and after unloading additionally signature of the consignee with date of unloading,

<sup>55</sup> BGL (2012), Jahresbericht, Annual Report, October 2012.

<sup>56</sup> BGBl I, 794

<sup>57</sup> BGBl I, 3976

- Location and date of consignment and address of the unloading point,
- A common description of the goods and their packaging,
- The gross weight of the goods or an alternative measurement, and
- Registration plate of the goods vehicle.

In addition to these requirements, Article 7a of the German Road Haulage Act<sup>58</sup> establishes the requirement for hauliers effecting domestic road transport operations in Germany, to hold liability insurance against the damage of goods carried. The minimum amount of insurance is €600,000 for each claim, and no less than €1.2 million for a year. The haulier has to guarantee that a certificate of this insurance is carried by the driver while carrying out transport operations.

**Table A. 3.1 Market opening to new Member States in Germany**

Country	Date cabotage allowed
Bulgaria	1 January 2012
Czech Republic	1 May 2009
Estonia	1 May 2009
Latvia	1 May 2009
Lithuania	1 May 2009
Hungary	1 May 2009
Poland	1 May 2009
Romania	1 January 2012
Slovenia	1 May 2004
Slovakia	1 May 2009

Source: SDG research.

#### **A.3.1.1 New EU rules on road haulage (Regulation (EC) No 1072/2009)**

National legislation was not significantly affected by the entry into force of Regulation (EC) No 1072/2009 as since 2008, provisions established in European law had already, to a large extent, been in force in Germany through the Ordinance on International Road Haulage and Cabotage (GüKGrKabotageV) mentioned above.

However, an amendment of the German Road Haulage Act was issued on 31 July 2010 in response to Regulation (EC) No 1072/2009; this entered into force on 6 August 2010. This amendment changed Article 19 of the GüKG relating to infringements of the provisions of the new Regulation. In particular, all provisions originally related to Regulation (EEC) No 3118/93 were updated to refer to Regulation (EC) No 1072/2009. In addition, a more

<sup>58</sup> BGBl. I S. 1057

detailed description of a number of infringements was added. (Further details on Article 19 of the GüKG are set out in the following section).

On 28 December 2011 a new ordinance on International Road Haulage and Cabotage (GüKGrKabotageV<sup>59</sup>) came into force and replaced the up to then applicable Ordinance<sup>60</sup> of the same name. There have been only minor amendments, mainly related to ensuring that the Ordinance referred to Regulation (EC) No 1072/2009. However, Article 17a (2) of this ordinance states that cabotage in Germany is allowed after a full or partial unloading of the vehicle following a cross-border transport. This has to be seen in contrast to European law given that Article 8 (2) of the Regulation states that cabotage operations may be carried out "once the goods [...] have been delivered", but not further setting out whether this delivery must be a full or partial unloading.

### **A.3.1.2 The degree of enforcement of new and old rules and their impact on the EU road haulage market**

Article 11 of the German Road Haulage Act (GüKG) of 22 June 1998 appoints the Federal Office for Goods Transport (BAG) as the responsible authority for monitoring compliance with European and National law. Further to this, Articles 12 and 13 specify the powers of the Federal Office in relation to the monitoring and compliance with the law, and Articles 19 to 21a set out its powers to enforce it.

According to Article 20 of the GüKG, the Federal Office and its staff has to investigate infringements of the laws and prosecute these when carrying out the monitoring tasks in accordance with Article 11. Within this framework the staff of the Federal Office has the rights and obligations of officials of the police service under the provisions of the Criminal Procedure and the Law on Administrative Offences<sup>61</sup>.

Therefore controls in Germany are directly carried out by staff of the Federal Office for Goods Transport. In order to monitor compliance of national and foreign road haulage operators with the applicable laws, the national enforcement body may conduct monitoring actions on a sample basis, particularly at the roadside and in service areas. Officers of the BAG may stop trucks and check the compliance of the required documentation (Article 12(1), GüKG).

In addition, Article 12(4) of the GüKG states that the BAG may enter properties and offices of vehicle owners, road haulage operators and all entities related to the transport and trade of the relevant goods. Furthermore the BAG also has powers to review all relevant documents and data, make copies or copy them to their own data storage devices, if these actions are necessary to monitor compliance with national laws.

In accordance with Article 13 (1) of the GüKG, the BAG may prohibit the continuation of the journey if this is necessary to ensure compliance with the law.

In the event that the required documentation (including the driver attestation) cannot be provided upon request, the BAG and other entitled authorities may impound the vehicle until these documents can be submitted. These checks also look at whether cabotage regulations have been adhered to.

Table A. 3.2 gives an overview of the responsible bodies for different road transport related issues.

<sup>59</sup> BGBl. 2012 I S.42

<sup>60</sup> BGBl I, 3976

<sup>61</sup> BGBl. I S. 602

**Table A. 3.2 Road Transport – Control Authorities in Germany**

Items to be controlled	State police	Local police	Customs	Transport Ministry	Road Admin.
Traffic regulations and driving licences		x			
Authorisations for international road transport	x	x	x		x
Special authorisations for carriage of passengers and other related documents	x	x	x		x
T1 documents or TIR Carnets		x	x		
Weights and dimensions		x			x
Certificate for carriage of perishable foodstuff		x			x
Documents on veterinary and phytosanitary control		x			
Road user charges					x
Technical conditions of motor vehicles		x			x
Regulations on driving hours and rest periods		x			x
Regulations on transport of dangerous goods	x	x	x		x

Source: Adapted from IRU (2011).

Article 19 (2a) of the GüKG defines infringements against the provisions of Regulation (EC) No 1072/2009 as administrative offences, whenever a person intentionally or negligently:

- 1) does not carry out a cross-border transport from an EU Member State previous to the first cabotage operation;
- 2) carries out a cabotage operation previous to the last unloading of the goods imported into Germany;
- 3) carries out more than 3 cabotage operations following a cross-border transport;
- 4) does not use the same vehicle for carrying out all cabotage operations, or in the case of articulated vehicles, does not use the same motor vehicle for all cabotage operations;
- 5) carries out a cabotage operation later than 7 days after the unloading of the imported goods;
- 6) carries out a cabotage operation following an unloaded entry to Germany after having carried out more than one cabotage operation in another Member State;

- 7) carries out more than one cabotage operation in Germany, following an unloaded entry to Germany after having carried out one cabotage operation in another Member State.

Paragraph 3 of the same Article states further that drivers from third countries, intentionally or negligently carrying out cabotage operations in accordance to Article 8 of Regulation (EC) No 1072/2009 without carrying along a driver attestation, commit an administrative offence.

In addition, paragraph 4 classifies as subject to an administrative penalty a person who intentionally or negligently uses drivers in cross-border haulage or cabotage operations without them being issued a driver attestation in accordance with Article 3 of Regulation (EEC) No 881/92, and for undertaking cabotage operations without holding a Community licence in accordance with Article 3 of Regulation (EEC) No 881/92.

In accordance with Article 19 (5) of the GüKG, administrative offences can be punished with a fine. The amount varies from: up to €200,000 for the use of drivers in cross-border haulage and cabotage without them being issued a driver attestation; up to €20,000 for undertaking cabotage without holding a Community licence; and up to €5,000 in the remaining cases listed in the paragraphs above.

In order to control compliance with the provisions of the GüKG, the BAG carried out 118,009 roadside checks of goods vehicles registered in EU Member States in 2011, and identified a total of 612 infringements against European legislation on cabotage. In 2012, 477 infringements were identified in relation to cabotage legislation following 106,542 inspections. The infringement rate in 2011 was 0.2%, whereas in 2012 this rate increased to 0.45%. The BAG however notes that these figures are statistically not significant.

The Federal Association of Road Haulage, Logistics and Disposal (BGL) believes that monitoring compliance with the regulation only through the review of the necessary documentation is not sufficient. Illegal cabotage activities can be detected in only a small number of cases due to a mismatch between the documentation and actual behaviour. The special circumstances relating to empty entry are almost impossible to monitor. Further to this the BGL mentioned the possibility for hauliers to comply with the paper-based documentation by illegally issuing CMR consignment letters for previous cross-border transports. This kind of fraud can only be detected by detailed controls at the hauliers' offices, but not during roadside checks.

The BAG confirms that monitoring compliance of the '3 in 7' rule creates some difficulties as falsifications or missing documents are not necessarily infringements against regulations on cabotage. In accordance with current legislation, it is extremely difficult to identify the actual number of journeys that have been carried out.

A particularity in German law is the responsibility of the contracting party, ruled in Article 7c of the GüKG. The Article states that any organisation contracting transport services to another company on a commercial basis, must not allow this service to be carried out if they know that or negligently have no knowledge that the contracted enterprise:

- 1) does not hold an allowance in accordance with Article 3 of the GüKG, does not hold an entitlement in accordance with Article 6 of the GüKG, or alternatively a community licence, or illegitimately uses the allowance, entitlement or licence,

- 2) uses drivers in a manner not compliant with provisions of Article 7b (1) sentence 1 of the GüKG, or for not holding a driver attestation in accordance with Articles 3 and 5 of Regulation (EC) No 1072/2009,
- 3) subcontracts services to another freight forwarder or haulier which carries out the services under the conditions
  - a. listed in 1), or
  - b. listed in 2).

According to the BAG, the condition 'negligently has no knowledge' is fulfilled in the event the contracting party does not request the documentation necessary to prove compliance with this Article. Infringements against provisions of Article 7c are subject to a fine of up to €20,000 in the cases of 1) and 3a), and in the remaining cases are subject to a fine of up to €5,000.

In 2011, 128 fines amounting to a total of €227,369 were issued for infringements against Article 7c. In 2012, 86 fines were issued amounting to a total of €256,442. The average fine increased from €1,780 in 2011 to €2,980 in 2012.

Instead of issuing administrative fines, the BAG may start confiscation procedures (Verfallverfahren) against enterprises contracting transport services. This procedure requires a monetary advantage achieved through infringements against this article, and has the aim to confiscate the value of this illegally achieved advantage. In 2011, 61 cases were closed, confirming total confiscations of €424,461. In 2012, the number of cases increased to 82, with a total amount of confiscations of € 482,624.

#### **A.3.1.3 The need for a review of the rules**

No specific shortcomings or weaknesses were identified in terms of the German legal framework. This view was confirmed by the Ministry of Transport and the Federal Association of Road Haulage, Logistics and Disposal (BGL). Nevertheless, there are clear problems with the monitoring of compliance as in other Member States.

In relation to European legislation, the BGL argues that the current legislation ensures a sufficient degree of liberalisation to provide services without overstretching freedom of establishment within the European Union.

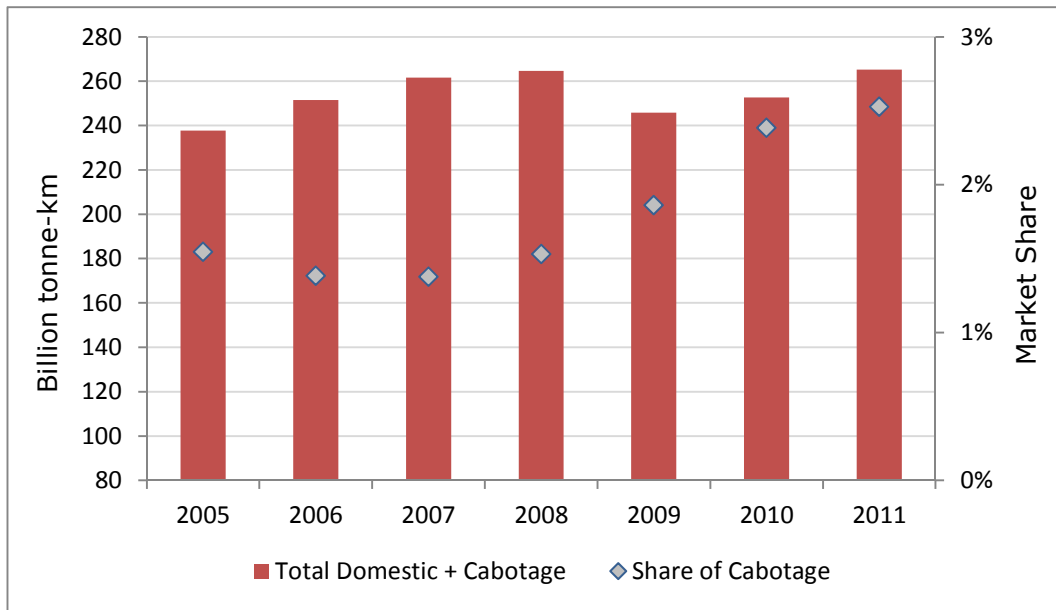
#### **A.3.2. Data analysis**

In 2010, a total of 621.3 billion tonne-km were transported in Germany. The vast majority, about 70%, was transported by road. The second most important mode was rail with a share of 17%, followed by inland waterways with a share of 10%. The shares of the remaining modes, pipelines and air were significantly lower with 3% respectively 0.3%.

Figure A. 3.1 sets out the evolution of the total German domestic road haulage market between 2005 and 2011. Up to 2008, the amount of transported tonnes has steadily increased, before experiencing a substantial drop of 7.2% from 2008 to 2009. In the following years the market increased again, however could not fully recover the loss of the previous year.

Although German hauliers still have a dominant position in the market, the share of foreign road hauliers in the market, carrying out cabotage, has steadily increased, from 1.5% in 2005 to 2.5% in 2011.

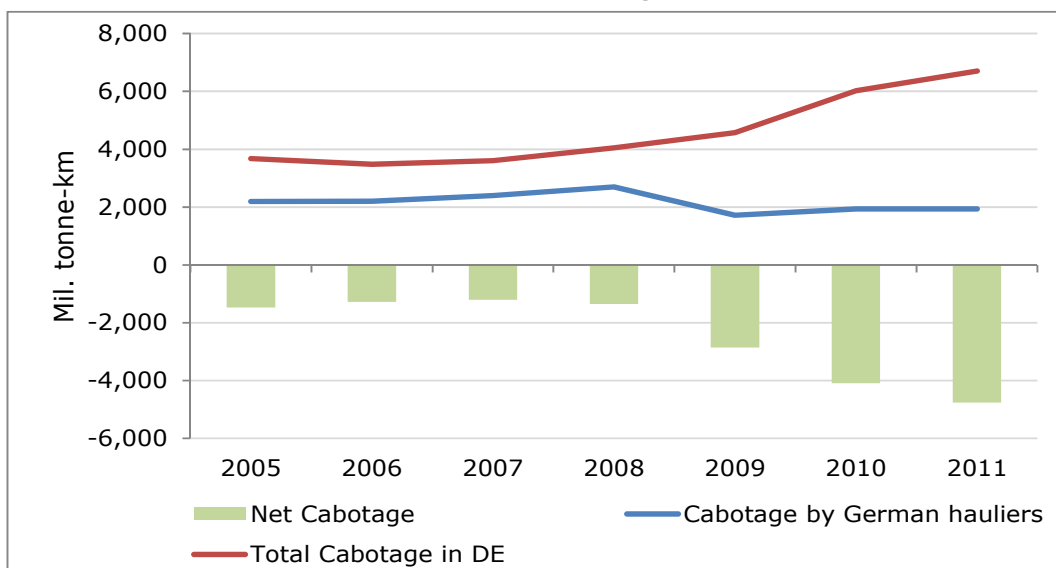
**Figure A. 3.1 Evolution of the total domestic market, and share of foreign hauliers**



Source: SDG analysis of Eurostat data.

Figure A.3.2 shows the evolution of cabotage operations carried out by German hauliers abroad and the evolution of cabotage carried out by foreign hauliers in Germany. In addition, it sets out their difference, also known as Net Cabotage. Between 2005 and 2008, cabotage volumes transported by German hauliers abroad and cabotage carried out in Germany experienced increased slightly. While foreign hauliers strengthened their position in the German domestic road haulage market even in 2009, the year of the recession, German hauliers lost a substantial part of their cabotage volumes transported abroad. After 2009, when the European transport markets recovered, German hauliers were not able to significantly increase their volumes of cabotage, whereas foreign hauliers substantially strengthened their position in the German domestic market.

**Figure A. 3.2 Evolution of German Net Cabotage Volumes**



Source: SDG analysis of Eurostat data.

A summary of further relevant data at the national level is provided in Table A. 3.3 below.

**Table A. 3.3: Key statistical data – Road transport in Germany**

Year	2006	2007	2008	2009	2010
Length of motorway network (km)	12,531	12,594	12,645	12,813	12,819
No. of Community licences issued			51,596	50,246	49,332
No. of Community licence certified copies issued			377,887	378,353	386,469
National road haulage (billion tonne km, vehicles >3.5t)	251.4	261.4	264.5	245.6	252.5
International Road haulage by vehicles registered in Germany (billion tonne km, vehicles >3.5t)	24.8	22.7	19.7	15.6	14.7
Cabotage on Germany roads (billion tonne km, vehicles >3.5t)	3,479	3,600	4,049	4,572	6,023
No. of goods road transport enterprises registered					51,292
No. of employees of goods road transport enterprises					585,711

Source: Eurostat (2012), BGL (2012), BAG (2012).

There is an on-going discussion in Germany whether further opening of the market for road cabotage would impact competition in the German domestic road haulage market, and as such lead to a disadvantage for German hauliers compared to their counterparts from the new EU Member States. The reason for this disadvantage is principally due to significantly lower wage levels in some other countries.

### A.3.2.1 Market Opening 2009

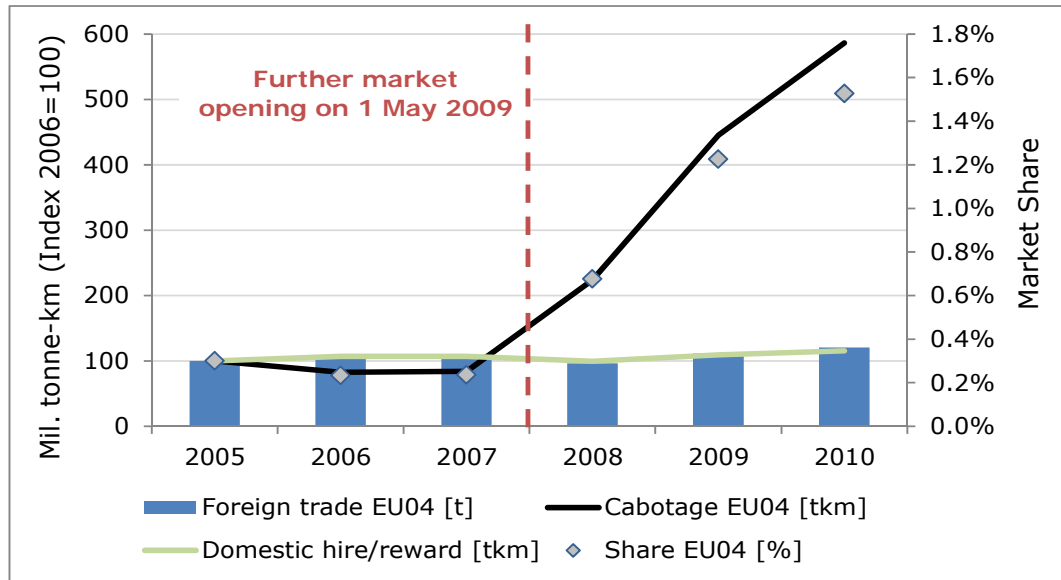
In April 2010, 11 months after the opening of the cabotage market to 7 new Member States, the BAG published a study looking at its impacts. It showed that after the ban had been lifted, the German road haulage market did not experience a rapid increase in cabotage operations from hauliers from these Member States.

However, traffic data for 2009 and 2011, recently published by Eurostat, suggests a substantial increase in cabotage operations carried out by hauliers from these countries in Germany. Since 2008, these hauliers increased their share in the German domestic market by a factor of 7, from 484 million tonne-km to 3,364 million tonne-km in 2011. Due to a slight increase in the total market over this period, their share of the market actually grew by a factor of 6.4, from 0.24% to 1.53% in 2011. In contrast to this evolution, foreign trade between Germany and these countries (in tonnes) only increased by approx. 21% over the same period. The indexed time series are set out in Figure A.3.3.



Industry associations claim that hauliers from these countries benefit from significantly lower labour costs in their countries. The BAG however stated that labour cost differences are gradually decreasing and part of these differences are outweighed by a higher efficiency of German hauliers.

**Figure A. 3.3 Evolution of Cabotage in Germany carried out by hauliers from EU 2004 Member States and foreign trade with these countries (based on data in tonnes and tonne-km)**



Source: SDG analysis of Eurostat data.

### A.3.2.2 Market Opening 2012

A study prepared by the German Federal Office for Goods Transport (BAG, 2012)<sup>62</sup> in December 2011 suggests that the removal of the cabotage restriction for Bulgarian and Romanian hauliers from 1 January 2012 would not have a significant effect on the German domestic road freight market and the prevailing price level. This assumption was based on the following existing barriers to entry into the German market.

The requirement for road haulage companies operating in the German domestic market to have sufficient liability insurance against goods damage, and the limitation of cabotage operation to a maximum of 7 days after unloading of an international transport are expected to form substantial barriers for entry for hauliers from the new Member States, and Bulgaria and Romania in particular. Although it should be noted that this was not a barrier for operators from previous Accession countries.

On the other hand, the study does not expect the significant cost advantage of hauliers from Bulgaria and Romania to be fundamental for entry into the German market. According to BAG estimates, hauliers from Bulgaria and Romania retain approximately a 50% cost advantage on labour costs compared to their German counterparts. Due to the high efficiency of German hauliers, the advantage in total operational costs decreases to approximately 30%<sup>63</sup>.

<sup>62</sup> BAG (2012), *Marktbeobachtung Güterverkehr, EU Osterweiterung, Mögliche Auswirkungen der Kabotagefreigabe für Bulgarien und Rumänien zum 1 Januar 2012 auf den deutschen Güterverkehrsmarkt.*

<sup>63</sup> It should be noted that a 30% cost advantage is significant given the competitive nature of the market.

In addition to the factors mentioned above, the BAG recognises further barriers in the German market hampering the entry for hauliers from Bulgaria and Romania. These barriers include different language and culture, a lower level of perceived quality of Bulgarian and Romanian transport operators (in particular poor reliability and punctuality), and finally the pressure of competition from road freight transport companies from Poland, the Czech Republic and the Baltic States, which is likely to make it difficult for transport companies from Bulgaria and Romania to enter the German market.

In this context a Hungarian haulier mentioned that German contractors are likely to prefer domestic hauliers and accept their higher prices, assuming that these higher prices entail greater quality, rather than dealing with uncertainties related to contracting hauliers from the new Member States. Furthermore they considered the requirement to have liability insurance to be one of the main barriers to entry the German market.

A German association of road freight hauliers stated that the opening of the market to hauliers from Bulgaria and Romania was more likely to affect cross-border transport rather than provide an additional burden on the domestic market through cabotage. Notwithstanding this, the share in tonne-km driven in Germany by trucks from the western European Member States decreased, while the share driven by eastern European trucks increased significantly, in particular by those from Romania and Bulgaria.

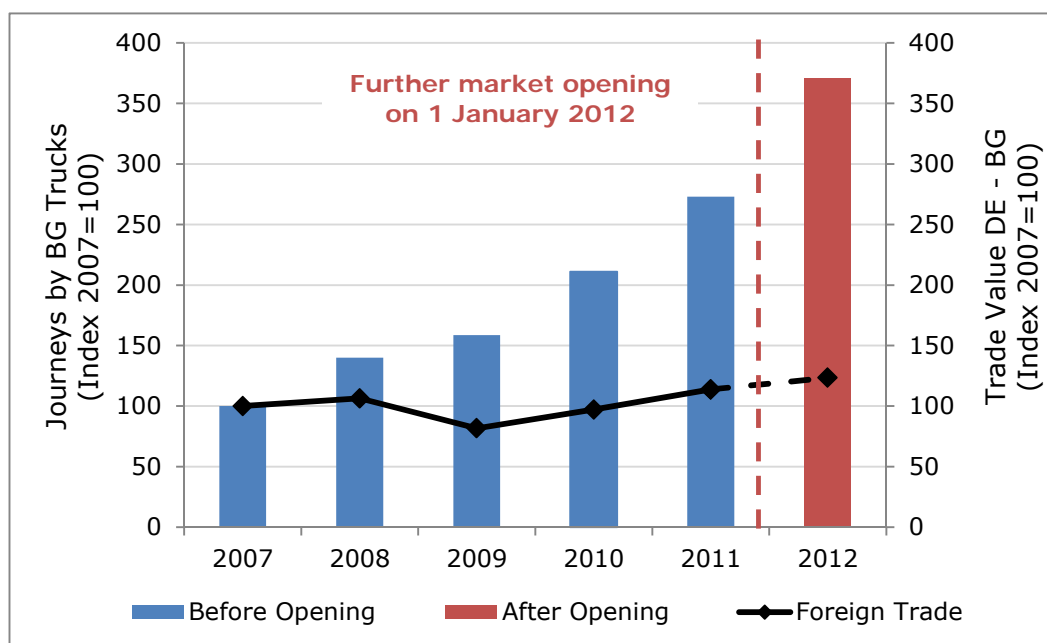
Although it is clear that barriers to enter the German market exist, the experience of the further market opening in 2009 shows that hauliers from Eastern European Member States are able to face these challenges and gain a significant share in the German domestic market. To date there is no evidence that the strong increase in market share of eastern European hauliers is slowing down.

More recent data suggests an increase in transport operations carried out by Bulgarian hauliers in Germany in 2012, and this increase was greater than would have been expected from the increase in the value of trade between these two countries.

Figure A. 3.4 sets out the evolution of the number of journeys realised by vehicles registered in Bulgaria on the German motorway network and the evolution in value of trade between these countries. It shows a steady growth in journeys from 2007 to 2012, with very small growth in 2009. Furthermore, 2009 saw a decrease in the value of trade between the two countries. While there is a clear trend of increasing activity of Bulgarian heavy goods vehicles in the German market, there is no evidence that this trend has been boosted by the opening of cabotage to Bulgarian hauliers in 2012.

Data for 2012 however suggest a significantly stronger increase in journeys carried out by vehicles registered in Bulgaria on the German motorway network than would have been expected from the growth in trade between the two countries. This cannot be explained by an increase of the share of Bulgarian hauliers in cross-border transport between Germany and Bulgaria.

**Figure A. 3.4: Journeys realised by Bulgarian hauliers on the German motorway network and value of foreign trade between Germany and Bulgaria**



Source: SDG analysis of Toll Collect and Federal Statistical Office (Destatis) data.

Therefore, a part of this increase must derive from cabotage of Bulgarian hauliers as a continuation of their international transports to Germany.

An association of German road hauliers claimed that cabotage indirectly influences prices in the national road haulage market. Freight forwarders that subcontract both cabotage operators and domestic road hauliers, are threatening domestic hauliers with using cabotage, with the aim of getting price reductions. Downward pressure on prices in the road haulage sector is also coming from excess capacity. The relocation of vehicle fleets from Western Europe towards the new Member States in the East has continued to take place, driven by the continuing differences in labour and social costs. Given the relative small domestic markets in the new Member States, these fleets can only be deployed in cross-border or cabotage operations.

The association further emphasises that current legislation already ensures both freedom to provide services and freedom of establishment in any Member State. Hauliers wanting to get further involved in domestic markets can exercise their right in accordance to the rights of freedom of establishment within the European Union. They further stated that in light of remaining differences in staff and social costs, liberalised cabotage is only conceivable in harmonised markets where there is some form of level playing field relating to social costs and obligations.

### A.3.3. Summary for Germany

The ordinance on International Road Haulage and Cabotage (GüKGrKabotageV) of 2008 anticipated the entry into force of Regulation (EC) No 1072/2009. This ordinance established the requirements to carry out cabotage in Germany and the documentation necessary to carry on the vehicle. After the entry into force of the Regulation, the German Road Haulage Act was amended by a list, setting out in detail infringements against the

Regulation and applicable fines. No major amendments of German law were necessary, as most provisions of the Regulation had already been in force.

A particularity in German legislation, stated in the Road Haulage Act (GüKG), is the requirement for hauliers wanting to carry out domestic transport services (including cabotage) to hold liability insurance of €600,000. According to foreign hauliers and the Federal Office for Goods Transport this forms an important barrier to entry in the German market. In addition, the contracting party is required to request information from the haulier on the availability of the required documentation. The contracting organisation can be made responsible and charged with a fine if this was not the case.

The German Federal Office for Goods Transport (BAG) check compliance with the laws related to road haulage. Monitoring compliance mainly takes place by means of roadside checks. However, both the Federal Office and industry stakeholders mentioned that monitoring compliance with the current law is not straightforward and infringements against certain requirements, e.g. empty entry, are almost impossible to monitor. This appears to be an EU-wide issue given that stakeholders from various Member States mentioned this concern.

Between 2005 and 2011, the total market for road haulage in Germany increased by 12%. In contrast, the share of cabotage in the market for 'hire and reward' proved to be more dynamic and increased from 2% to 3% over the same period. In addition, and especially after 2008, German hauliers lost substantial parts of their cabotage volumes transported abroad. As a result, cabotage volumes transported in Germany in 2011 were three times as high as cabotage carried out by German vehicles abroad.

Despite the existence of barriers to enter the German domestic road haulage market (e.g. the requirement to hold liability insurance against goods damage), hauliers from the 2004 Accession countries significantly increased their participation in the German market from 0.3% in 2006 to 1.5% in 2011. Stakeholders claim that this is mainly due to significant lower staff costs in these countries. After the further opening of the market to hauliers from Bulgaria and Romania in 2012, industry associations expect a strong entry into the German domestic market, given staff costs in these countries are approx. 50% lower those in Germany. In contrast, the BAG believes that a further opening will not have a significant impact on the domestic market, as high barriers exist and German freight forwarders preferably contract domestic hauliers rather than dealing with uncertainties related to contracting east European hauliers. However, freight forwarders do apply pressure on German hauliers in order to keep prices low.

## A.4. CASE STUDY UNITED KINGDOM

The road network in the United Kingdom is about 395,000 km long with motorways accounting for only 1% of that total. In 2011, approximately 5% of the traffic on UK roads is heavy vehicle traffic and 44% of this traffic is on motorways. In addition, approximately 4% of all heavy goods vehicles are foreign registered.

According to the Freight Transport Association there were approximately 285,000 HGV drivers in United Kingdom and that the logistics sector as a whole employs about 2.2 million people. There are no figures on the total number of companies that operate in the sector, but in 2010 there were a total of about 88,000 goods vehicle operator licences. This number has been gradually decreasing from a level over 100,000 in 2000.

### A.4.1. Legislative Background

Road cabotage is ruled in the UK by the Regulation (EC) No 1072/2009, in force since 14 May 2010 as per Article 19 of the Regulation<sup>64</sup>.

The UK road cabotage market is currently open to hauliers from all EU Member States (MSs) as all restrictions previously applying to Accession Member States have been lifted (the last restrictions removed was the one applied to Bulgarian and Romanian hauliers in force up to the end of December 2011). Table 1 below summarises the year of opening of the UK market to new MSs.

**Table A. 4.1 Market opening to new Member States in the United Kingdom**

Country	Date cabotage allowed
Slovenia	1 May 2004
Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovakia	1 May 2009
Bulgaria, Romania	1 January 2012

Source: SDG research.

#### A.4.1.1 New EU rules on road haulage (Regulation (EC) No 1072/2009)

Prior to Regulation (EC) No 1072/2009 road transport within the UK was subject to Regulation (EEC) No 3118/93.

A number of national laws and regulations followed the publication of Regulation (EEC) No 3118/93 and relate to road freight transport, in particular:

- the Goods Vehicles (Licencing of Operators) Act of 1995;
- the Goods Vehicles (Licencing of Operators) Regulations of 1995 (modified in 1996 and in 2010);
- the Transport Act 2000 (that modifies the 1995 Act);

<sup>64</sup> Data presented in this case study refer to Great Britain.

- the Goods Vehicles (Enforcement of Powers) Regulations 2001 (subsequently amended in 2009).

Some sections of these laws have now been repealed following the introduction of Regulation (EC) No 1072/2009. The main changes to these laws are:

- Removal of the requirement in the 1995 Act to have a UK licence to operate in the UK where a company has a Community licence.
- Giving the enforcement agency VOSA clear direction to monitor compliance with cabotage provisions (included in the Goods Vehicles (Enforcement of Powers) (Amendment Regulations) 2009 which modified the Goods Vehicles (Enforcement of Powers) Regulations 2001.

The implementation and enforcement of Regulation (EEC) No 3118/93 raised some interpretation problems also in the UK, as in the rest of EU MSs, with respect to the identification of cabotage operations on the basis of the “temporary” criteria set by the Regulation itself. This made the Department for Transport write to the European Commission setting out how it interpreted Regulation (EEC) 3118/93 in relation to this issue. The Department for Transport’s<sup>65</sup> interpretation – which was build out of a Communication issued by the European Commission on this subject<sup>66</sup> - was the following:

- Cabotage operations must not be:
  - Permanent,
  - Frequent, regular or continuous.
- Cabotage operations must:
  - Involve the vehicle(s) in question leaving the UK at least once per month,
  - Be entirely ad hoc, casual and circumstantial, and
  - Be at infrequent intervals.

The statement by the DfT went on to provide an example of when an action was considered to be illegal when:

- there was some form of standing contract for road freight operations within the UK,
- the operator was repeatedly performing cabotage operations for the same company or industry,
- the operator has its own premises in the UK.

The entry into force of Regulation (EC) No 1072/2009 clarified the situation through the introduction of a new regime for cabotage operations in EU MSs that specifies clearer rules such as the fact that cabotage operations can start only after full unloading of an international carriage and can be limited to up to three cabotage operations to be carried out within seven days from the full international carriage unloading (Art. 8 Regulation (EC) No 1072/2009).

Stakeholders, as discussed below are generally satisfied with the new regulations as they have cleared up the uncertainty in the previous Regulation.

---

<sup>65</sup> Statement on the DfT’s interpretation of Road Transport Cabotage Rules (Department for Transport, 2006).

<sup>66</sup> European Commission (2005), *Commission Interpretative Communication on the temporary nature of road cabotage in the movement of freight*, Official Journal of the European Union, 26 January 2005.

#### **A.4.1.2 The degree of enforcement of new and old rules and their impact on the EU road haulage market**

The enforcement of cabotage rules is undertaken by the Vehicle & Operator Services Agency (VOSA) created in 2003 as an executive agency of the Department for Transport following the merger of the Vehicle Inspectorate and the Traffic Area Network division of the Department for Transport. VOSA carries out a number of licensing, enforcement and testing activities. One of its activities is to enforce cabotage requirements within the UK.

Enforcement is regulated by the Goods Vehicles (Enforcement of Powers) (Amendment Regulations) 2009 which modified the Goods Vehicles (Enforcement of Powers) Regulations 2001 relating to enforcement of the licencing provisions included in the 1995 Act mentioned above. These Regulations state how the 1995 Act is to be enforced in relation to penalties and decisions on impounding.

Infringements of cabotage provisions can result in a penalty of £200 as per level 1 of the standard scale of fines for summary offences set out in the Criminal Justice Act of 1982. Serious infringements relating to the above mentioned Acts and Regulations can also lead to higher fines and the impounding of vehicles. While the fine is always imposed when an operator is found to have infringed the Regulation, VOSA usually proceeds to send a letter of warning to the transport company, and only after this notification will VOSA proceed to impounding or expelling vehicles for repeat offences.

Since the introduction of Cabotage rules, VOSA has issued over 1,500 prohibition notices leading to these vehicles having to immediately leave the country by the nearest port<sup>67</sup>.

Up to the end of 2010, VOSA had issued 323 £200 fines for the infringement of cabotage provisions following the identification of 449 offences. Furthermore, in the first 8 months of the 2012-2013 financial years, VOSA has issued 229 infringement notices relating to cabotage. In addition VOSA has also impounded a number of vehicles following the infringement of cabotage operations.

Operators can appeal all VOSA decisions relating to cabotage to the Transport Tribunal. This has happened on a number of occasions, in particular when the vehicle alleged to have carried out the offence has been impounded. The Tribunal has on all occasion found in favour of VOSA, in particular reiterating the point that it is the operator's duty to prove compliance when challenged by the enforcement officer, the officer is not obliged to stay with the vehicle whilst information is sent from another country.

It is clear from the VOSA publication "Moving on"<sup>68</sup> that VOSA is focused on ensuring that there is a level playing field in United Kingdom in relation to freight transport. Statistics from the latest issue show that just under 47% of all roadside encounters are on foreign vehicles within the UK. VOSA informed us that it is important that they have an equal split between the number of foreign and domestic operators that they stop (as set out in Recital 10 of the Regulation). These roadside encounters are carried out all over the country and not just around the main ports of entry. A breakdown of roadside encounters of foreign vehicles by country for 2010/11, 2011/12 and for the period April to December 2012 is set out in Figure 1 on the next page. Accompanying data confirms that the total number of roadside encounters of foreign vehicles accounts for about 50% of all vehicles stopped. It should be noted however that foreign operators (undertaking cabotage and/or international services) account for about 15% of total tonne-km in United Kingdom. Given this

<sup>67</sup> VOSA, *Moving on, Issue 40*, September 2012.

<sup>68</sup> Ibid.

proportion, it is actually more likely that a foreign operator will be stopped than a domestic operator.

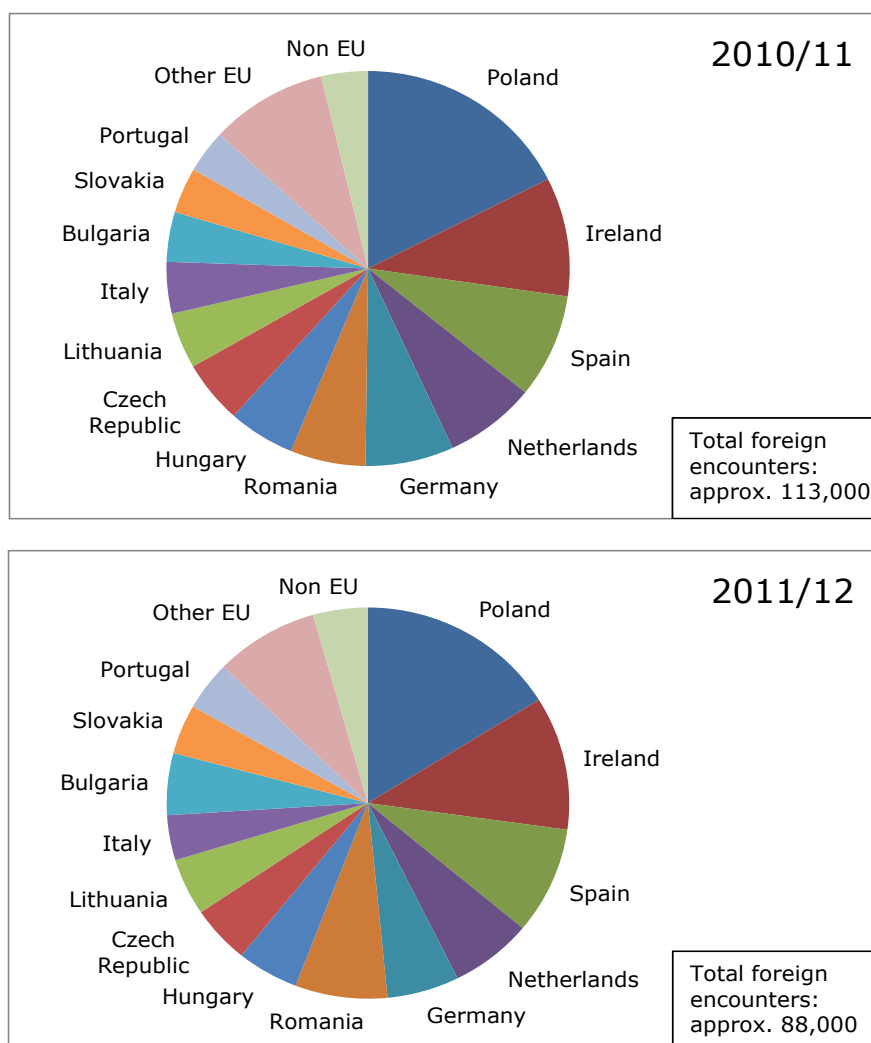
Combining the value for the total number of infringements to the number of inspections, we have seen that 0.2% of inspections end up in a cabotage infringement. Data is not available in relation to other types of infringements. Detailed enforcement statistics relating to the number of vehicles impounded over the last three years are set out in the Table A. 4.2 below.

**Table A. 4.2 Impounding Statistic 2010/11 to 2012/13**

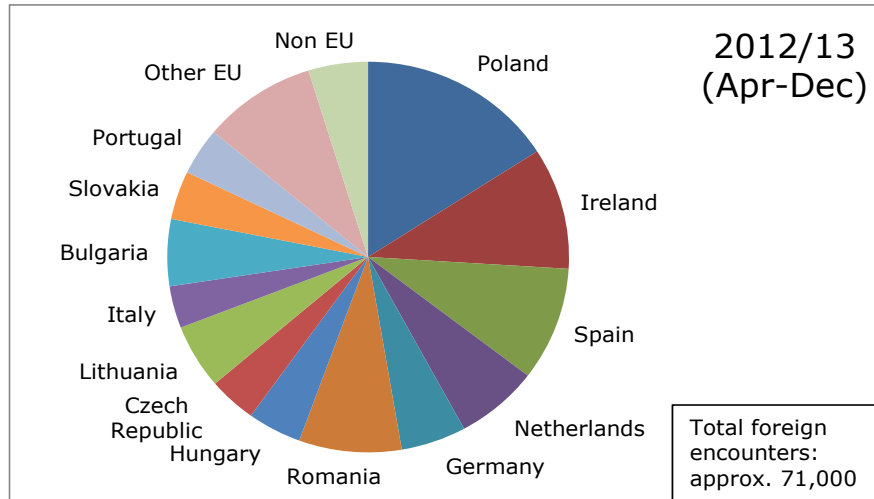
Category (Per HGV)	2010/2011	2011/2012	2012/2013
Total impounded	23	29	20
Total impounding decisions appealed	12	16	16
Total returned	2	3	1
Total not returned	21	26	19

Source: VOSA (2013).

**Figure A. 4.1 Roadside encounters in the UK**







Source: VOSA (2013).

In an attempt to pre-empt possible infringements of cabotage and other requirements VOSA has developed the Operator Compliance Risk Score (OCRS) which aims to predict the likelihood that an operator will infringe the Regulations set out above. The system has been in operation since 2006 and there have been varying views on its effectiveness. To meet some of the concerns VOSA has updated the system in 2012 to make it more equal and reflect more closely the likelihood of an infringement. More details relating to this are set out in the box below.

#### Box A. 4.1.: Operator Compliance Risk Score (OCRS)

##### MONITORING ROAD HAULIERS IN THE UK

The Vehicle and Operator Services Agency (VOSA) has developed a predictive tool to be able to identify the likelihood of an operator being non-compliant with the requirements of freight road transport vehicles. This tool, known as the Operator Compliance Risk Score (OCRS) was set up initially in 2006 to measure the risks related to certain operators in relation to roadworthiness and traffic enforcement:

- The road worthiness data includes test history information, data relating to when the fleet was checked and actual checks undertaken at the roadside.
- Traffic enforcement data is based on a score relating to the number of infringements relating to driver hours and the number of infringements relating to overloading and other infringements.

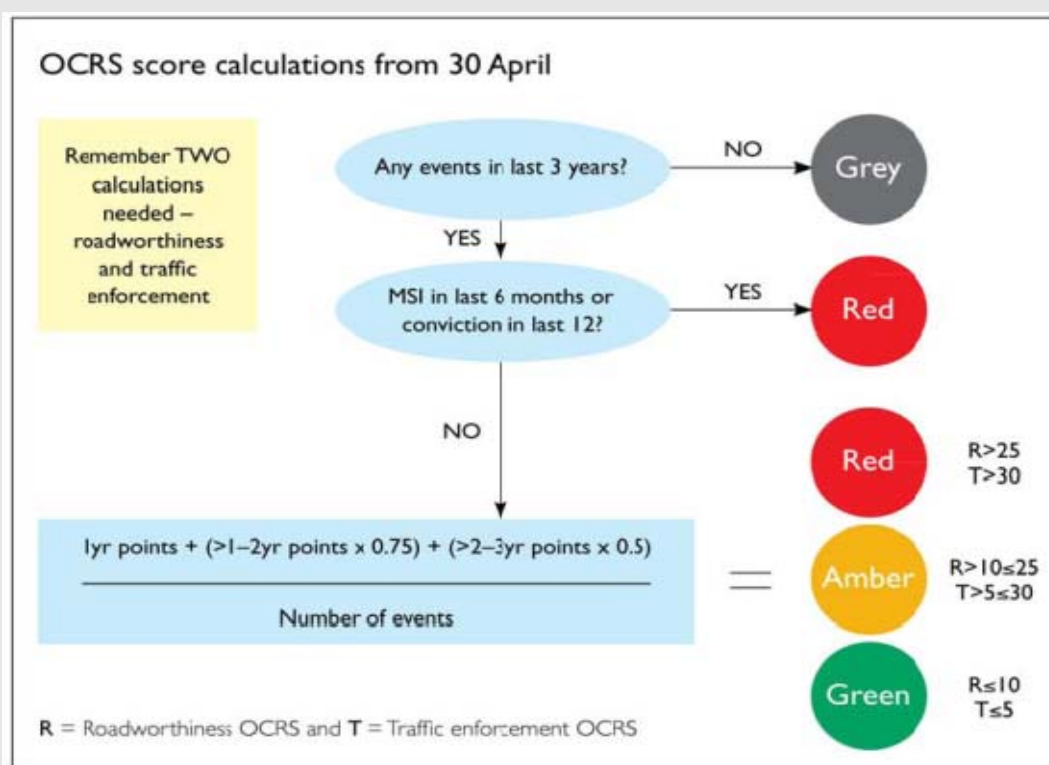
The OCRS is used primarily by VOSA roadside examiners to choose which vehicles to check and is based on information initially gathered in relation to vehicles and operator details and included into VOSA's Mobile Compliance system. This system allows VOSA staff to focus on non-compliant operators and reduce the number of checks on compliant vehicles. The scoring system that is used to identify the level of risk of an operator follows the standard "traffic light" approach:

- Green for an operator with low risk;
- Amber for operators with medium risk; and
- Red for operators that are believed to be high risk.

The system has worked well since its creation with the industry as a whole supporting its adoption and its workings, while acknowledging that there were some areas that could be deemed discriminatory that needed to be changed or updated. In particular these areas of improvement focused on how complicated the system was the manner in which the results of the scores were being used by the wider transport industry. In response to this, VOSA undertook a major review of the OCRS in 2012 and implemented the new changes in October 2012. The main changes introduced were:

- Removal of the predictive scoring system (where new operators were given a score prior to any encounter based on the general score of their comparable operators. This has now been removed and replaced by a new Grey band showing VOSA examiners that historical data is not available).
- Increase of the rolling period of enforcement record from 2 to 3 years (to ensure that there is a larger dataset to work from).
- Changes to the banding system (introducing the Grey band as mentioned above to bring the UK operators in line with non-UK operators).
- Weighting points to when the defect/offence occurred (allowing for older defects/offences to have less of an impact on the score than more recent ones).
- Straight to Red for serious offences (when the offence has been categorised as a "Most Serious Infringement" or the operator has been successfully prosecuted for an offence).
- Change in the number of points and penalties per defect (Points and penalties now relate to the severity of the defect/offence).

**OCRS system process**



Source: OCRS Guidance Notes, VOSA (2012)<sup>69</sup>

<sup>69</sup> Provided to VOSA by the Freight Transport Association.

The figure below shows the score to be allocated for the individual bands.

#### OCRS bands

Banding	Roadworthiness Baseline Score	Traffic Enforcement Baseline Score
RED	>25	>30
AMBER	11-25	6-30
GREEN	≤10	≤5
GREY	NO SCORE	NO SCORE

The aim of the OCRS system is to incentivise operators to maintain standards or make improvements in their practices as a better score will lead to vehicles being less likely to be targeted for checks. As the scoring system is also extended to non UK operators the system is seen as being equitable.

#### A.4.1.3 The need for a review of the rules

As set out above, VOSA has recently updated its OCRS monitoring system in order to counter some of the criticisms it has received since 2006. There remain some concerns in relation to the extent to which VOSA is able to monitor cabotage operations, although the limited number of points of entry in the UK may make it easier to monitor entry and exit than in other Member States. In addition, recent case law has gone into detail on the interpretation of Article 8 (3) of the Regulation in relation to providing evidence that cabotage operations are valid. In particular, the Transport Tribunal mentioned above has determined that drivers need to carry the relevant evidence with them at all times to prove that they are complying with the requirements, a driver found without evidence is deemed to be in breach of the cabotage provisions.

In discussions with the enforcement agency it seems that the main cause of cabotage infringements is an inadequate understanding of the cabotage limitations. In particular, often the drivers of HGVs don't know the limits of what they can do. In addition, there is much confusion between when and how cabotage and combined transport requirements can be applied leading to some of these problems and also creating difficulties for the examiners.

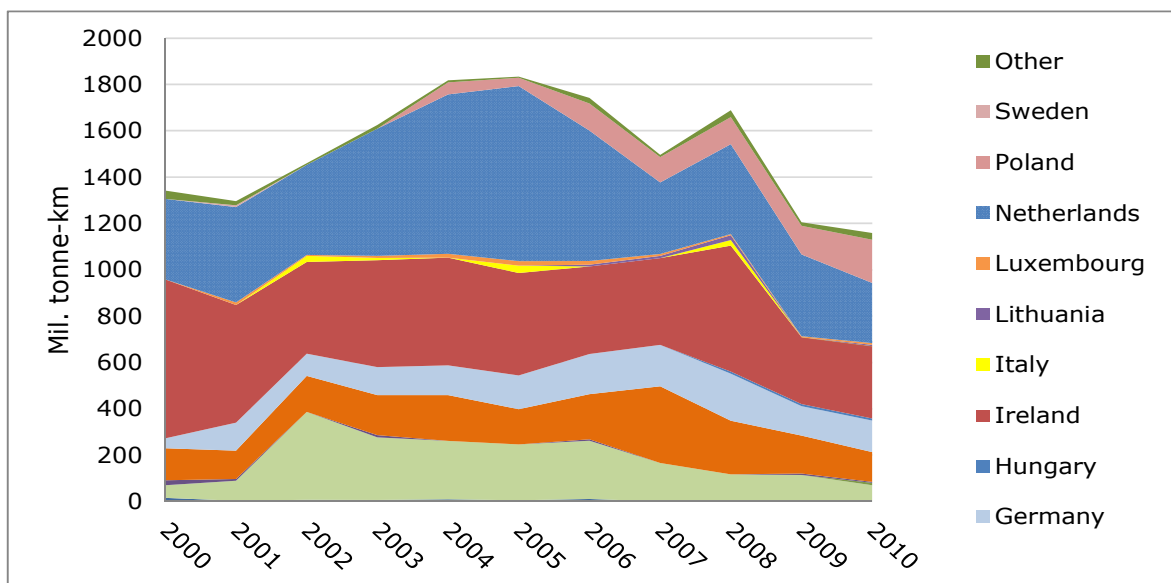
Furthermore, VOSA has explained that they provide substantial information to other Member States in relation to the application and enforcement of the cabotage provisions but that they so not always receive the same amount of information in return. As such it is fundamental that there is a more joined up approach to monitoring in particular in relation to sharing information on enforcement.

In terms of the Regulation itself, all stakeholders focused on the importance of monitoring and enforcement and particularly the coordination of this monitoring across Member States. While the system in place in United Kingdom is effective there is a concern that in other Member States it is less so, making it difficult to catch problematic operators before they enter United Kingdom.

### A.4.2. Data analysis

The Department for Transport publishes information on the level of cabotage within United Kingdom split by the country of origin. The historical data for this is set out in the figure Figure A. 4.2 below.

**Figure A. 4.2 Road cabotage in the UK 2000-2010**



Source: Department for Transport, UK (2011).

The figure above shows that the share of cabotage undertaken with vehicles from the Netherlands and Belgium has fallen significantly in recent years. This has been replaced, primarily, by cabotage from Poland, although it can be seen that there has been a general contraction of business due to the economic crisis.

Given the comparative disadvantage of British hauliers in terms of cost when compared to other Member States there is little evidence of cabotage operations being carried out in other Member States. The exception to this is the derogation that the Irish government obtained in relation to the haulage of road vehicles around the seasonal peak at the start of the calendar year. In this period, cabotage rules are relaxed in Ireland to allow for seasonal peak demand to be met by overseas hauliers. In this case, the majority of hauliers that enter the Irish market are from United Kingdom and Northern Ireland.

### A.4.3. Economic and social impacts

The UK market is already extensively open and the number of infringements mentioned above illustrate that there are a large number of operators willing to carry out cabotage operations within United Kingdom. The statistics set out above show that the main sources of cabotage remain neighbouring Member States, with the largest source being Ireland (although the largest was the Netherlands until 2008).

Although geographical barriers mean that there is a high barrier (ferry/tunnel cost) to enter into United Kingdom it is clear that there is a substantial amount of international road traffic that enters the UK and leaves empty. The introduction of cabotage provisions have ensured that parts of the return journeys are carried out in a more efficient manner and with a full load. Cabotage operations has increased competition in the domestic market and reduced prices with the main source of competition coming from Irish drivers. This has had

a downward pressure on wages, although the associations that we spoke to generally welcomed the competition as long as it was fair and that comparative advantage remains important in the sector.

Domestic companies have expressed concern that some operators are taking advantage of the cabotage provisions and not adhering to the legal provisions although it has been acknowledged that the work of VOSA is clamping down on such practices. As shown above, VOSA has already impounded vehicles of a number of operators who had based overseas registered vehicles in the UK.

The general industry view (through its associations) was that the current provisions are acceptable in terms of the extent to which cabotage is allowed and they would not like to see it change. Further liberalisation would impose further downward pressure on wages and make monitoring even more complicated. Furthermore, it was made clear that the key action to take was in relation to changing the Regulation is to make the provisions clearer and ensure that there is better understanding of how they are to be applied. It is also necessary to ensure that there is better cooperation between Member States to ensure that there is a robust information exchange that can benefit all parties.

We have been informed that there needs to be renewed focus on monitoring and enforcement within United Kingdom as there is a concern that some cabotage operators are not as focused on safety (with vehicles operating below EU standards) as domestic hauliers leading to higher risks on Britain's roads. The social consequences of safety concerns should not be underestimated, nor should they be used as a barrier to entry if they are set different to the levels across the rest of the EU. This fear has been cemented in recent times by some high profile accidents caused by foreign drivers/hauliers whose vehicles may not have been maintained in an appropriate manner or where drivers may not have been following working time limitations.

#### **A.4.4. Summary for United Kingdom**

Cabotage operations in the UK have developed substantially in recent years and, apart from Irish hauliers, there has been a shift in the origin of the operators that are carrying out the cabotage operations with more cabotage being undertaken by Eastern European hauliers.

Monitoring of cabotage in United Kingdom is carried out by VOSA which also monitors compliance with other HGV, road related requirements (such as road worthiness). Its roadside checks are carried out both on foreign operators and on domestic operators; the share of foreign operators that are checked is about 47%. VOSA has also developed a system to monitor compliance with all road related laws, the OCRS. This system is a risk based tool that provides VOSA with an assessment of the probability that an operator will infringe one of the laws. This system was recently updated to improve its functionality.

The main concern in the United Kingdom is not related to wage levels of foreign hauliers as competition is seen as a good thing for the sector, the greater concern relates to ensuring that the vehicles that are entering United Kingdom are adhering to the appropriate safety standards.

## A.5. CASE STUDY HUNGARY

Hungary is a landlocked country, bordered by Austria, Slovakia, Ukraine, Romania, Serbia, Croatia and Slovenia. It has a population of about 10 million inhabitants, 2 million of whom live in the capital, Budapest. The country's road network is approximately 197,500 km long, including 1,273 km of motorways.

In 2009, there were 16,314 enterprises registered in the road freight transport sector. The number of people working in the sector is estimated to be around 100,000<sup>70</sup> although official statistics from 2009 report a value of 58,210 workers registered in this sector (Eurostat data).

### A.5.1. Legislative background

Cabotage for Hungarian hauliers in the rest of Europe has been restricted through a temporary ban enforced by most Member States following Hungary's accession to the Union in 2004. Most of these restrictions were lifted during 2009, however some Member States lifted them earlier (Sweden in 2006) and others only recently (Romania and Bulgaria in 2012). Until May 2010, road cabotage in Hungary was regulated through MT Regulation 89/1988. (XII. 20.) on road transport services and operation of road vehicles.

Following accession to the European Union in 2004, Hungary retained an exemption from allowing cabotage activities within the scope of Commission Regulation (EEC) No 3118/93 for 3 years with a possible extension of a further 2 years. Following the expiration of the derogation, MT Regulation 89/1988. (XII. 20.) was modified to better reflect the provisions of the EU Regulation. This Hungarian legal act introduced a template form to be completed by operators, a so called "control sheet", with the aim of ensuring the uniform and unambiguous data collection regarding road cabotage within the scope of the above mentioned Regulation. The data to be included in the form were the following:

- name of the carrier;
- plate number of the vehicle used for cabotage;
- planned starting date of the cabotage;
- plate number and storage place of the vehicle used for cabotage;
- name and address of the carrier, country code, number of the carrier's Community licence;
- name of the driver;
- number of the driver attestation in case of driver from non-EU country;
- date on which the vehicle enters and exits Hungary;
- weight of goods;
- name and address of the consigner, place of loading and unloading, starting and finishing date of the cabotage;
- place, date, signature.

According to the information provided by the National Transport Authority, this form was not difficult to complete and there were no complaints received in connection with that. However, there were some practical limitations in relation to the identification of who the

---

<sup>70</sup> Bende, Z. (2011), *Billentik a mérleget*, Working Paper of the Hungarian Association of Road Hauliers ([http://www.mkfe.hu/dokumentumok/pdf/billentik\\_a\\_merleget\\_bende\\_zoltan\\_2011\\_03\\_21.pdf](http://www.mkfe.hu/dokumentumok/pdf/billentik_a_merleget_bende_zoltan_2011_03_21.pdf)).

authorised representative of the haulier was as required within Act No CXL of 2004 on the General Rules of Administrative Proceedings and Services.

In addition to the provisions within the Regulation mentioned above, Government Decree No 156/2009. (VII. 29) set out the sanctions to be imposed for misuse of the cabotage report form. The period of the application of the report extended from the end of the derogation period until the entry into force of Regulation (EC) No 1072/2009. Today these regulations are no longer in force, thus it is no longer compulsory for this form to be carried on each truck.

#### **A.5.1.1 New EU rules on road haulage (Regulation (EC) No 1072/2009)**

After the entry into force of Regulation (EC) No 1072/2009 the ability to collect data on road cabotage diminished greatly. The cabotage report set out above was found to be contrary to the EU regulation. In particular, it was claimed that it contravened paragraph 4 of Article 8 in Regulation (EC) No 1072/2009, stating that "No additional document shall be required in order to prove that the conditions laid down in this Article have been met." Thus Hungarian legislation (Ministerial Decree No 89/1988) originally modified to include this control form had to be re-modified, in order to exclude the requirement concerning the registration of cabotage.

In parallel to this decision, Government Decree No 156/2009 also had to be modified to abolish the sanctions in connection with misuse of the cabotage report. As explained in detail in Section 1.1.2 below, Decree No 156/2009 sets out all the sanctions relating to infringements in road freight transport in Hungary.

#### **Box A. 5.2.: Example of cabotage before Regulation (EC) No 1072/2009**

In the short period when registration was required, there was one important case of road cabotage within Hungary which involved the transportation of wind turbine parts to the port of Győr-Gönyű from where these parts had to be transported on road. Heavy and wide/long load transport was needed and in part carried out by Spanish hauliers who submitted a cabotage report form and in turn received detailed information about the requirements for cabotage.

The modification of Ministerial Decree No 89/1988 led to a substantial fall in the statistical information relating to road cabotage. Currently, no public body is collecting information in relation to cabotage in Hungary. However, this may change in 2013 with the introduction of the national electronic register where all serious infringements<sup>71</sup> of road cabotage provisions will have to be logged, which might slightly improve the influx of relevant data. The national electronic register is obligatory from January 2013. The aim of the system is to collect data relating to road cabotage infringements and is required by Article 14 of Regulation (EC) No 1072/2009.

Since the publication of the Regulation in 2009 there has been some interest in the possibility of carrying out cabotage operations in Hungary. On these occasions, the National Transport Authority has recommended that operators voluntarily complete the above mentioned form in order to be better prepared for roadside inspections, but there is no obligation to carry this information in this format as it is any case available in other documents that hauliers carry on their deliveries.

<sup>71</sup> For example leading to the imposition of a penalty by the Member State, or any temporary or permanent withdrawal of the Community licence or of the certified true copy of the licence.



### A.5.1.2 The degree of enforcement of new and old rules and their impact on the EU road haulage market

Table 1 below gives a broad overview of the authorities involved in controlling road transport in Hungary. Even though the National Transport Authority (NTA) can be seen as one of the main controlling body, it should be noted that currently the control and enforcement of the applicable rules is not entirely under the jurisdiction of the NTA, with some of the responsibilities currently being undertaken by the Ministry of the Interior (through the state police). As a result, adherence to road cabotage regulations can theoretically also be checked during ordinary road side controls by the state police. Considering that these controls are not conducted with the explicit aim of monitoring cabotage activity, little information relating to this area is actually gathered. This contributes to the lack of official data. Moreover, since the extension of the Schengen Area to Hungary, the opportunities to monitor cabotage have reduced considerably as there are no longer border controls.

**Table A. 5.1 Road Transport Control Authorities in Hungary**

Items to be controlled	State police	National Tax & Customs Admin.	Border Guard	NTA	Other body or office
Traffic regulations & driving licences	x		x		
Authorisations for international transport		x	x	x	
T1 documents or TIR Carnets		x		x	
Weights and dimensions		x		x	
Certificate for carriage of perishable foodstuff	x	x	x	x	
Documents on veterinary & phytosanitary control		x	x		(3)
Road user charges		x		x	(1), (2), (4)
Roadworthiness	x	x	x	x	
Regulations on driving hours and rest periods	x	x		x	(5)
Regulations on transport of dangerous goods	x	x		x	(6)

**Notes:**

- 1) Transport Ministry
- 2) Road administration
- 3) Veterinary and Phytosanitary Services of the Ministry of Agriculture
- 4) ÁAK Rt. (State Motorway Management CO LTD By Shares)
- 5) Labour Authorities
- 6) Disaster Management Authority

Source: Adapted from IRU (2011)<sup>72</sup>.

<sup>72</sup> International Road Transport Union (2011), *Road Transport Regulating and Enforcement Bodies*, Hungary, September 2011, <http://www.internationaltransportforum.org/IntOrg/road/ctrlbodies/rdhungary.pdf>



In addition, the tasks of the NTA have recently been decentralized, as county level Government Offices have been created and given the task of carrying out some of the duties of the NTA locally, including the control of cabotage activities. The NTA only as a second tier authority charged with making recommendations to the various Government Offices. This is one of the reasons why centralized data regarding infringements of the road cabotage regulation are difficult to gather.

Government Decree No 156/2009 sets out the enforcement provisions relating to road freight transport. The exact amount for the penalties is set out in Annex 1 to the Decree. The first paragraph of this Annex specifies that road transport services carried out without a Community Licence lead to a fine of 600,000 HUF (€2,122)<sup>73</sup>. The second one states that if the operator does not have a certified copy of the Licence on the journey (but does have a licence) the company is liable for a fine of 300,000 HUF (€1,061) or 30,000 HUF (€106), the latter is applicable if the operator is in possession of an extract of the licence. Paragraph 7 states that if the driver does have his/her relevant documents then he/she is liable for a fine of 200,000 HUF (€707).

It is interesting to note that Point 1 of Annex 1 still includes a penalty to be issued in case of the lack of a cabotage authorization. This sanction has obviously remained in the Decree by mistake, and it has to be changed.

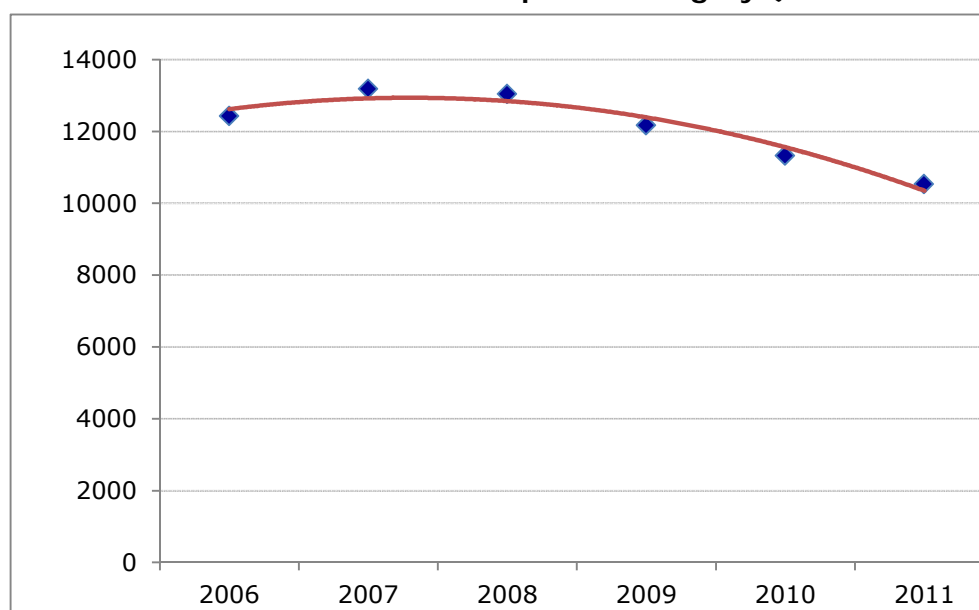
Explicit sanctions regarding the infringement of the cabotage rules are not included in Hungarian legislation. To date, the authorities have not reported a significant number of violations, thus the question of penalties has not yet emerged as vital to the industry, and so, neither to the administration. This is also the reason why the above mentioned mistake in the Annex of the Decree has also not been revealed until now.

#### **A.5.1.2 The need for a review of the rules**

Cabotage activity in Hungary is mainly carried out by hauliers from abroad in order to reduce the number of empty runs within the country. However, given the size of the domestic market in Hungary, the recent economic downturn and resulting fall in good transported (see Figure 1), the extensive toll-road network and the competitiveness of Hungarian hauliers limited the scope for foreign hauliers for entering into the Hungarian road cabotage market. There are a number of notable exceptions relating to activities around border towns, but the volume of these services are marginal when compared to the entirety of road freight transport volumes.

---

<sup>73</sup> All values in EUR have been calculated as based on the official exchange rate of the Magyar Nemzeti Bank (Hungarian National Bank), 282,77 Ft = €1, on 06/12/2012.

**Figure A. 5.1 National annual road transport in Hungary (million tonne-km)**

Source: Eurostat (2012).

### A.5.1.3 Presence of Hungarian road hauliers abroad

According to the road hauliers association Hungarian hauliers carry out very little cabotage activities in other Member States. (This seems to be contradicted by the information set out in the data analysis section below.) The association told us that often national markets still have indirect barriers to entry, for example: in Germany, a €600,000 CMR insurance certificate must be purchased by a road haulier that wishes to carry out road freight transport activities in the country. However, the association points to linked cabotage having allowed capacity utilisation to increase from around 80-85% to 90-92%<sup>74</sup>.

Contrary to the limited road cabotage activities described in the previous paragraph, following the economic crisis, Hungarian and Polish hauliers have doubled their market share in international road freight transport<sup>75</sup>, where, due to the cross border nature of the activity, it is more difficult to create barriers to entry. One stakeholder put substantial emphasis on the protectionist practices set out above saying that it will be hard for them to be overcome in the short term. The forwarders of the Western European countries have had to limit their activities to their internal market, while the hauliers from countries with lower wages have been able to increase their share. This trend can be expected to continue in the future. To give an example, the gross salary of a driver is €1,000 per month in Hungary compared to €3,000 month in Germany, which gives a clear price advantage for the hauliers from the new Member States and reflects the different standards of living in the Member States and the fact that similar differences arise also in other sectors of the economy.

<sup>74</sup> Data from the Hungarian Association of Road Hauliers.

<sup>75</sup> Monika WRZESINSKA (12/2011), *Six years of road freight growth lost to the crisis*, Eurostat, ([http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-SF-11-012/EN/KS-SF-11-012-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-11-012/EN/KS-SF-11-012-EN.PDF))

## A.5.2. Data analysis

### A.5.2.1 High level data

Part of data available for cabotage operations in Hungary is the information that is included in the Eurostat databases that is based on some information originating from the national statistics offices which, in turn, is derived from what is reported by the hauliers themselves.

**Table A. 5.2 Basic statistics – Hungarian road freight transport**

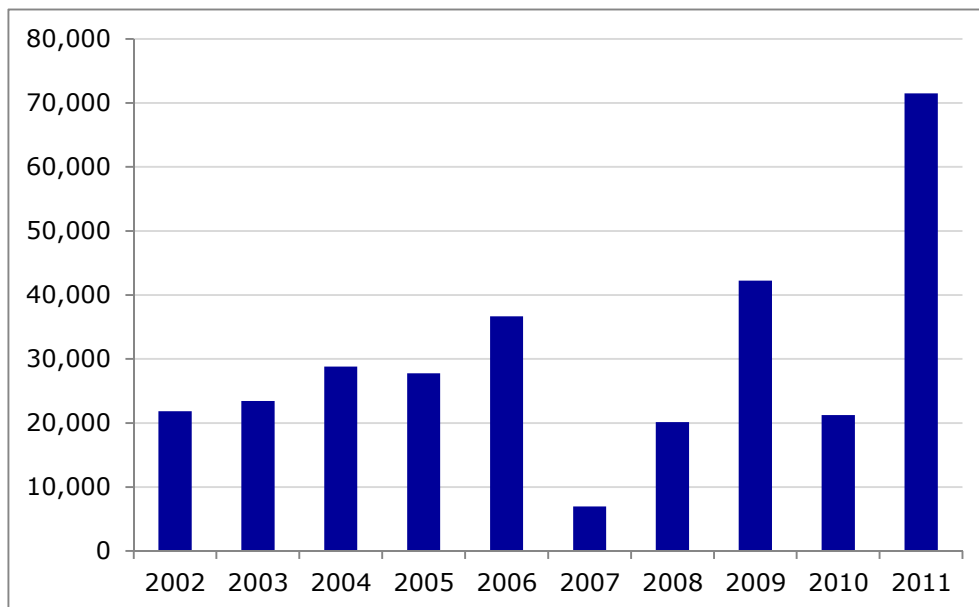
Year	2006	2007	2008	2009
Length of motorway network (km)	785	858	1274	1273
National road haulage (million tonne km)	12,299	13,070	12,962	12,075
International Road haulage by vehicles registered in Hungary (million tonne km)	13.656	15.332	14.725	14.09
Cabotage on Hungarian roads (thousand tonne km)	36,660	6,940	20,151	42,256
No. of goods road transport enterprises registered	-	-	-	16,314
No. of employees of goods road transport enterprises	39,563	40,156	312,259	58,210

Source: Eurostat (2012) .

The table above sets out the key statistics for Hungary relating to road freight transport, while Figure A. 5.2 shows the road cabotage information that is available for Hungary in thousand tonne-km. When these values are compared to total annual road freight transport traffic of (see Figure A. 5.3), these values are very low, between 0.056% and 0.21% in line with what has been expressed in the Report of the High Level Group on the Development of the EU Road Haulage Market (Bayliss, 2012<sup>76</sup>). The variation between the values can be explained by the fact that this data is self-reported by the companies to the National Statistics Office, and the data that they provide may be somewhat biased.

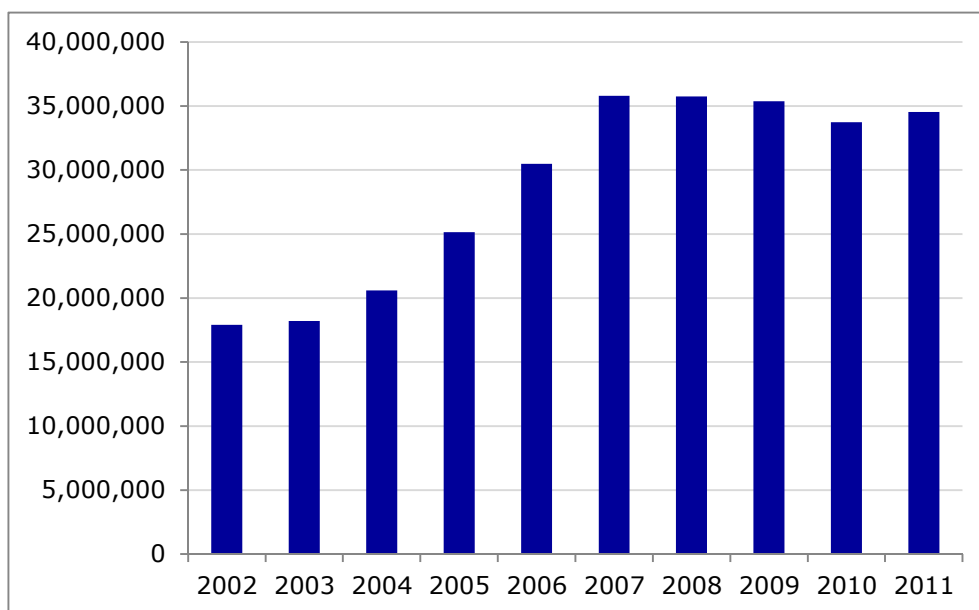
<sup>76</sup> Bayliss, B.T. (2012), *Report of the High Level Group on the Development of the EU Road Haulage Market*, June 2012.

**Figure A. 5.2 Road cabotage in Hungary (thousand tonne-km)**



Source: Eurostat (2012<sup>77</sup>).

**Figure A. 5.3 Total annual road freight transport of Hungarian hauliers (thousand tonne-km)**



Source: Eurostat (2012<sup>78</sup>).

However, the average level and trend of this data corresponds to what has been published by the European Commission, in as much as the penetration of cabotage in Hungary is still low with a value below 1%, and also, in absolute values, the Hungarian operators do not engage in a high volume of cabotage activities abroad. They are more successful in cross-trade haulage, where the share of Hungarian hauliers was 8% in 2011 (based on tonne-km).

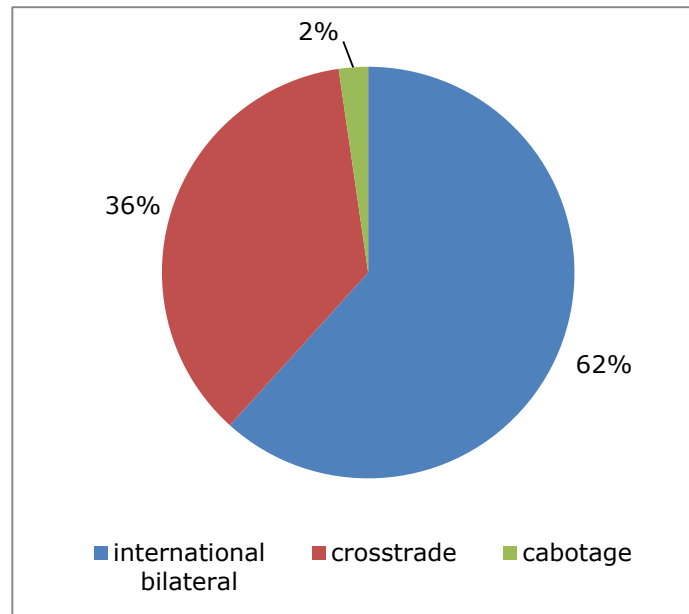
<sup>77</sup> <http://epp.eurostat.ec.europa.eu/portal/page/portal/transport/data/database>

<sup>78</sup> *ibid.*

### A.5.2.2 The role of Hungarian hauliers on cabotage abroad

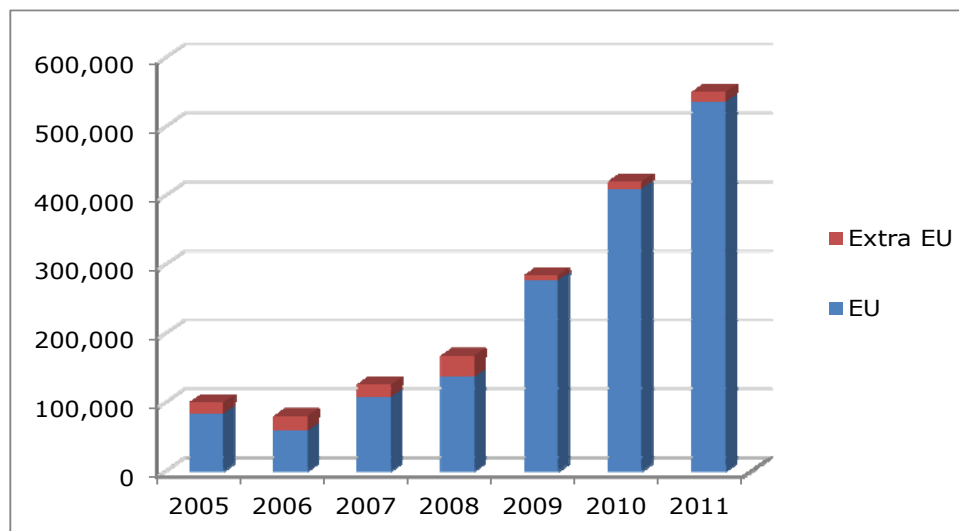
Looking at the most recent data available from the European Commission, a more in-depth analysis of the role of Hungarian hauliers on cabotage abroad can be identified. Figure A. 5.4 shows the percentage of types of road haulage of the Hungarian companies in 2011. It can be seen in 2011 that road cabotage accounted for 2% of all transport undertaken by non-Hungarian hauliers.

**Figure A. 5.4 Share of different non-national road haulage activities of Hungary**



Source: Eurostat (2012).

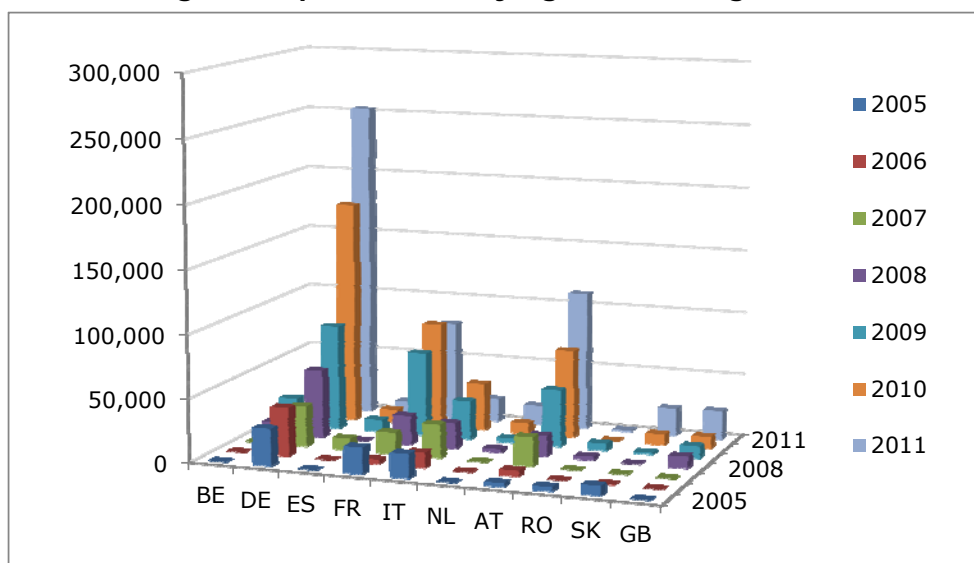
**Figure A. 5.5 Hungarian cabotage activities**



Source: Eurostat (2012).

Figure A.5.5 shows how cabotage operations undertaken by Hungarian hauliers has been growing in the recent years, and that – although small in absolute values – it is clearly displaying rapid growth. The numbers also indicate that most of the cabotage activities take place within the European Union.

**Figure A. 5.6 Hungarian operators carrying out cabotage abroad**



Source: Eurostat (2012).

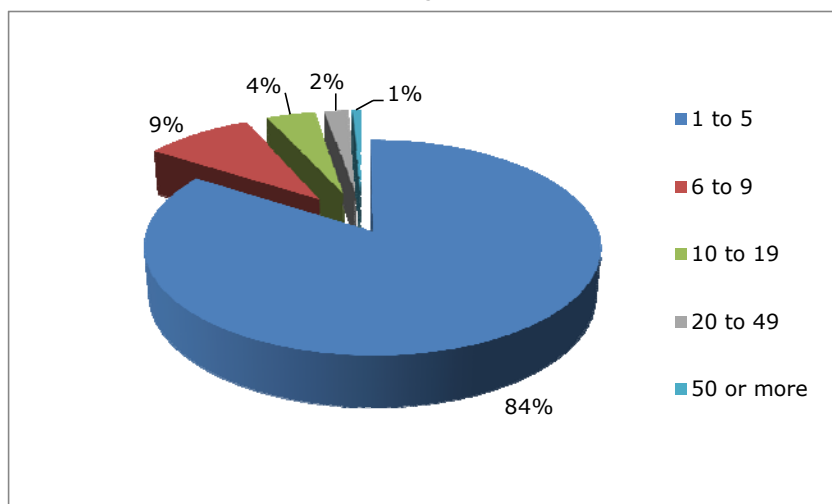
Figure A.5.6 sets out the trend in cabotage undertaken by Hungarian operators abroad. It can be seen that the most dominant countries where Hungarian hauliers exercise cabotage activities are Germany, France, Italy and Austria. This figure confirms that there is a growing trend in cabotage by Hungarian operators.

From this data it can be seen that Hungarian operators accounted for about 4% of all cabotage operations in the United Kingdom and about 2% of cabotage in Germany. The absolute numbers of road cabotage in tonne-km is not significant, but cabotage can be seen as a factor increasing the overall efficiency of road haulage firms.

### A.5.3. Economic and social impacts

The Hungarian road freight market is very fragmented. More than 95% of the 16,314 companies (data from 2009) in this sector have a vehicle fleet of at most 3 vehicles. This is also confirmed by the distribution of firms as based on the number of employees (see Figure A.5.7), about 93% of the firms have less than 10 employees.

**Figure A. 5.7 The distribution of employees per haulier (2009)**



Source: Eurostat (2012).

The National Transport Authority has informed us that current trends show that the number of companies is decreasing on an annual basis but the average size of the vehicle fleet is growing gradually, which is due to the market becoming more concentrated. However, this concentration is occurring slowly, with small operators preferring to continue competition with other hauliers rather than join forces. These small firms also find it difficult to control costs and in some cases suffer from poor management that limits their growth potential, but also makes them more susceptible to fines when travelling abroad.

Furthermore, more and more companies are shifting their focus from national to international freight forwarding, which is a direct consequence of the Hungarian market becoming smaller due to the economic crisis.

Hungarian hauliers have told us that in the event of full liberalisation, foreign hauliers, especially from the new Member States (as well as from Slovakia and Poland) may become strong competitors for Hungarian companies. In this case, the social effects may be severe, as the number of small forwarders is very high

Furthermore, stakeholders have told us that there are 20 to 30 companies with large vehicle fleets, which are mainly the subsidiaries of Western European companies that are currently carrying out cabotage activities abroad. This leaves little room for the smaller Hungarian enterprises.

A further issue arises regarding the posting of workers Directive where the Hungarian Road Transport Association<sup>79</sup> states that this Directive should not be applied for cabotage operations. This view is shared by the International Road Transport Union, that states that Directive 96/71/EC is not easily applicable to the road freight transport sector, as it does not take into account the intense mobility of the relevant labour force and the difficulties inherent in controlling adherence. Applying the local labour/social regulations to drivers active in international road freight transport would induce a disproportionate administrative burden on road haulage.

At present, drivers' wages in Hungary are comparatively low and is therefore an "exporter" of staff for this sector. While this is not currently having an effect on the national market, the Hungarian Road Transport Association stated that with an increase in the age limit when drivers' attestations can be issued, it is likely that this will lead to a shortage of drivers as labour moves abroad.

Supporting the idea of facilitating road freight transport and the free movement of goods within the European Union, the view of the Hungarian Road Transport Association, is that Regulation (EC) No 1072/2009 could be simplified in the following way: to repeal the constraint regarding the current 3 number of cabotage operations allowed within the 7 days limit (as it is anyhow difficult to control) and leave the 7 days limit as it is.

#### **A.5.4. Summary for Hungary**

The entry into force of Regulation (EC) No 1072/2009, lead to a number of changes in Hungary including no longer having a centralised database monitoring cabotage activities in the country, as the former "cabotage report" was found to be contrary to the Regulation. This has led to a number of difficulties in monitoring and enforcing cabotage across the country as a result of the number of authorities involved under the new regime. These

---

<sup>79</sup> Review of the Regulation on common rules for access to the international road haulage market (Regulation (EC) No 1072/2009), Statement of the Hungarian Road Hauliers Association, 30/11/2012.

difficulties have made enforcement very difficult and there is no evidence that any penalties have been issued in relation to cabotage in Hungary.

Eurostat statistics, however, show that the ratio of cabotage carried out on Hungarian territory is remarkably low, ranging from 0.056% to 0.21% of annual road freight traffic. Representatives of the industry have stated that the number of cabotage operations performed by Hungarian road haulage companies abroad is also very low, and they occur mainly as linked cabotage.

The opinion of the Ministry, the National Transport Authority and the industry seems to be fairly uniform on the matter of further market liberalisation. That is that under the present state of social and economic conditions, the cabotage operations enabled under Regulation (EC) No 1072/2009 are adequate and appear to ensure the right level of freedom in road freight transport. The Hungarian Road Transport Association would like to see the Regulation simplified by removing the provision regarding the maximum number of cabotage operations, but would leave the constraint of 7 days unchanged.





## A.6. CASE STUDY ITALY

Italy borders France, Switzerland, Austria and Slovenia along its northern borders. It has a population of approximately 60 million inhabitants. The country's road network is 487,700 km long, including around 6,600 km of motorways.

The number of workers employed in road freight transport activities ranged between 200,000 and 350,000 in 2009 (depending on whether the wider logistics sector is counted or not), however this figure has decreased in recent years. There were around 80,000 enterprises active in the transport of goods by road in 2009 (Eurostat).

### A.6.1. Legislative Background

Road cabotage is ruled in Italy by the Regulation (EC) No 1072/2009, in force since 14 May 2010 as per Article 19 of the Regulation. The Italian road cabotage market is currently open to hauliers from all EU Member States (MSs) as all restrictions previously applying to Accession Member States have been lifted (the last restrictions removed was the one applied to Bulgarian and Romanian hauliers in force up to the end of December 2011). Table A.6.1 below summarises the year of opening of the Italian market to new MSs.

**Table A. 6.1 Market opening to new Member States in Italy**

Country	Date cabotage allowed
Bulgaria	1 January 2012
Czech Republic	1 May 2009
Estonia	1 May 2009
Latvia	1 May 2009
Lithuania	1 May 2009
Hungary	1 May 2009
Poland	1 May 2009
Romania	1 January 2012
Slovenia	1 May 2004
Slovakia	1 May 2009

Source: SDG research (2012).

The introduction of Regulation (EC) No 1072/2009 replaced Regulation (EEC) No 3118/93 and related national legislative provisions.

Up to 14 May 2010, road cabotage in Italy was subject to the following legislation:

- Italian Transport Ministry Decree of 3 April 2009: in force between 29 April 2009 and 13 May 2010. This Decree was introduced to pre-empt the entry into force of Regulation (EC) No 1072/2009 and refine the scope for road cabotage operations in Italy to align national law to the new requirements. It established that hauliers authorised to undertake cabotage operation in Italy according to Regulation (EEC) No 3118/93 were allowed to undertake up to 2 cabotage operations within 7 days from the last unloading in Italy following international carriage (rules were less restrictive in previous legislation, as outlined below). It also abolished the special register, "libretto dei resoconti", where hauliers were asked to track cabotage operations and listed the types of documents to be provided, aligning them to those that would then have been included in forthcoming Regulation (EC) No 1072/2009.
- Italian Transport Ministry Decree of 18 March 2005 and related acts, applied up to 29 April 2009. These laws stated that hauliers were authorised to undertake cabotage operations in Italy according to Regulation (EEC) No 3118/93 for a maximum period of 30 days within 2 months, providing that they departed from Italy at least once every calendar month. A separate administrative act (i.e. Decreto Dirigenziale 24 March 2005) provided details on the type of information to be provided by hauliers regarding their cabotage operation that had to be recorded on a special register, i.e. "libretto dei resoconti".

#### **A.6.1.1 New EU rules on road haulage (Regulation (EC) No 1072/2009)**

Regulation (EC) No 1072/2009 defines "cabotage" as "national carriage for hire or reward carried out on a temporary basis in a host MS," and states that "...any haulier for hire or reward who is a holder of a Community licence and whose driver, if he is a national of a third country, holds a driver attestation, shall be entitled [...] to carry out cabotage operations, within the conditions laid down Art. 8, 9 and 10 of the Regulation".

After the entry into force of the Regulation, the Italian Transport Ministry issued a number of laws that specify in more detail the provisions of the Regulation. These include:

- Circolare Ministeriale 1/2010/TSI of 5 May 2010, clarifying the general legislative framework ruling cabotage operations in Italy after the entry into force of the new Regulation. For example it clarified:
  - a) the type and number of cabotage operations allowed in Italy under the Regulation, increasing from 2 to 3 operations within 7 days;
  - b) the provisions ruling journeys related to combined transport services, which are not considered cabotage operations as per Directive 92/206/EEC;
  - c) the persistence of bans for Romanian and Bulgarian hauliers up to 31 December 2012.
- Circolare Ministeriale 1/2011/TSI of 25 November 2011, as amended by - Circolare Ministeriale 3/2012/TSI of 28 May 2012 clarifying aspects related to the issuing of the Community licence in Italy.

The new documentation requirements for Regulation (EC) No 1072/2009 are more onerous than the old "libretto dei resoconti". These include the name, address and signatures of both the hauliers, the suppliers and the customers as well as the dates of dispatch and delivery of the goods transported.

As far as the implementation of the Posted Workers Directive is concerned, the criteria for application of the law on posting in the transport sector is not clear in Italy and this uncertainty is reflected in the cabotage regime<sup>80</sup>. The criteria for applying the appropriate national laws appear to be based on the location of the employer, unless the worker carries out his main activity in the country of residence. According to a 2011 study for the European Commission<sup>81</sup>, the PWD does not seem to be applied to workers travelling through Italian territory to provide transport services.

#### A.6.1.2 The degree of enforcement of new and old rules and their impact on the EU road haulage market

The **enforcement** of cabotage rules in Italy is overseen by the Ministry of Infrastructure and Transport, in coordination with the different police forces in the country as shown in Table A.6.2.

**Table A.6.2 Road Transport – Control Authorities in Italy**

Items to be checked	State police	Local police	Customs	Transport Ministry	Road Admin.
Traffic regulations & driving licences	x	x		x	
Authorisations for international road transport	x	x	x	x	
Special authorisations for carriage of passengers & other related documents	x	x	x	x	
T1 documents / TIR Carnets			x		
Weight & dimensions	x	x	x	x	
Certificate for carriage of perishable foodstuff	x	x	x	x	
Documents for veterinary & phytosanitary controls		x	x		
Road user charges					x
Roadworthiness of motor vehicles	x	x		x	
Regulations on driving hours & rest periods	x	x		x	
Regulations on transport of dangerous goods	x	x		x	

Source: Adapted from IRU (2011).

<sup>80</sup> Van Hoek and Houwerzijl (2011), *Comparative study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union*, March 2011.

<sup>81</sup> Ibid.

The debate that preceded the introduction of Regulation (EC) No 1072/2009 and the entry into force of the Regulation itself paved the way for a revision of the manner in which road checks on freight hauliers were undertaken in Italy.

Two major issues needed to be dealt with:

- The need to coordinate a wide range of enforcement agencies and authorities which are accountable to different government departments;
- The need to maximise controls in specific areas particularly affected by cabotage.

In 2009, further cooperation between the Ministry of Transport and the Ministry of the Interior (responsible for police operations) was developed through the signing of a specific Agreement<sup>82</sup>. The Agreement stressed the importance of carrying out enforcement through the "Centri Mobili di Revisione", special policing units tasked with monitoring road freight transport and carrying out spot checks on Italian roads. It also made explicit the prioritisation of controls in border regions and around port areas.

In one of the Italian regions most affected by road cabotage, Friuli Venezia Giulia (FVG), additional measures were put in place in 2010 to increase and simplify controls in the road transport sector<sup>83</sup>. In 2010, the government reported that around 60% of all road checks in FVG had involved foreign vehicles.

However the national figures reveal a different picture. In the latest reporting period (January-October 2012) the Road Police reported that 10.1% of all road checks were on non-Italian, EU vehicles, 88.2% on Italian vehicles and 1.7% on extra-EU vehicles. Overall, hauliers from other MSs were responsible for 6.8% of total infractions. More specifically, infringements levied for violation of international road transport rules (which includes also cabotage ones) resulted below 0.1% of total inspections (205 infringements were issued out of 220,965 road vehicle inspections).

The **objective of any roadside check** is to verify that drivers are in possession of a community licence and that the C.M.R.<sup>84</sup> waybill contains the relevant information about goods transported and trips made by date as certified by the suppliers of the goods.

The European legislator has delegated the setting of sanctions to each MS. As a result, the introduction of new European cabotage rules in 2010 has led to a new set of national sanctions in Italy. Most sanctions are detailed in Law No 120/2010, art.52 which modifies a pre-existing law (No 298 of 1974) relating to general road transport sanctions. Other sanctions refer to Legislative Decree 286/2005 as modified by Law No 127/2010.

The following list provides an overview of the main type of infringement of cabotage rules in Italy and the related sanctions which apply following roadside checks:

- If the relevant documents (i.e. driver attestation etc.) have not been completed correctly or have not been completed at all, the sanctions applied vary from €600 to €1,800. In case the documentation has been completed correctly but it is not on the vehicle at the time of the check, sanctions can be between €40 and €120. In this case, the document needs to be presented at any police station in Italy within 15 days – in this intervening period the vehicle will be impounded ("fermo

<sup>82</sup> Cross Ministerial document (2009), *Protocollo d'intesa tra il Ministero dell'Interno e il Ministero delle Infrastrutture e dei Trasporti per il potenziamento e la semplificazione dei controlli di legalità nel settore del trasporto stradale di merci.*

<sup>83</sup> Ministero delle Infrastrutture e dei Trasporti - Direzione Territoriale Nord Est (2010), *Protocollo d'intesa Friuli Venezia Giulia.*

<sup>84</sup> United Nations, (1956), *Convention on the Contract for the International Carriage of Goods by Road.*

amministrativo”) as explained below and will be returned only upon receipt of the documentation.

- If EU hauliers are found to contravene the provisions of the Regulation, heavier sanctions are applied. These include: instances in which cabotage has taken place in the absence of a Community licence; infringements of the limit of 7 days and of the maximum number of operations (3); missing documents as proof of cabotage activities that have already taken place. All of these cases are subject to administrative sanctions between €5,000 and €15,000. Sanctions need to be paid in cash to the local police stations.
- The lowest sanctions apply whenever hauliers can pay on the spot.
- However if the hauliers are not able to pay the sanctions they owe, further administrative sanctions of “fermo amministrativo” (which invalidates any car registration and forbids vehicle’s circulation) apply until the full sum is paid. Depending on the degree of illegality found by the control authorities.
- In general, impoundment can be applied for a period of 3 months and potentially be extended for 6 months if the violations of cabotage rules are reiterated.

In addition, as set out in Legislative Decree 286 of 21 November 2005 sanctions can also be levied on suppliers and the owners of the goods transported by a vehicle violating cabotage rules. For instance, in the absence of a formal contract between the supplier and the road haulier, the supplier has 30 days to present the missing contract. In this case, the police can also seize the goods being transported.

Overall, the new cabotage rules have thus led to greater coordination efforts between the competent enforcement authorities and a more strategic approach to roadside checks. New rules at the European level have triggered some new administrative sanctions in Italy through a modification of the existing laws.

#### **A.6.1.3 The need for a review of the rules**

The introduction of Regulation (EC) No 1072/2009 in Italy has generated a wider policy debate around international competition issues in road transport. Some stakeholders are concerned about the manner in which the Regulation is being applied, highlighting in particular enforcement issues. However most industry associations have used the debate around cabotage as a common platform to present new proposals and highlight the problems with other rules affecting the road freight sector.

The National Logistics Plan 2012-2020 addresses the issue of cabotage and indicates a series of strategic projects to be implemented over the next few years in order to improve the effectiveness of roadside checks and tackle illegal cabotage operations. These projects include:

- strengthening of the mobile policing units (Centri Mobili di Revisione) in the areas with the highest road freight traffic volumes;
- coordinating enforcement actions across Italy ensuring uniformity of treatment by the competent authorities;

- developing training programmes such as language courses to communicate with foreign drivers and courses aimed at improving the knowledge and awareness of existing laws; and
- improving data collection with the objective of creating a national database for cabotage operations comparable to that of other MSs.

The region of Friuli Venezia Giulia has requested that the Italian government invoke article 10 of the Regulation in relation to “safeguard procedures” to prevent serious disturbances of the national market. This procedure received the formal approval of the Italian Senate in October 2011. However the Italian government does not appear to have presented this request to the European Commission to date.

The introduction of the new cabotage regime has also prompted the road transport industry in Italy to call for a review of the related rules which affect the competitiveness of Italian enterprises vis-à-vis their foreign competitors.

An alliance of the main industry bodies has brought a case to the Administrative Court (TAR) relating to the current rules on “minimum costs for road freight transport” in Italy (art. 83 bis of Law 133/08). These rules impose specific minimum safety standards which must be respected by all drivers. While a judgement on the issue is expected by the end of 2012, the Italian government has recently confirmed that these rules do not apply to international transport and cabotage.

A further issue was raised by Italian MPs in 2009 as the new rules came into force, this time concerning the payment of VAT by foreign enterprises carrying out cabotage operations in Italy on behalf of businesses subject to VAT in Italy. The Transport Commission of the Italian Parliament clarified in this instance that extending VAT provisions to not Italian, EU enterprises carrying out cabotage operations in Italy would not be compatible with Directive 2006/112/EC<sup>85</sup>.

In their submission to the consultation process carried out for the High Level Group Report, the industry association Confartigianato Trasporti stated that they would be in favour of a review of cabotage rules, as long as this would ensure compliance with national legislation on wages, social security, national level of transport tariffs and transportation costs.

For example, they highlight the need for a thorough application of the Posted Workers Directive: at the moment, this applies to salary requirements, but not to social contribution levels paid by companies. The industry associations are not in favour of a review of the cabotage-specific rules which they praise for having set a level-playing field across the EU. They are also against further liberalisation.

These instances show that several stakeholders believe there is a need to review the rules related both to cabotage specifically and to road transport competitiveness in general. The sector is subject to a series of rules which have undergone further scrutiny as a result of the introduction of the new cabotage regime. The National Logistics Plan also included a number of proposals to streamline and render enforcement actions more efficient.

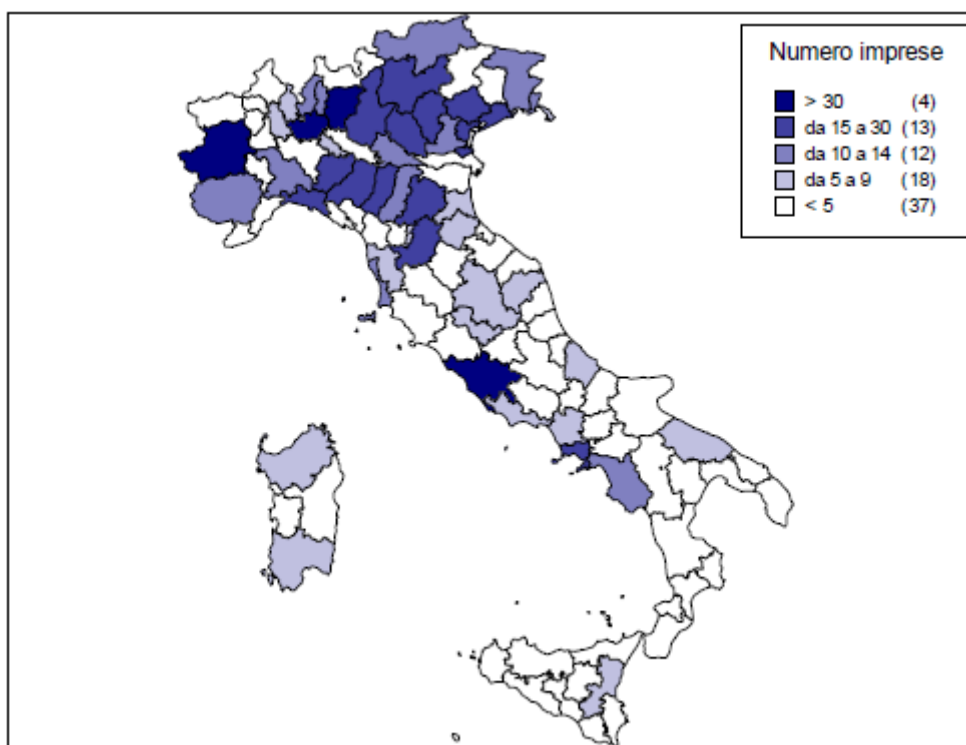
<sup>85</sup> Camera dei Deputati, XVI legislatura, *Bollettino delle Giunte e delle Commissioni Parlamentari, Trasporti, Poste e Telecomunicazioni (IX)*, p.84, 17 December 2009.

## A.6.2. Data analysis

Road freight activity by Italian hauliers, measured in tonne kilometres, has suffered from a period of stagnation between 2005 and 2008, followed by a slump in traffic between 2008 and 2009 as a result of the recession. Although activity has not picked up in recent years, road remains the main mode of transport for transporting freight, with a modal share of 83% in 2010.

The number of enterprises in Italy was around 80,000 in 2009. As shown in Figure A.6.1 below, the density of enterprises is higher around Milan, Rome, Turin and the industrial areas of Veneto and Emilia. Both the Eastern and Western borders have a high concentration of road hauliers.

**Figure A. 6.1 Road Transport – Density of enterprises by Italian provinces**



Source: Conto Nazionale Trasporti 2010-2011.

Road cabotage activities have grown steadily in recent years despite the economic downturn. Cabotage measured in tonne-km saw an increase of 104% in tonne-km in Italy between 2000 and 2010. The relative importance of cabotage as a share of total traffic has also increased as a result of the total decline in domestic traffic.

In light of this growth, cabotage activities were equivalent to around 1% of domestic traffic in 2009 (for vehicles above 3.5t). This is confirmed both by Eurostat and national statistics (Conto Nazionale Trasporti – CNT). However the CNT also reports a series of estimates made taking into account total freight traffic (including vehicles below 3.5t). These estimates suggest that the share of cabotage activities could actually be around 5 to 7%.

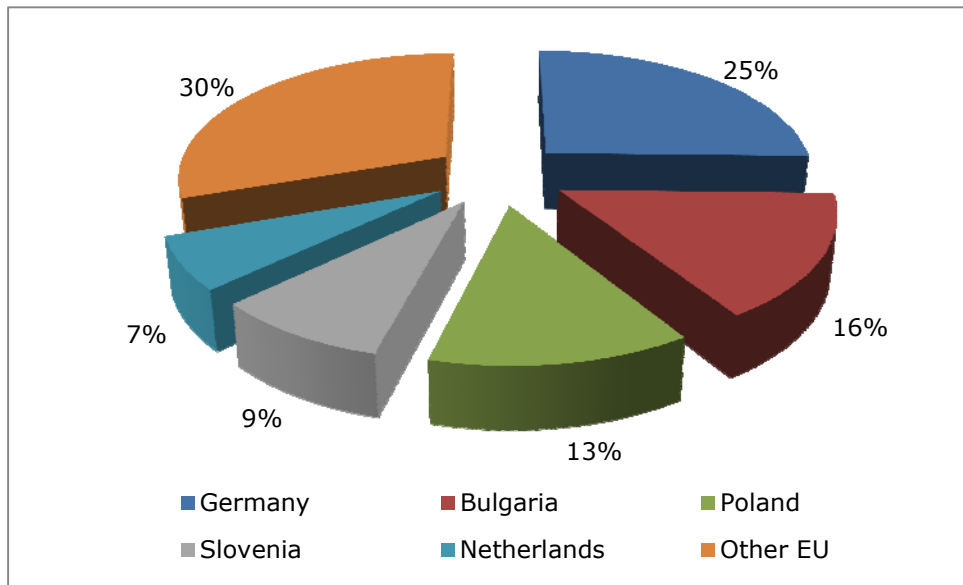
A closer look at Eurostat figures reveals that in 2010 most cabotage trips reported in Italy were done by German and Bulgarian hauliers. It is surprising to see such a large share of operations by Bulgarian hauliers given the restrictions in force until January 2012. Polish



hauliers have recorded the highest growth in the period between 2004 and 2011. Given the relative size of its national market, Slovenian hauliers had a large share of operations in Italy (9%).

The countries in which Italian hauliers appeared to be most active, based on tonne-km traffic in 2011, were Germany and France. Data for other Member States is not readily available. However, overall, Italy is a net importer of cabotage activities at the EU level.

**Figure A.6.2 Share of cabotage activity in Italy by country of registration (2011)<sup>86</sup>**



Source: Eurostat (2012).

Cross-trade activities (recorded in terms of tonne-km by Eurostat) have, instead, been declining since 2007. National data appears to confirm this declining trend for cross-border transport: for example, through-traffic across the Alps reported by Confetra (2010) shows that, in 2009, traffic levels along the Alpine corridors were more than 15% lower than in the 2006-2007 peaks.

A summary of the relevant data at the national level is provided in Table A.6.3 below.

As highlighted in previous sections, some regions in Italy are more affected by cabotage than others, depending on the relative importance of road transport in the regional economy as well as the exposure to competition from bordering Member States. In this respect, the Friuli Venezia Giulia region is once again an interesting case study. Data on cabotage has emerged as part of a study by the Udine's Chamber of Commerce.

The main findings of the study are the following:

- Since the accession of Slovenia to the EU in 2004, there has been an increase in the number of Slovenian hauliers of +218% at the Gorizia crossing and +149% at the Rabuiese crossing;
- Around 62% of the Slovenian vehicles entering the Italian territory have the Friuli Venezia Giulia and Veneto regions as their destination;

<sup>86</sup> Excluding countries which do not provide data due to confidentiality.

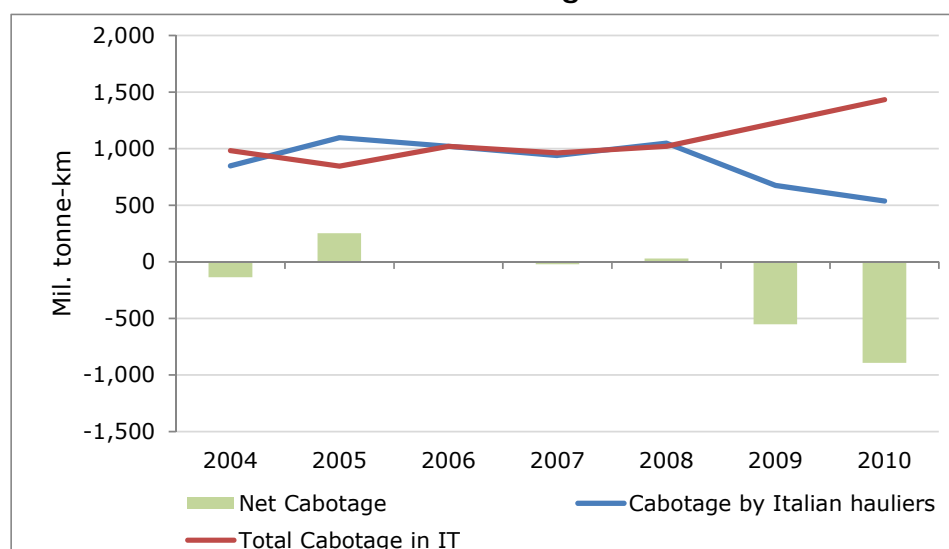
- Between 2004 and 2009, the number of road transport enterprises in the region has fallen by 20.8% (in Italy, by 13.8%). The province of Gorizia has seen the largest fall with a decrease of 26.7%;
- Registration of trucks above 16t has fallen by 31% in the region between 2000 and 2008, against the Italian figure of -0.07%.

**Table A.6.3 Key statistical data – Road transport in Italy**

Year	2006	2007	2008	2009	2010
Length of motorway network (km)	6,554	6,588	6,629	6,661	6,668
Number of Community licences issued			15,075	14,969	14,751
Number of Community licence certified copies issued			53,679	50,824	56,930
National road haulage (billion tonne km, vehicles >3.5t)	187.07	179.41	180.46	167.63	175.78
International Road haulage by vehicles registered in Italy (billion tonne km, vehicles >3.5t)	31.64	27.00	28.64	22.02	26.53
Cabotage on Italian roads (billion tonne km, vehicles >3.5t)	1.04	1.06	1.06	1.27	1.46
Number of goods road transport enterprises registered	97,800	91,006	87,295	80,900	-
Number of employees of goods road transport enterprises	213,760	222,272	230,750	220,317	-

Source: Eurostat (2012).

The analysis of net cabotage (i.e. the difference between the total activity of Italian hauliers in the EU and the total activity of EU hauliers in Italy) reveals that Italy has only recently moved to a net-importer position. It is not surprising that the divergence of the red and blue lines in Figure below begins in 2009, the first year of the recession and of market opening to most EU12 countries.

**Figure A.6.3 Evolution of Italian net cabotage volumes**

Source: SDG analysis of Eurostat data (2012).

### A.6.3. Economic and social impacts

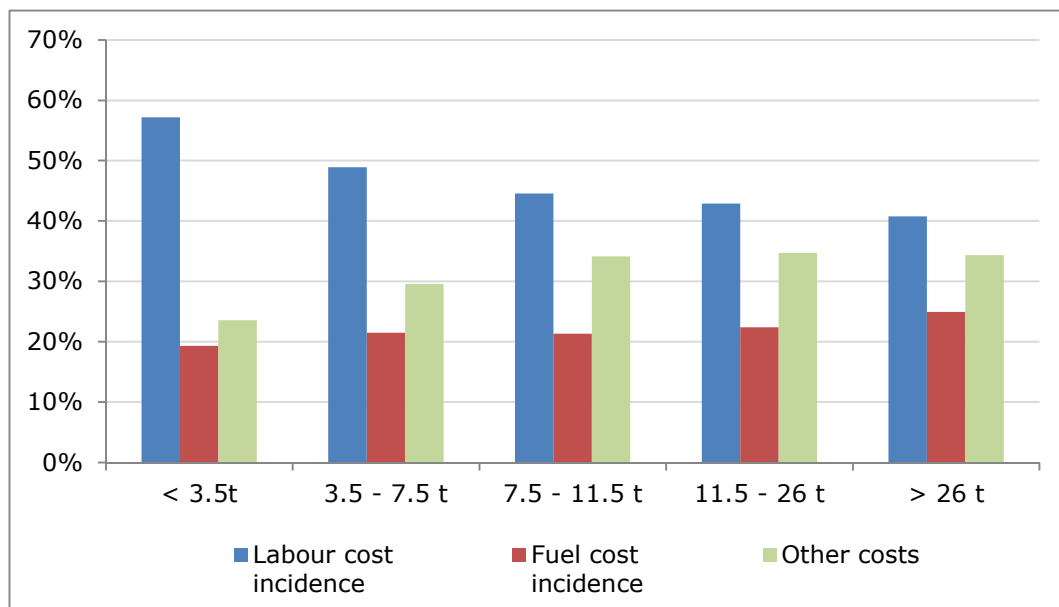
In Italy, the implementation of the Cabotage Regulation has coincided with a marked decrease in road freight transport volumes at the national level. Total freight traffic measured in tonne-km has declined steadily since 2007 and, despite a marginal increase in 2010; total traffic levels in 2011 are below those recorded in 2000.

The crisis of the road freight sector must be seen in the context of declining overall economic activity in Italy and high fuel prices throughout the recession. Industry associations have voiced their concern through strikes and protests as well as through institutional channels. In this context, it is difficult to evaluate the economic and social impacts of cabotage in isolation.

Nonetheless, it is possible to extrapolate the specific effects of international competition in this sector, for example by looking at the relative costs of Italian operators compared to foreign competitors. For instance, ANITA and Confartigianato have highlighted the cost differentials in a presentation to the European Commission in February 2012: Italian drivers' labour costs are 132% higher than Romanian ones and 114% higher than Polish ones. Similar data has been provided by the Albo Autotrasportatori as part of their submission to the National Plan for Logistics.

Further analysis based on average cost components for road transport enterprises as provided by the Ministry of Transport also suggests that labour costs have a high incidence on total costs. These vary between 40% and 60% depending on the weight of the vehicles involved and their average mileage. Fuel costs, which are the highest in Europe, also have a negative effect of the competitiveness of Italian enterprises.

**Figure A.6.4 Average costs for road transport enterprises in Italy – September 2012**



Source: SDG analysis of Ministero delle Infrastrutture e dei Trasporti data (2012).

The increase in cabotage undertaken by Central and Eastern European hauliers has given rise to concerns by industry associations of the impact of cheaper competitors on the Italian market. On the one hand, media coverage tends to highlight the poor social conditions in which drivers from EU12 countries are living, emphasizing in particular lower

pay<sup>87</sup>. On the other hand, it is also recognised that vehicles entering Italy from the EU12 are performing better in terms of road safety and environmental standards<sup>88</sup>.

One of the largest workers' association (FIT-CGIL) wrote an open letter in February 2012 to the Italian Minister of Labour denouncing the "dramatic impact" that the employment of foreign workers is having on the eastern region of Veneto. The association highlights several ways in which cabotage rules are circumvented in Italy, for example:

- a Romanian company offers the opportunity to hire Romanian workers for alleged cabotage operations on the Italian territory – in reality, Italian enterprises can hire these services at a lower cost for domestic haulage "camouflaged" as cabotage;
- an Italian company has opened a branch in Slovakia, transferring its drivers from Italian to Slovakian labour laws, with substantial cost savings.

The industry's concerns must be set within the wider context of the Italian road freight market. Road freight traffic levels in 2011 (200 billion tonne-km) were the lowest for the past decade and preliminary estimates for 2012 indicate that the slump is continuing further.

Italy has entered a double-dip recession in 2012 and most economic indicators have not recovered from the 2008 economic crisis. Industrial production, for instance, was still 23% below its 2007 output peak in September 2012. The growth in the road freight sector is highly correlated to the weakness of the Italian economy. This is shown both by traffic data and new registrations data: the Italian market for new HGV registrations is one of the worst performing in Europe, only Greece and Portugal are in a worse position (ACEA 2012).

In addition, cross-border transport (both cabotage and cross-trade trips) is likely to be linked to the wider trend of delocalisation, a widespread phenomenon for Italian enterprises moving their factory to low-cost countries, including re-locating branches in EU12 countries. This process is likely to have resulted in greater transport activity between Italy and these MSs.

Finally, the Italian road freight sector is considered to be less competitive than its European counterparts for reasons other than labour costs. The geography of the Italian territory imposes higher operating costs including those incurred when crossing the Alps and connecting the main islands. The sector suffers from the impact of the black economy – for instance, 50,000 enterprises registered in Italy do not appear to possess any vehicles. The average size of freight enterprises is smaller than the European average, meaning that very few large groups can achieve economies of scale. Hence as Italian hauliers are suffering from competition from their European counterparts.

#### **A.6.4. Summary for Italy**

The European cabotage rules were already being applied in Italy before the entry into force of Regulation (EC) No 1072/2009, given that the previous national rules (Italian Transport Ministry Decree of 3 April 2009) were similar to the EU Regulation. However the new Regulation has raised the number of operations that hauliers can carry out within the 7 days limit from 2 to 3. The Ministry has also laid out a set of sanctions which vary

---

<sup>87</sup> [http://www.corriere.it/economia/12\\_gennaio\\_25/di-vico-2000-tir-dimezzano-prezzi\\_6bee0d22-471f-11e1-8fa7-b2a5b83c8dfe.shtml](http://www.corriere.it/economia/12_gennaio_25/di-vico-2000-tir-dimezzano-prezzi_6bee0d22-471f-11e1-8fa7-b2a5b83c8dfe.shtml).

<sup>88</sup> Commissione per la sicurezza stradale nel settore dell'autotrasporto (2012), *Attività di controllo della Polizia Stradale*.

depending on the type and recurrence of cabotage infringements. Vehicles can be impounded if drivers fail to pay fines on the spot.

Cabotage activities have grown in Italy by more than 100% between 2000 and 2010. The main contribution to this growth has come from EU12 hauliers, and in particular Slovenia and Poland. At the same time, the Italian market for road freight transport has been suffering since the onset of the economic crisis in 2008: the number of HGV registrations in 2012 was among the lowest in Europe and heavy traffic was still below its 2000 levels.

As a result, the industry is concerned about the growing market share of foreign hauliers in Italy. The analysis of traffic flows in one of the regions most exposed to competition, Friuli Venezia Giulia, shows a sharp increase in foreign traffic together with a significant decline in the number of local companies. Local authorities and national governments have promoted more coordination of the control bodies in recent years to improve the effectiveness of enforcement procedures, focusing on legal/language training and regional cooperation.

In addition, wage and working conditions mean that Italian hauliers are not very competitive abroad. They suffer from high labour costs, high fuel costs, as well as geographical and economic fragmentation. Cabotage might be responsible for some of the erosion of domestic companies' market shares, especially in bordering regions. In light of this, it seems that lower fiscal and bureaucratic burdens, together with industry consolidation, are the most effective solutions to reinstate the competitiveness of Italian hauliers in the long-run.

The analysis above shows that several stakeholders believe there is a need to review the EU and national rules related both to cabotage and to wider road transport competitiveness. As for EU legislation on cabotage, stakeholders claim that there is a need for greater enforcement of existing rules before considering any other amendment to current legislation. In particular they believe there is a need to harmonize the different social and working conditions of drivers from different Member States before any further opening of the market is taken forward.

As for national rules, a series of provisions have undergone further scrutiny as a result of the introduction of the new cabotage regime in 2010, such as the rules on "minimum costs for freight transport". The National Logistics Plan has also incorporated several proposals to improve the effectiveness of enforcement actions in the near future.

## A.7. CASE STUDY LITHUANIA

Lithuania borders with Latvia along its northern border and Poland along its southern border. Lithuania also borders with Russia (Kaliningrad area) along its southern boundary and Belarus along its eastern border. It has a population of approximately 3 million inhabitants. The country's road network is 82,911 km long, including around 1,642 km of motorways.

The number of workers employed in road freight transport activities increased from 38,645 in 2009 to 40,349 in 2011. There were around 3,990 enterprises active in road freight transport in 2009 and 3,848 in 2011 (Eurostat).

### A.7.1. Legislative Background

Regulation (EC) No 1072/2009 came into force in Lithuania as per the requirements in the Regulation itself and road cabotage is allowed in Lithuania according to its rules. The Lithuanian road cabotage market is currently open to hauliers from all EU MS.

Up to 2009, road cabotage was regulated by bilateral agreements signed between Lithuania and other Member States dealing with road transport issues (including cabotage), which are listed in the other country;

Table A. 7.1. All these bilateral agreements are still valid for those provisions not covered by the Accession treaty or Regulation (EC) No 1072/2009. Only some of these bilateral agreements allowed cabotage. Where it was allowed it could only be undertaken once the competent authorities of the host country provided a special licence for road cabotage to the haulier from the other country;

**Table A. 7.1 Bilateral road transport agreements between Lithuania and other MS**

Country	Date of bilateral contract	Status of road cabotage
Belgium, Estonia, Latvia, Luxemburg, Netherlands	11 May 1992	Allowed with special licence
United Kingdom	2 November 1994	Not allowed
Bulgaria	7 March 1995	Allowed with special licence
Czech Republic	13 July 1995	Allowed with special licence
Denmark	27 May 1993	Allowed with special licence
Greece, Poland	Road cabotage not covered in the agreement	
Spain	6 July 1994	Allowed with special licence
Italy	5 June 1997	Not allowed
France	26 May 1994	Not allowed

Country	Date of bilateral contract	Status of road cabotage
Slovakia	-	Allowed with special licence
Slovenia	14 November 1997	Allowed with special licence
Finland	10 November 1998	Allowed with special licence
Sweden	31 July 1992	Allowed with special licence
Hungary	26 May 1993	Not allowed
Germany	19 June 1995	Not allowed
Austria	6 June 1995	Not allowed
Romania	17 March 1993	Not allowed

Source: SDG research.

From 2004 when Lithuania joined the European Union Regulation (EEC) No 3118/93 came into force in Lithuania. Also, following Accession in 2004, a 2 year transition period was put in place. During this period, companies established in Lithuania couldn't work in the internal transport market of other EU Member States and, equally, existing and new EU Member States couldn't provide services in Lithuania. After these two years, Member States could choose to extend the transition period for a further 2 years or start to apply EU legislation enabling cabotage. If EU Member States didn't choose to extend transition period road cabotage between this country and Lithuania were regulated by Regulation (EEC) No 3118/93. In other case when EU Member States chose to extend the transition period Lithuanian haulier couldn't carry out road cabotage in such countries and vice versa.

After 4 years of transition (2+2), Member States could apply for an additional 1 year period if their internal market was likely to be distorted. During the transition period, Member States could gradually allow reciprocal cabotage on the basis of bilateral contracts or allow full liberalisation of the markets.

According European Commission information, after a 2 year transition period which ended on 1 May 2006 road cabotage was liberalized in Ireland, Denmark, Estonia, Cyprus, Malta, Portugal, Slovakia and Slovenia for Lithuanian hauliers and vice versa. After a further 2 years of transition on 1 May 2008 road cabotage was liberalized with Belgium, Czech Republic, Spain, Finland, Luxemburg, Latvia, Netherlands and Sweden. Finally, after a further year of transition on 1 May 2009 road cabotage was liberalized with all EU MS except Romania and Bulgaria which was then liberalised on 31 December 2011.

#### **A.7.1.1 New EU rules on road haulage (Regulation (EC) No 1072/2009)**

Since Regulation (EC) No 1072/2009 came into force in Lithuania it is the only act which sets out rules on road cabotage. No national legal documents regulating road transport were passed or updated as a result of the application of the Regulation. For example all sanctions for infringements of the Regulation are regulated by first part of Article 1424 of the Code of Administrative Infringements of Republic of Lithuania. This part covers all infringement when goods are carried on international routes with road transport without a license, with a blank license or license which is in conflict with type of journey undertaken.

Penalties for infringements are described in chapter 1.1.2. However, the part of Code of Administrative Infringements of Republic of Lithuania mentioned above was set before the Regulation came into force into Lithuania.

Now road cabotage is interpreted by Lithuanian authorities as national carriage for hire or reward carried out on a temporary basis in a Member State in which a haulier operates other than the haulier's Member State of establishment. In Lithuania a road haulier from other Member States can start road cabotage following their last unloading of goods carried on an international leg. At most 3 cabotage operations can be carried out in Lithuania after the final unloading of internationally transported goods. The final cabotage operation must be completed no later than 7 days after last unloading of international carriage.

#### **A.7.1.2 The degree of enforcement of new rules**

The enforcement of cabotage rules in Lithuania is overseen by the Ministry of Transport and Communication, in coordination with State Road Transport Inspectorate under the Ministry of Transport and Communications (hereafter – Inspectorate) and Customs department of Republic of Lithuania which are responsible for the control and enforcement of road cabotage in Lithuania.

The other authority that is in charge of monitoring road freight transport is the Lithuanian Road Police Service acting under the Ministry of the Interior, but they do not monitor cabotage related issues.

The Ministry of Transport and Communication is responsible for setting the national rules for road cabotage while Inspectorate and Customs department of Republic of Lithuania are responsible for monitoring and enforcing road transport including cabotage operations.

Officers of the State Road Transport Inspectorate perform the following functions (with respect to road freight transport) at roadside checks and in relation to companies:

1. State control of transport carriers' activity;
2. Inspect documents issued by Republic of Lithuania and other competent institutions for transportation of passengers and cargo, documents of drivers and transport vehicles carrying passengers and cargo;
3. Check adherence to rest and driving periods of drivers at company premises and at roadside checks;
4. Check company activity, related to transportation of dangerous goods, at the roadside and at customs checkpoints;
5. Inspect the documents of holders of authorisations to drive on the roads in Lithuania, issued to large goods and heavy goods vehicles registered abroad, but using roads in Lithuania;
6. Monitor the correct implementation of the Agreement on the International Carriage of Perishable Foods and special transport vehicles used for this carriage.
7. Check the road worthiness of vehicles;
8. Ensure that vehicle owners and operators pay relevant road tolls.
9. Control compliance with the procedures relating to Obligatory Technical Inspection;



10. Control technical condition of road transport vehicles;

11. Control of tachographs.

Cabotage operators are checked in the same way as any other freight carriers: they are all subject to random checks. During the control procedures of the road transport vehicle Inspectorate, officers check all documents related to vehicle and goods carriage and also compare cargo transportation documents with rest and driving period data. In the event that an infringement is identified, the driver is then required to pay a fine of between €579 and €869 and it is the only sanction for infringements of road cabotage rules. It is important to note that the penalty is levied on the driver and not the enterprise. Also it is important to emphasize that the penalty is for all infringements related to documentation of cargo transportation not only for road cabotage infringements.

In Lithuania, there are no defined specific control procedures to ensure that carriers do not infringe the rules on cabotage (e.g. there is no way of finding out whether a vehicle is making its third or fourth trip). As the Inspectorate declared, there is no statistical data for infringements specifically for road cabotage rules. According to the Inspectorate, about 3% of all checks carried out on foreign road hauliers result in a fine for infringements related to inadequate documentation (a part of this is cabotage). There is no specific register for road cabotage infringements.

#### **A.7.1.3 The need for a review of the rules**

The Road Transport Department of the Ministry of Transport and Communication have not raised any formal complaints relating to the road cabotage regulation although they state that it is clear that there is a need for further clarification at the EU level on specific details of the cabotage rules provided in the Regulation.

In addition, the president of the Lithuanian National Road Carriers' Association LINAVA<sup>89</sup> suggested the following changes to the road cabotage rules:

- Set a maximum period for cabotage without setting the number of cabotage operations (the number of cabotage operations is very difficult to monitor);
- Allow road cabotage in cases of partial delivery (multi-drop) without having the requirement to unload all goods transported internationally to optimise transportation costs and reduce empty running;
- CMR rules only protect (including CMR insurance) carriers while international freight delivery is performed; CMR protection does not apply to freight delivery operations carried out within a country as a local (internal) delivery, including cabotage operations. This is the reason why cabotage operations are considered risky/complicated as additional insurance is necessary to protect the carrier. As a result of this it is important to ensure clearer (unified) regulations for cargo insurance when undertaking road cabotage.

All these suggestions are aimed at ensuring that cabotage can be carried out in a more efficient manner.

<sup>89</sup> LINAVA is only IRU member representing Lithuanian road carriers. This association unites roughly 1000 road transport carriers which manage more than 20.000 freight vehicles. LINAVA also represents interests of road transport carriers when it comes to legal and other issues regarding regulation of road transport.

The State Road Transport Inspectorate explained that the Regulation needs to be explained better, particularly in relation to monitoring. In this respect, the Inspectorate suggested that additional guidelines should be prepared on how to monitor and enforce road cabotage.

### A.7.2. Data analysis

The incidence of cabotage on national road haulage in Lithuania is very small: cabotage operations of foreign hauliers on Lithuanian roads accounted for 0.03% of total national road haulage in 2012. Nevertheless, the trend has been growing in recent years: the volume of cabotage operations increased by about 77% from 2006 to 2011. Most of the cabotage operators in Lithuania arrive from Latvia because of the geographical proximity and of the presence of bilateral agreements between these two countries since 2006. The table below sets out the main statistical indicators relating to Lithuanian goods transport by road.

**Table A. 7.2 Key statistical data – Road transport in Lithuania**

Year	2006	2007	2008	2009	2010	2011
Length of motorway network (km)	309	309	309	309	309	309
No. of Community licences issued	2,984	3,624	3,974	3,550	3,834	4,071
No. of Community licence certified copies issued	20,460	25,163	25,750	20,246	21,713	24,503
National road haulage (billion tonne km, vehicles >3.5t)	2.23	2.70	2.56	2.63	2.29	2.32
International Road haulage by vehicles registered in Lithuania (billion tonne km, vehicles >3.5t)	15.84	17.51	17.78	15.05	17.03	19.11
Cabotage of Lithuanian hauliers carried out in EU countries (million tonne km, vehicles >3.5t)	37.99	55.70	55.4	60.18	57.81	67.63
Cabotage on roads of Lithuanian (million tonne km, vehicles >3.5t)	3.86	2.08	5.42	14.00	8.52	6.84
No. of goods road transport enterprises registered	3,185	3,219	3,627	3,990	3,834	3,848
No. of employees of goods road transport enterprises	32,668	40,587	44,413	38,645	35,858	40,349

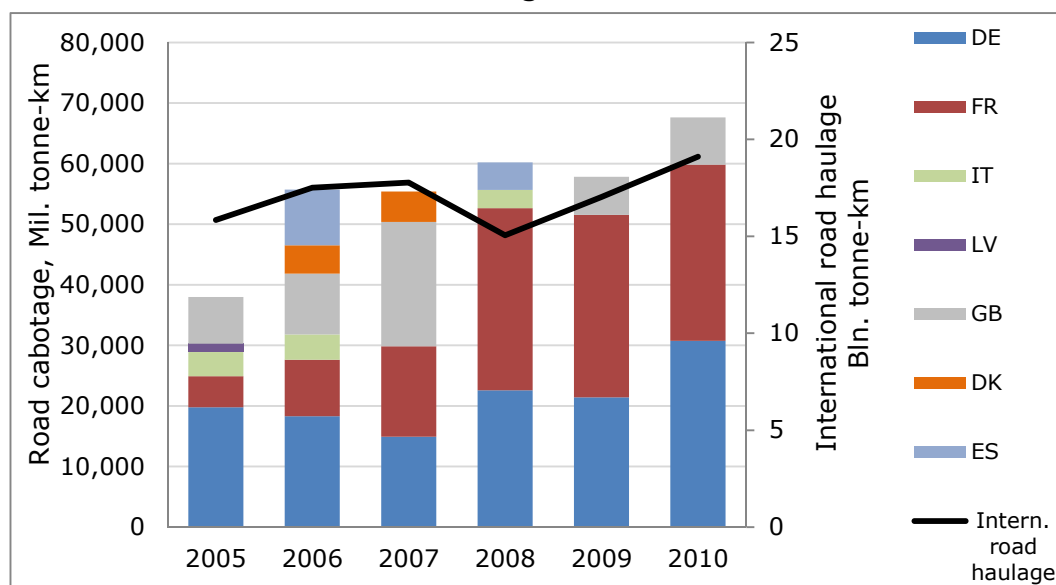
**Source:** Eurostat (2012) and Lithuanian Department of Statistics.

Road freight transport in Lithuania experienced strong growth until the economic crisis in 2009 when all indicators relating to freight transport decreased. However in 2010 all indicators of road freight transportation increased except national road haulage because of low level of consumption in Lithuania and slow economic recovery in other European countries.

Eurostat figures show that in 2011 cabotage represented a share of 0.05% of total international freight volumes (in tonne-km) transported by Lithuanian carriers. Cabotage

activities of Lithuanian hauliers in the EU registered positive growth rates since 2006 - except for 2010 when the amount of road cabotage decreased 4% in comparison with 2009. This is probably due to the overall contraction of the EU market for freight transport due to the economic and financial crisis affecting EU Member States.

**Figure A. 7.1 International road haulage by vehicles registered in Lithuania (billion tonne-km) and main countries in which Lithuanian hauliers do road cabotage (million tonne-km)**



Source: Eurostat (2012).

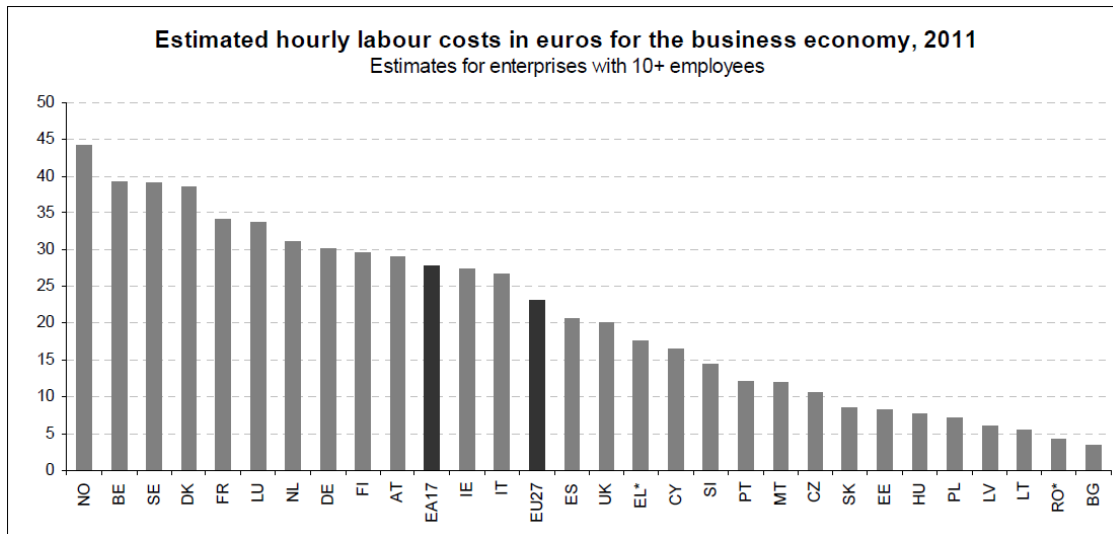
Although the contribution of Lithuanian hauliers to cabotage operations in other EU Member States grew by 78% between 2006 to 2011 when measured in tonne-km, the involvement of Lithuania in the EU cabotage market is rather low: according to Eurostat data, in 2011 Lithuanian road hauliers covered around 0.33% of cabotage market in other EU Member States. It should be noted that the growth registered between 2006 and 2011 pre-dated the entry into force of the Regulation in Lithuania and was mainly due to main trade flows between Lithuania and Germany, and between Lithuania and France respectively (see Figure A. 7.1 and Figure A. 7.2). It is important to note that road cabotage between Lithuania and a number of MS including Germany, France and Italy was liberalised only on 1 May 2009, so according the head of Road Transport Department of Ministry of Transport and Telecommunication of Lithuania Republic there were no legal conditions for cabotage operations of Lithuanian hauliers in these three MS until that date. This seems to suggest that the data shown by Eurostat on the cabotage operations of Lithuanian haulier abroad is either incorrect or points to evidence of illegal operations being undertaken.

### A.7.3. Economic and social impacts

In general, Regulation (EC) No 1072/2009 has had little impact on the Lithuanian freight market as the market is too small for foreign operators to be interested in carrying out cabotage operations there<sup>90</sup>. Furthermore, the freight flows within Lithuania's internal market are too small and competition between internal freight hauliers is too intense in terms of costs as Lithuanian carriers are able to offer lower prices due to lower labour costs (drivers and support staff) compared to EU15 carriers.

<sup>90</sup> Interview with LINAVA and State Road Transport Inspectorate under the Ministry of Transport and Communications.

**Figure A. 7.2 Estimated hourly labour costs in Euros for the business economy, 2011 in EU**

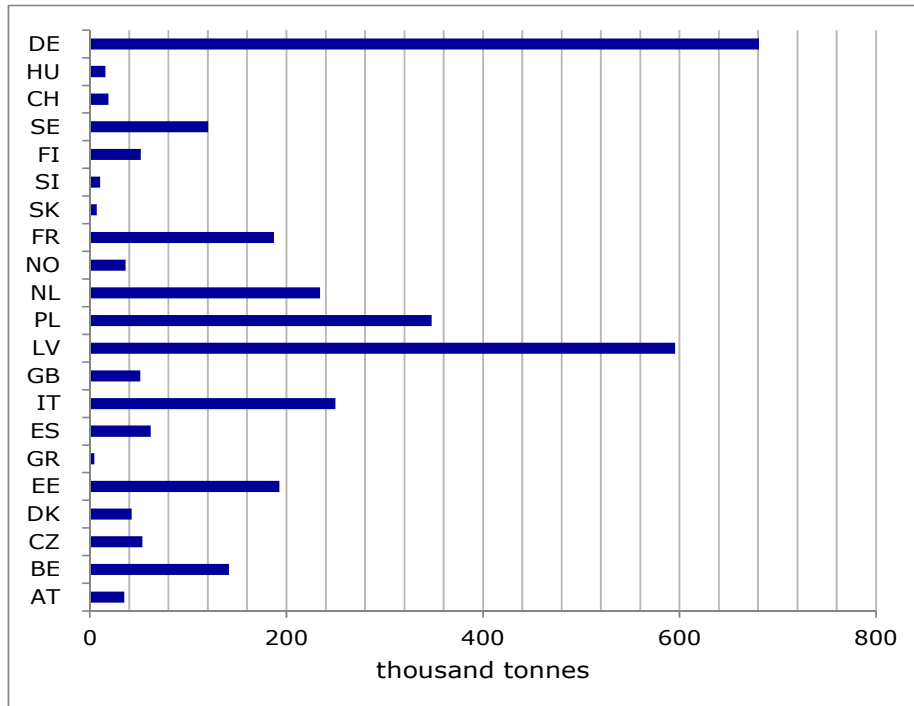


Source: Eurostat (2012).

Latvian carriers are the main cabotage operators in Lithuania as they can offer similar prices for their services as Lithuanian carriers due to similar economic and social conditions (working conditions, power of trade unions) in both countries.

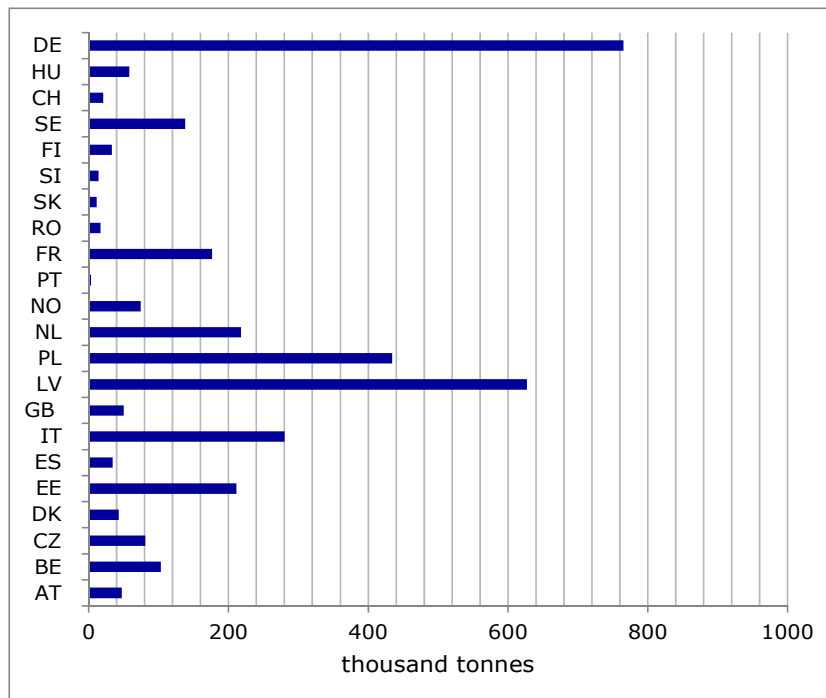
Lithuanian carriers focus primarily on cabotage in Germany and France (as shown in Figure A. 7.2). These countries are Lithuania's main trading partners and also most of Lithuania's international freight flow is to/through these countries. As a result of this, cabotage is more attractive in these countries compared to other MS.

**Figure A. 7.3 Imports into Lithuania by country of origin, 2011**



Source: Lithuanian Department of Statistics.

**Figure A. 7.4 Exports from Lithuania by destination countries, 2011**



Source: Lithuanian Department of Statistics.

Lithuanian freight haulers have a competitive advantage in road cabotage due to salaries, related taxes as well as social security. It is important to note, that the minimum wage<sup>91</sup> in Lithuania is €289 per month. Most freight companies employ drivers with a contract which uplifts this minimum wage by a factor of 1.3 but does not cover additional costs related to

<sup>91</sup> Settled by government decree.

travel and subsistence. This combined value (€375) is the taxable income (social insurance, inhabitant income tax, etc.). We have been informed that the share of income which is paid for travel and subsistence is not taxable. Lithuanian drivers spending time outside Lithuania are paid an additional daily lump sums predefined in Lithuanian law, differentiated according to the country of destination but on average equivalent to €58 per day<sup>92</sup>.

We have been told that Lithuanian drivers working abroad are not protected by Lithuanian professional unions nor by foreign professional unions therefore actual working conditions of drivers are very poor, for example to save costs drivers sleep inside their vehicles.

The President of LINAVA also declared that Lithuanian road Hauliers do not carry out road cabotage in other EU Member States for economic reasons. Also, the chairman of the Lithuanian National Road Carriers' Association LINAVA stated that the implementation of the Regulation had been a success for Lithuanian road freight hauliers as it had eliminated a lot of empty mileages. Despite such statements we have been told that, Lithuanian carriers are involved in cabotage, including in some cases actions that infringe the cabotage requirements, although not necessary with forethought.

#### **A.7.4. Summary for Lithuania**

In Lithuania there were no legal national acts were passed or changed as a result of the entry into force of Regulation (EC) No 1072/2009. Road cabotage is regulated by this Regulation and penalties for infringements related to all documentation (including cabotage) are set by the Code of Administrative Infringements of Republic of Lithuania. We have been informed that there are no specific procedures for control of road cabotage in Lithuania. Cabotage operators are checked in the same way as any other freight carriers – that is they are all subject to random checks. During roadside checks carried out by the Road Transport Vehicle Inspectorate, officers check all documents related to vehicle and goods carriage and also compare cargo transportation documents with rest and driving period data.

Although the contribution of Lithuanian hauliers to cabotage operations in other EU Member States grew by 78% between 2006 to 2011 when measured in tonne-km, the involvement of Lithuania in the EU cabotage market is rather low. According to Eurostat data, in 2011 Lithuanian road hauliers accounted for about 0.33% of the cabotage market in other EU Member States. Regulation (EC) No 1072/2009 has also had little impact on the Lithuanian freight market as the market is too small for foreign operators to be interested in carrying out cabotage operations there. Furthermore, the scope of entry for foreign hauliers – especially EU15 ones - is rather limited as they face strong competition from internal freight hauliers that are able to offer lower prices due to lower labour costs (drivers and support staff). Lithuanian freight hauliers have a competitive advantage in road cabotage due to salaries, related taxes as well as social security. However we have been told that Lithuanian drivers working abroad are not protected by Lithuanian professional unions nor by foreign professional unions therefore actual working conditions of drivers can be very poor.

Representatives of the Ministry of Transport and Telecommunication of Lithuania and the State Road Transport Inspectorate under the Ministry of Transport and Communications stated that further clarification is necessary at the EU level on specific details of the

---

<sup>92</sup> If Lithuanian driver is to spend a month working outside Lithuania, which is common practice, travel money he earns might be up to €1,740 plus minimum salary of €289. €1,740 is not object of any taxes. This is exploited as extreme competitive advantage.

cabotage rules provided in the Regulation especially related to monitoring (how to make sure that it is actually road cabotage and whether it is the first or fourth operation). Also it was suggested from Lithuanian stakeholders that a more appropriate approach would be to set a maximum period for cabotage without setting the number of cabotage operations and allow road cabotage in cases of partial delivery (multi-drop) without having the requirement to unload all goods transported internationally to optimise transportation costs and reduce empty running.

## A.8. CASE STUDY NETHERLANDS

The Netherlands borders Belgium and Germany and has a coast on the North Sea and is the home of the largest freight port in Europe. The total Dutch population is about 17 million inhabitants. The country's road network is 136,827 km long, including around 2,631 km of motorways.

Around 130,000 workers were employed in road freight transport activities in 2008 and there were around 9,000 enterprises active in the transport of goods by road in 2008 (Eurostat). Nearly half of all HGVs registered in the Netherlands possess a community licence.

### A.8.1. Legislative Background

Road cabotage in the Netherlands is governed by the Goods Transport Act ("Wet wegvervoer goederen"), last amended in 2007 and by Regulation (EC) No 1072/2009. The Dutch Parliament has not modified the Goods Transport Act since the entry into force of the Regulation and hence the national law is lacking some specific provisions, for example in relation to art.16 and the applicable sanctions to cabotage infringements.

These gaps in the legislation are set to be overcome in 2013. The Goods Transport Act is to be reformed to implement in full the provisions of the Regulation into Dutch law. The law will be changed significantly in this area, to reflect the new rules at the European level in more detail.

**Table A. 8.1 Market opening to new Member States in the Netherlands**

Country	Date cabotage allowed
Bulgaria	1 January 2012
Czech Republic	1 May 2009
Estonia	1 May 2009
Latvia	1 May 2009
Lithuania	1 May 2009
Hungary	1 May 2009
Poland	1 May 2009
Romania	1 January 2012
Slovenia, Malta and Cyprus	1 May 2004
Slovakia	1 May 2009

Source: SDG research.



Members of the Benelux countries (Belgium, the Netherlands and Luxembourg) have benefited from free rights to cabotage across the three countries since 1991. Cabotage restrictions for hauliers from new Member States have been progressively lifted in the Netherlands, beginning with hauliers from Slovenia, Malta and Cyprus in 2004, as detailed in Table A. 8.1.

#### **A.8.1.1 New EU rules on road haulage (Regulation (EC) No 1072/2009)**

Regulation (EC) No 1072/2009 defines “cabotage” as “national carriage for hire or reward carried out on a temporary basis in a host Member State, in conformity with this Regulation” states that “...any haulier for hire or reward who is a holder of a Community licence and whose driver, if he is a national of a third country, holds a driver attestation, shall be entitled [...] to carry out cabotage operations, within the conditions laid down Art. 8, 9 and 10 of the Regulation.”

More specifically, Article 8 of the Regulation provides that every haulier is entitled to perform up to three cabotage operations within a seven day period starting the day after the unloading of the international transport. Prior to the introduction of the Regulation, the Netherlands had not defined the “temporary nature” of cabotage; this has been resolved with the entry into force of the Regulation.

In relation to Article 9 that indicates that cabotage operations shall be subject to the laws, in force in the host Member State, Dutch legislation specifies that cabotage transport is subject to VAT in accordance with the fiscal regime applicable to national transport services<sup>93</sup>.

It is unclear whether the Dutch implementation measures of the Posted Workers Directive apply to cabotage and international transport. A consultation carried out by the Ministry in 2011 revealed that most interviewees “did not have an informed opinion about the theoretical inclusion and the practical exclusion of workers in the transport sector<sup>94</sup>”.

#### **A.8.1.2 The degree of enforcement of new and old rules and their impact on the EU road haulage market**

The enforcement of cabotage rules in the Netherlands is overseen by the Ministry of Infrastructure and Transport, in coordination with the Inspectorate for Transport and the Environment (ILT) and policing bodies at different geographical level as shown in Table 2.

Since the Regulation has not been fully applied in the Netherlands, the Inspectorate has not been granted the necessary powers to enforce the cabotage rules. There is a lot of uncertainty among stakeholders as to what the applicable sanctions are, as these are not clearly defined by the current legislative framework.

Besides the expected modifications to the Road Transport Act, the Dutch Economic Offences Act (de Wet Economische Delicten) will be reformed to include sanctions related to cabotage. These legislative changes are expected to bring much needed clarity to this sector and the Inspectorate has been tasked with starting a pilot project to monitor cabotage developments as soon as the new legislation comes into force.

<sup>93</sup> ECORYS and E&Y, *Study on Road Cabotage in the freight transport market*, DG TREN 2006.

<sup>94</sup> Van Hoek and Houwerzijl (2011), *Comparative study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union*, March 2011.

**Table A. 8.2 Road Transport – Control Authorities in the Netherlands**

Items to be controlled	State police	Local police	Customs	Transport Ministry	Authorised experts
Traffic regulations and driving licences	x	x			
Authorisations for international road transport	x		x	x	
Special authorisations for carriage of passengers and other related documents				x	
T1 documents or TIR Carnets			x		
Weights and dimensions	x			x	x
Certificate for carriage of perishable foodstuff			x		
Documents on veterinary and phytosanitary control					AID
Road user charges				x	
Technical conditions of motor vehicles	x	x			x
Regulations on driving hours and rest periods	x	x		x	
Regulations on transport of dangerous goods	x		x	x	

Source: Adapted from IRU (2011).

### A.8.1.3 The need for a review of the rules

The most important concern for industry associations is the absence of appropriate sanctions for foreign hauliers within domestic law, along with the low number of roadside checks, and the imminent budget cuts that will further reduce the powers of enforcement bodies.

The association of smaller road hauliers, Vern, highlights the absence of a proper regulatory regime for cabotage in the Netherlands as the main problem. They highlight the urgent need to draft complementary legislation to Regulation (EC) No 1072/2009 in order to establish the necessary sanctions in case of cabotage infringements. At present, enforcement bodies are effectively powerless even if checks are undertaken. This also creates an asymmetry with other MSs where sanctions are well-defined and involve monetary penalties.

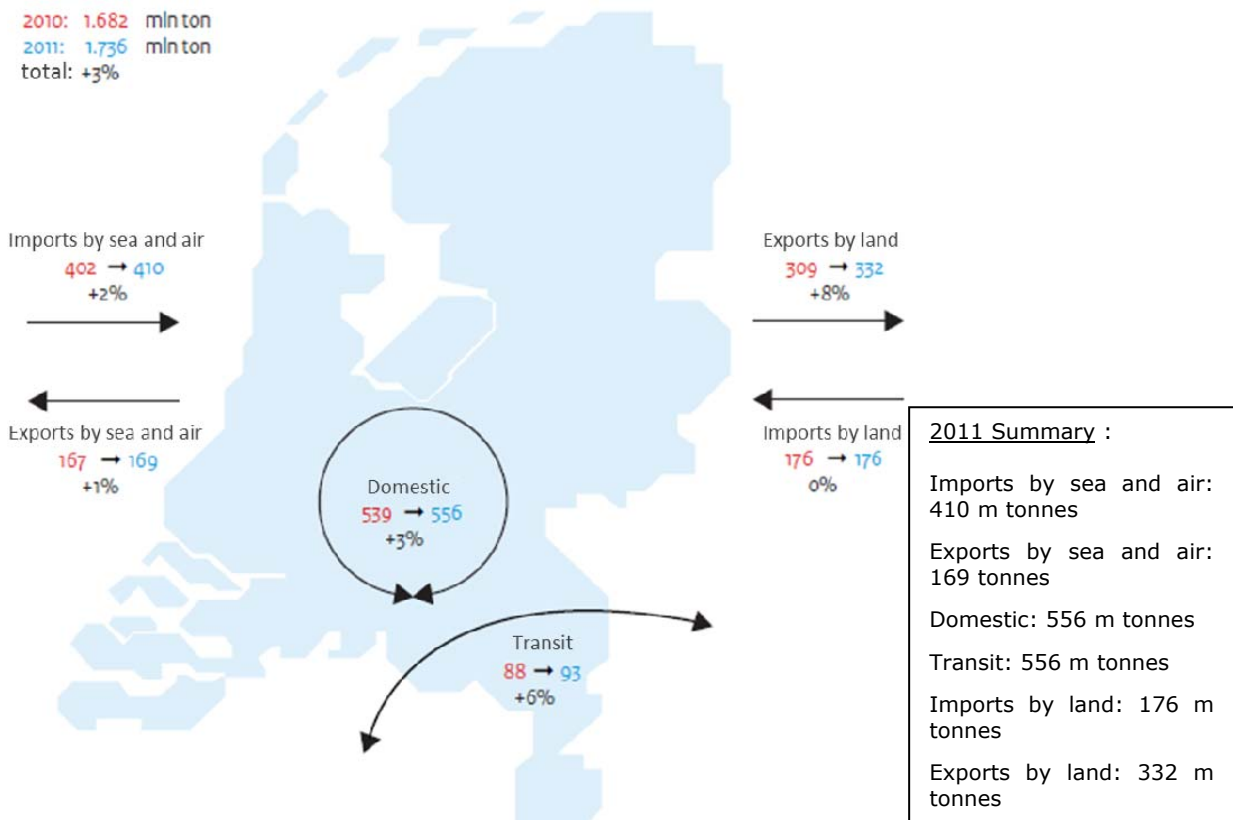
In addition, industry groups are concerned about the inadequate number of people involved in roadside checks, both at the Inspectorate (ILT) and the road police (KLPD). The association of larger hauliers, TLN, has expressed its concerns with respect to planned budget cuts of €2 million which will reduce the staff at ILT by 89 full-time equivalents (FTEs) between 2012 and 2017.

Several Dutch hauliers operating to and from the port of Rotterdam have asked the government to invoke the provisions in Article 10 of the Regulation (relating to "safeguard procedures" aimed at limiting cabotage) in relation to the port area. The requests have not been successful to date.

### A.8.2. Data analysis

Total road freight traffic in the Netherlands was fairly stable between 2000 and 2010, with a modal share of around 40% - the lowest among EU15 Member States. Following a sharp decline in activity in 2009, domestic road traffic once again began to grow, while international transport continued its decline in 2010 and 2011. Figure 2 below shows the recent trends in goods transport. On aggregate, land-based movements linked to exports, imports and transit traffic in 2011 accounted for more than 30% of all goods transported nationally.

**Figure A. 8.1 Total transport movements in the Netherlands 2010-2011 (million tons)**



Source: KiM elaboration of CBS data.

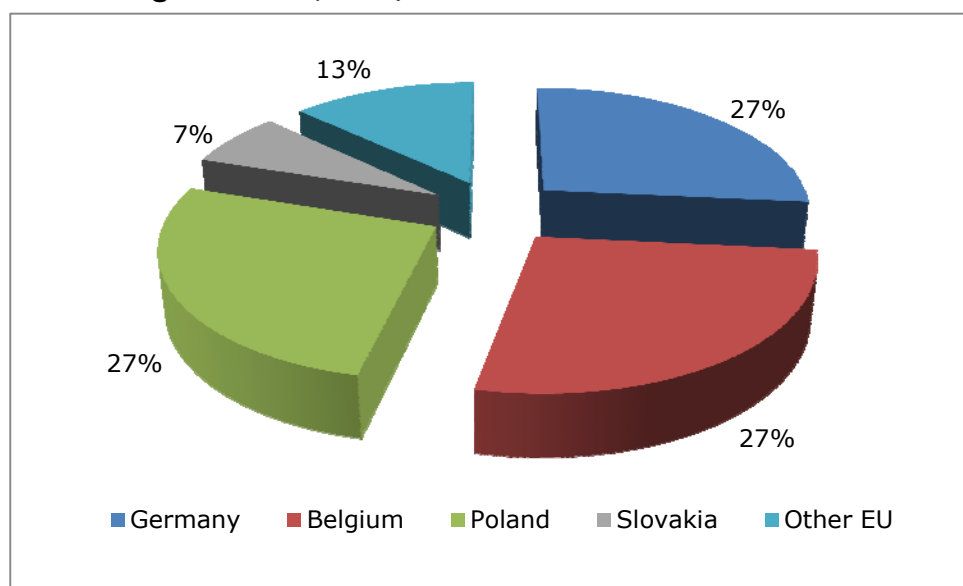
The latest available statistics suggest that around 130,000 road freight transport enterprises are active in the Netherlands, employing some 9,000 employees (Statistical Pocketbook, 2011). The ratio between the number of employees and the number of enterprises suggests that the Dutch industry has already consolidated into several large enterprises: the average number of employees (14) is much higher than in other EU MSs such as Italy (3) and Sweden (7).

The size of Dutch enterprises can also be measured by looking at the number of certified copies of community licences over the total number of licences owned by domestic hauliers. This ratio is the highest in Europe. In addition, almost 50% of all trucks registered in the country possess a certified copy of the community licence. This compares to a mere 5% in Italy and 8% in United Kingdom.

Cabotage in the Netherlands increased by around 130% between 2000 and 2011. The relative share of cabotage has likewise been growing, from around 0.3% of total traffic in 2005 to around 1% of total traffic in 2011 (Eurostat 2012). According to CBS (2010), in 2009, around 40% of the hauliers performing cabotage in the Netherlands came from Belgium, around 30% from Germany and 17% from Poland.

However the most recent Eurostat figures show that cabotage volumes from Polish hauliers have doubled between 2007 and 2011. Likewise, traffic by hauliers from other Central and Eastern European Member States (Slovakia and Hungary in particular) has been growing, while traffic by German and Belgian hauliers has been declining. The updated, 2011 situation is shown in Figure A.8.2.

**Figure A. 8.2 Share of cabotage activity in the Netherlands by country of registration (2011)<sup>95</sup>**



Source: SDG analysis of Eurostat (2012).

The historically dominant position held by Dutch hauliers in the European road freight market results from a traditionally strong role in freight facilitated by the port of Rotterdam and Schiphol airport. Between 2000 and 2011, the volume of exports grew by 52%, far outweighing GDP growth.

In 2005, 20% of all cabotage activity (tonne-km) in the EU was carried out by Dutch hauliers (Eurostat). More recent data shows that the role of Dutch hauliers is still very important: in 2010, while total traffic by Dutch hauliers was only 6% of the EU15 total, the share of cabotage traffic by Dutch hauliers was 12% (Eurostat 2012). In addition, in 2009, around 75% of cabotage by Dutch hauliers took place in Germany and Belgium, and around 10% in UK (CBS).

<sup>95</sup> Excluding countries which do not provide data due to confidentiality.

Overall, the Netherlands remain a net cabotage export, as shown in Figure 3 below. While there is a generally increasing trend for cabotage operations by foreign hauliers across the Netherlands, Dutch operators are very active on the European market.

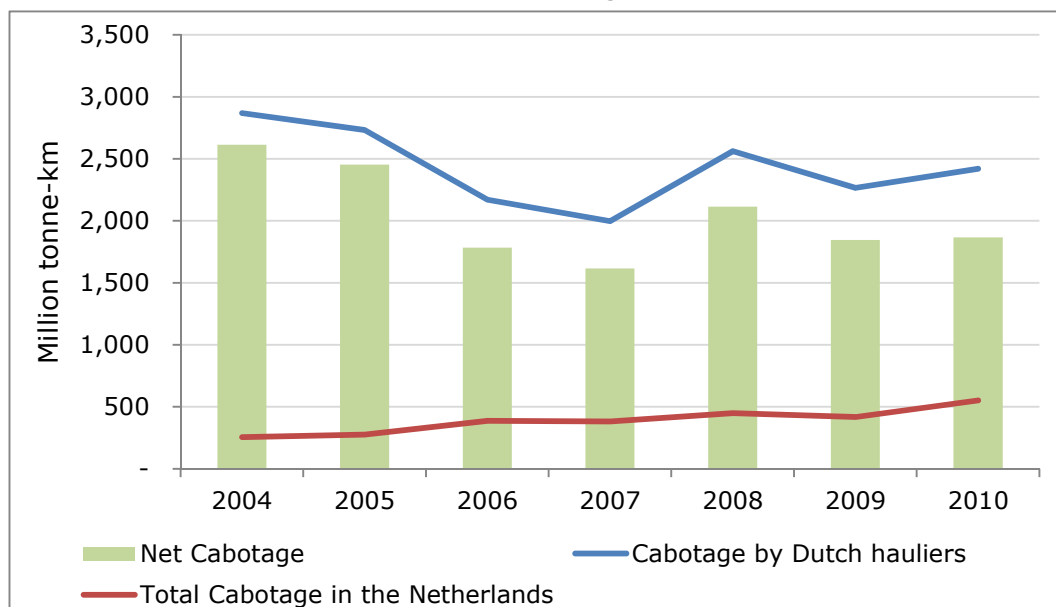
A summary of the relevant data at the national level is provided in Table below.

**Table A. 8.3 Key statistical data – Road transport in the Netherlands**

Year	2006	2007	2008	2009	2010
Length of motorway network (km)	2,604	2,582	2,637	2,631	:
No. of Community licences issued	:	:	10,083	10,092	10,150
No. of Community licence certified copies issued	:	:	78,539	98,557	79,851
National road haulage (bil. tonne-km, vehicles >3.5t)	31.0	30.7	32.0	31.3	34.3
International haulage by vehicles registered in NL (bil. tonne-km, vehicles >3.5t)	52.2	47.2	46.2	41.3	42.0
Cabotage on Dutch roads (bil. tonne- km, vehicles >3.5t)	0.39	0.38	0.45	0.42	0.55
No. freight road transport enterprises	9,370	8,800	9,000	:	:
No. employees of freight road transport enterprises	122,950	128,000	30,000	:	:

Source: Eurostat (2012).

**Figure A. 8.3 Evolution of Dutch net cabotage volumes**



Source: SDG analysis of Eurostat data (2012).

In summary, road freight activity in the Netherlands has been fairly stable in recent years, although the share of international traffic on domestic infrastructure, and cabotage activities in particular, have increased. Likewise, Dutch hauliers continue to be very active in the European market. These figures indicate a high degree of integration in transport activities, especially between the Netherlands and its neighbouring countries.

### A.8.3. Economic and social impacts

Dutch transport companies have held a strong position in the international road freight market over the past decades, mainly thanks to the sustained volumes of international trade as detailed in the figures presented above. Analysis by the KiM<sup>96</sup> has shown that the recorded changes in road freight transport in the country can be explained by a few factors, including GDP growth on the positive side and delocalisation on the negative side. However the single explanatory variable with the highest impact is the so-called "internationalisation" of the economy, measured in terms of imports and exports. This factor explains 35% of the growth in transport volumes.

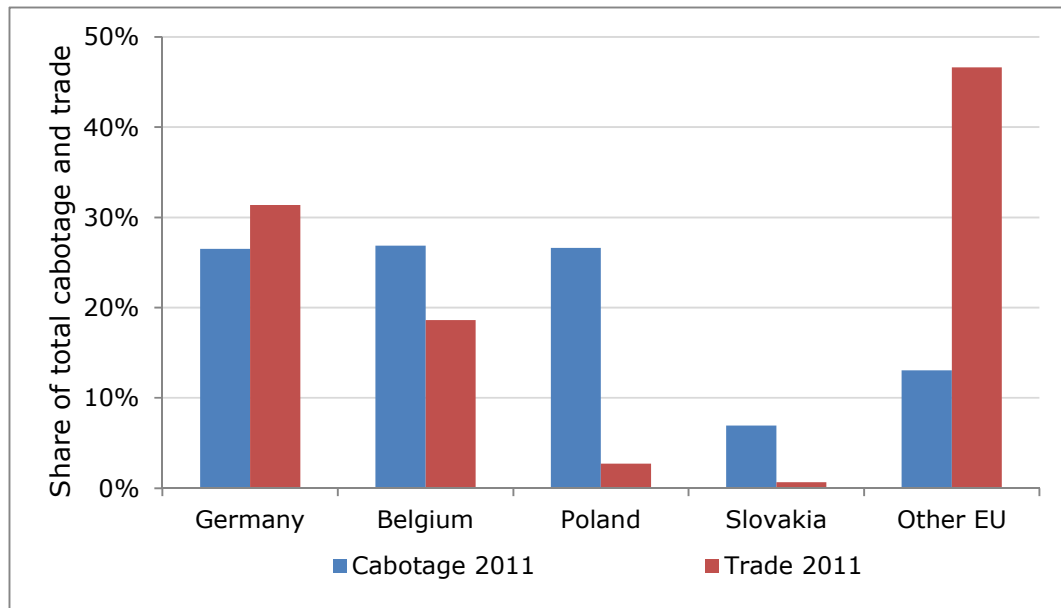
In this context, cabotage has yielded some positive long-term economic benefits to the Dutch economy. These are particularly evident in the context of Benelux integration. Having fully liberalised cabotage in 1991, Benelux countries (Belgium, the Netherlands and Luxembourg) have repeatedly prolonged this agreement, most recently in 2008 through the Conseil Interparlementaire Consultatif. The rationale for this decision lies in the recognition that hauliers gain a higher revenue per truck by being able to reduce empty runs across the Benelux countries.

In addition, Dutch Transport Policy Analysis (KiM) has produced the largest study to date on the potential environmental impacts of liberalising cabotage in the EU. In the event of full liberalisation of road cabotage at an EU level, the study estimates a reduction of empty trips between 0.7% and 1.9% vehicle-km, leading to a reduction of between 0.5% and 1.6% in CO<sub>2</sub> emissions (as a percentage of total road transport CO<sub>2</sub> emissions).

However the resilience of the transport sector in the Netherlands has been hit by the economic downturn, and its market dominance in the EU is challenged by hauliers from new Member States. The industry has been hit by the 2009 recession which has had a severe impact on trade activities: trade between the EU25 and the Netherlands fell by 18% between 2008 and 2009. Moreover, an analysis of recent trends reveals that trade volumes may be decoupling from cabotage volumes. This is shown in Figure 3, which presents the relative share of imports/exports between the Netherlands and the EU27 against the relative share of cabotage operators running services on Dutch territory. While cabotage activities appear to be proportionate to trade for Germany and Belgium, Polish and Slovakian hauliers are more active in the Netherlands than expected from their commercial activities with the country, a fact that can be partially explained by the cost competitiveness of Polish and Slovakian hauliers that can offer road freight transport services at a lower rates than Dutch ones.

---

<sup>96</sup> Kennisinstituut voor Mobiliteitsbeleid (2012), Mobiliteitsbalans, Institute for Transport Policy, November 2012, Netherlands, <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2010/06/08/cabotage-and-co2-reduction.html>.

**Figure A. 8.4 Relationship between cabotage and trade, main EU partners 2011**

Source: SDG analysis of Eurostat (2012).

The road transport sector in the Netherlands has been traditionally divided over cabotage and the impact of competition on Dutch hauliers. On the one hand, the larger hauliers which are better able to compete on international markets have benefited from less stringent rules and have gained market shares abroad, especially through international trade operations. On the other hand, smaller hauliers have been suffering from competition by operators from countries with lower labour and capital costs.

As stated by the Ministry, although in principle most stakeholders are in favour of liberalisation of the road transport market, the current economic downturn has led to a change of opinions for many. "...harsh competition due to illegal cabotage on the local transport market is thought to aggravate the difficult economic position of the national road transport sector in the Netherlands<sup>97</sup>".

The most important change has come from the association TLN, once supportive of market opening. It has now changed its position (at the end of 2012) highlighting that liberalisation would "...have very negative consequences for Dutch hauliers". As well as "...as long as the socio-economic differences between the old and new EU Member States have not been reduced, unrestricted cabotage will have too much of a negative effect on the Dutch market".

These negative effects are exemplified by a reduction in margins for Dutch companies as suppliers trying to cut costs by resorting to foreign cabotage operators. Labour shortages also constitute a pressing issue. The association Vern is concerned that the massive influx of foreign operators in recent years has reduced the number of Dutch skilled drivers. As older professionals approach retirement, it will be very difficult to find younger people willing to take up the profession. A recent survey by Vern in Dutch schools revealed that only 0.01% of the students interviewed would be willing to work as a truck driver.

A recent study commissioned by the Dutch Ministry of Industry and Environment<sup>98</sup> argues that these concerns regarding the potential negative effects of cabotage could be

<sup>97</sup> Stakeholder submission, Ministry of Infrastructure and the Environment.

<sup>98</sup> Ministry of Industry and Environment (2013). *The impact of untightening of cabotage*.

particularly challenging given current restrictions on cabotage are to be eased in the European Union. The study claims that an easing of current cabotage rules will not be favourable for the Dutch road haulage sector: such a measure is expected to lead to strong price competition between Dutch hauliers and companies using vehicles registered in lower wage countries, that may force some Dutch companies into bankruptcy and put pressure on employment and working conditions in the Netherlands. Moreover, according to the study, there is also the risk of a negative effect on the environment as road transport would become more competitive.

Overall, Dutch stakeholders attitudes towards cabotage have changed as the ability of Dutch hauliers to compete at the international and, more recently, at the national level, has diminished. The closer integration of commercial activities and the reduction of empty runs resulting from full liberalisation within Benelux are an example of the potential benefits of cabotage.

However this example originates from the integration of three economies with similar socio-economic bases, whereas the competitive pressures currently suffered by the road transport sector in the Netherlands can be attributed to large cost differences between local hauliers and companies registered in EU12 countries.

#### **A.8.4. Summary for the Netherlands**

In the Netherlands, the cabotage regime is currently being reformed and the new Road Transport Act will be passed by the national Parliament in 2013. The industry associations are expecting some significant changes especially to the control and enforcement system and the related sanctions. At present, the authorities tasked with enforcement (the ILT Inspectorate and the road police) lack the necessary powers to impose fines and intensify controls due to the legislative vacuum and recent budget cuts.

Dutch hauliers have traditionally had a dominant market position across the EU thanks to the flow of goods from its ports and airports and the presence of large haulage companies. Dutch operators are the second most active cabotage service providers with a 12% market share at EU level, however hauliers registered in Poland and Slovakia have increased their market presence both in the Netherlands and abroad, in competition with Dutch hauliers.

The combined impact of the recession and of market entry by EU12 hauliers has contributed to changing attitudes towards cabotage. Industry associations, including those who were once in favour of full liberalisation, are calling for the government to intervene in order to limit the negative socio-economic effects of cabotage, such as illegal contracting by shippers, companies being forced to close down and drivers' shortages. In this respect, the Dutch Association of Transport and Logistic (TNL) recently declared that it is against any EU action targeted at further liberalising the cabotage sector and that a further harmonisation and enforcement of current rules is first necessary to level the differences between old and new EU Member States.

On the other hand, it must be pointed out that the full liberalisation of cabotage in the Benelux region represents an example of successful market opening in the presence of a harmonised socio-economic environment. The national governments have repeatedly prolonged this agreement given its benefits, which include a reduction in empty runs and CO2 emissions, as well as greater economic integration.





## A.9. CASE STUDY POLAND

Poland is the largest country of the group of Member States which joined the EU in 2004. It shares borders with Germany, the Czech Republic, Slovakia, Ukraine, Belarus, Lithuania, and the Kaliningrad District (an exclave of the Russian Federation). Poland has a population of approximately 38 million inhabitants. Poland has 274,000 kilometres of paved roads, of which 857 km are motorways (Eurostat, 2010).

The number of people employed in the road freight transport sector in Poland has been steadily increasing over the past decade, and numbered around 284,000 people in 2010 – which is a 50% increase compared to 2000. The number of road freight transport enterprises totalled over 79,000 in 2010 – down from a high of nearly 87,700 in 2002.

### A.9.1. Legislative Background

The key item of legislation that governs the road goods transport sector in Poland is the Road Transport Act<sup>99</sup>. The Act was first passed in 2001 and has been further amended numerous times since (most recently in June 2012) to take account of new Polish and EU legislation. The Act incorporates the requirements of Regulation (EC) No 1072/2009 into Polish law.

The Polish domestic road transport market is currently open to hauliers from all Member States wishing to conduct cabotage operations on its territory, as all interim restrictions resulting from pre-accession treaties have been lifted. The table below shows the date of lifting of mutual restrictions on road cabotage.

**Table A. 9.1 Dates of lifting of pre-accession treaty restrictions on road cabotage for Poland**

Countries	Date cabotage allowed
Bulgaria and Romania	1 January 2012
Ireland, Portugal and Sweden	1 May 2007
All other EU Member States	1 May 2009

Source: SDG research.

Between May 2009 and the entry into force of Regulation (EC) No 1072/2009 in May 2010, the Road Transport Act specified that in order to perform cabotage operations on Polish roads, transport undertakings had to obtain a permit from the Ministry of Infrastructure. In order to apply for such permits, the transport undertaking had to obtain two positive references from Polish national road haulage organisations. Such permits had a time limit on their validity, but did not specify how many cabotage operations could be carried out within that period. This permit system still applies to transport undertakings from outside

<sup>99</sup> *Ustawa o transporcie drogowym z dn. 6 września 2001 r. z późniejszymi zmianami. Dz. U. 2001 Nr 125 poz. 1371, Road Transport Act, Poland.*

the EFTA (European Free Trade Agreement) wishing to undertake cabotage operations in Poland.

#### **A.9.1.1 New EU rules on road haulage (Regulation (EC) No 1072/2009)**

Regulation (EC) No 1072/2009 came into force in Poland on 14 May 2010. The Polish Road Transport Act (hereafter the "Act") specifies the competencies of national institutions with regard to the provisions of the Regulation. The Act also introduces into national legislation the EU provisions regarding road cabotage as formulated in Articles 8, 9 and 10 of Regulation (EC) No 1072/2009 (Article 29a of the Act).

Article 29a of the Act specifies that the driver of the vehicle performing cabotage operations in Poland is required to show upon request all relevant documents (including waybills and invoices) for the cabotage operations carried out on Polish territory. In addition, the implementation of the Posted Workers Directive does not appear to apply to the transport and road haulage industry in Poland. The Road Transport Act does not make any references to this Directive.

#### **A.9.1.2 The degree of enforcement of new and old rules and their impact on the EU road haulage market**

The original 2001 Road Transport Act created the General Inspectorate of Road Transport (Główny Inspektorat Transportu Drogowego, henceforth referred to as GITD). The GITD is the competent authority responsible for the enforcement of the provisions of EU road haulage legislation (roadworthiness of vehicles, driver working time, licensing, cabotage and certification of road hauliers). The GITD has the right to stop vehicles to conduct roadside checks and a right to impose fines or prevent vehicles from continuing their journey.

The Road Transport Act also designates the GITD as the competent authority with regard to issuing road transport licences, and as the administrator of the national electronic licence register.

The GITD indicates the following costs for obtaining a road haulier Community licence:

- 10 year licence: 8,000 PLN + 880 PLN for each certified copy (€1,914 + €210.5)<sup>100</sup>;
- 5 year licence: 4,000 PLN + 440 PLN for each certified copy (€960 + €105.3)

The costs of obtaining a licence in Poland are significantly higher than in the Czech Republic or Slovakia, where the costs of obtaining a licence are €39.5 and €6.5 respectively. They are also higher than in Germany, where a licence can cost a maximum of €700.

There are a number of forces and institutions allowed to conduct roadside checks of vehicles in Poland. These are the road police, the GITD, the border guard, the military police, and the customs service. However, the Road Transport Act requires these forces to create a co-ordinated plan of enforcement of road transport rules. Though this plan is confidential, each force is assumed to focus on its own key competencies – which means the bulk of the enforcement actions within the road haulage and coach transport sectors is carried out by the GITD. Officers of the GITD are also specially trained and equipped to conduct checks of coaches and lorries - e.g. they carry mobile vehicle weighing equipment, can control vehicle braking systems and tachographs. As part of co-operation arrangements

<sup>100</sup> A conversion rate of €1 = 4.18 PLN has been applied to all financial values mentioned throughout this note.

officers of other forces may request assistance from the GITD (and vice-versa) when dealing with coaches and lorries; forces may also conduct joint patrols and checks.

**Table A. 9.2 Road Transport – Control Authorities in Poland<sup>101</sup>**

Items to be checked	Police	GITD	Border Guard	Military Police
Traffic regulations & driving licences	x	x	x	x
Authorisations for international road transport	x	x	x	x
Special authorisations for carriage of passengers & other related documents	x	x	x	x
T1 documents or TIR Carnets	x	x	x	x
Weight & dimensions	x	x	x	x
Certificate for carriage of perishable foodstuff	x	x	x	x
Documents for veterinary & phytosanitary controls	x	x	x	x
Road user charges	x	x	x	x
Roadworthiness of motor vehicles	x	x	x	x
Regulations on driving hours & rest periods	x	x	x	x
Regulations on transport of dangerous goods	x	x	x	x

Source: Adapted from IRU (2011).

The GITD has a right to impose fines on drivers and vehicle operators, and impound vehicles, but it is not allowed to arrest individuals – it relies on assistance of officers from other services who are authorised to do so.

There is no difference between the sanctions or penalties levied for infringements committed by domestic drivers and those committed by drivers from other countries. The only difference is that domestic drivers may pay their fines within 21 days from the moment they are imposed, whereas foreign drivers are required to pay theirs on the spot. If the foreign driver is unable to pay the fine on the spot, the vehicle is impounded and kept at a secure parking lot (at the expense of the driver/company) for up to 30 days, pending payment. If payment is not made within 30 days, the vehicle is formally confiscated and sold.

The fines or sanctions for infringements regarding Community licences are as follows (Source: Road Transport Act):

- Company does not hold Community licence or one or more of its vehicles is not registered on the licence: 8,000 PLN (ca. €1,914) - penalty for haulage company;

<sup>101</sup> By law, all four authorities have the right to control all of the above – in practice the GITD conducts the vast majority of checks on HGVs as per the co-ordination plan.

- Absence of certified copy on-board the vehicle: 500 PLN (ca. €119) penalty for driver; 2,000 PLN (ca. €478) penalty for company;
- Fraudulent/false licence: regulated by criminal law;
- Performing cabotage operations by a foreign transport operator in violation of the rules set down by Regulation (EC) No 1072/2009 and the Road Transport Act: 10,000 PLN (ca. €2,392)

Infringements of cabotage regulations are a very small issue in Poland. The GITD conducted 157,000 roadside checks of vehicles between January and October 2012. Infringements with regard to cabotage regulations were identified in only three cases, one of which was with regard to a vehicle registered outside the EU. A fine of 10,000 PLN (ca. €2,392) was levied on each of the drivers from the European Union, whereas the non-EU driver was fined for breaching the terms and conditions of the permit system for transporting goods between the EU and non-Member States.

#### **A.9.1.3 The need for a review of the rules**

As Table A. 9.3 below, shows, the Polish road haulage market appears to have benefitted significantly from the liberalisation of the road cabotage rules – the number of Community licences has increased, as has the volume of goods transported through cabotage by Polish vehicles in other Member States (see Table 2 below).

Polish industry stakeholders have not reported any significant issues relating to the enforcement of the existing cabotage rules in other Member States and, as described above, infringements of cabotage regulations in Poland appear to be minimal. Stakeholders are more concerned with the economic situation in Poland and other Member States, and how this could potentially translate into lower demand for their services.

Polish industry stakeholders would like to point out that Regulation (EC) No 1072/2009 is the first item of legislation, which has clearly spelled out the timeframes and permitted number of cabotage operations across the EU. Thus, they would first and foremost like to see more emphasis placed on the harmonisation of the implementation and enforcement of these rules, but would not be against discussing a gradual increase in the access to the domestic markets in other Member States.

There are, however, other causes of discontent on the part of Polish road hauliers. The major one concerns the enforcement of the system of permits for the transport of goods to/from Russia and other non-EU Member States<sup>102</sup>. Road hauliers are also concerned by the amounts of money required for hauliers to prove they are able to meet their financial obligations (Article 7 of the Regulation)<sup>103</sup>. Finally, due to the harmonisation of excise duty, fuel prices have been rising significantly faster than inflation since 2008.

<sup>102</sup> Efekt Budziska. In "Przewoźnik ZMPD" - [http://przewoznik.zmpd.pl/aktualnosc.php?akt\\_id=259](http://przewoznik.zmpd.pl/aktualnosc.php?akt_id=259) Retrieved 18/12/2012.

<sup>103</sup> Jakie zabezpieczenie? ZMPD interweniuje. - [http://zmpd.zmpd.pl/aktualnosc.php?akt\\_id=2378](http://zmpd.zmpd.pl/aktualnosc.php?akt_id=2378) Retrieved 18/12/2012.

## A.9.2. Data analysis

The following table shows basic statistical information on the road haulage industry in Poland.

**Table A. 9.3 Key statistical data – Polish road transport**

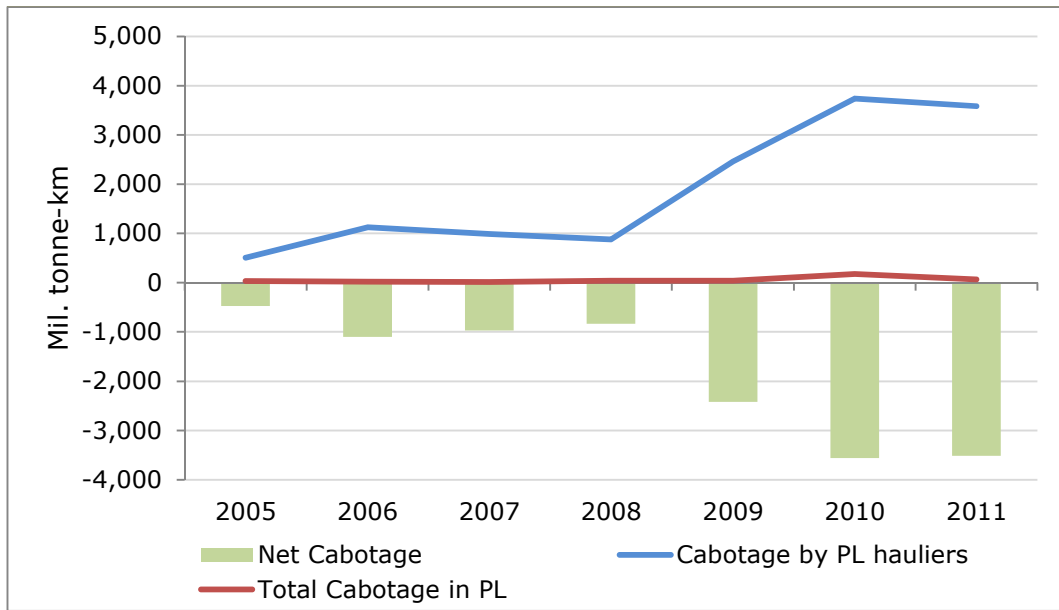
Year	2006	2007	2008	2009	2010
Length of motorway network (km)	663	663	765	849	857
No. of Community licences issued	16,311	N/A	3,135	23,685	24,895
No. of Community licence certified copies issued	92,283	N/A	12,868	128,663	137,502
National road haulage (billion tonne km, vehicles >3.5t)	59.4	65.8	71.9	79.2	86.2
International Road haulage by Polish vehicles (billion tonne km, vehicles >3.5t)	68.9	85.1	93.0	101.5	124.7
Cabotage on Polish roads (thousands tonne km, vehicles >3.5t)	22,354	17,076	42,903	42,426	180,685
Cabotage by Polish companies/vehicles in other Member States (billion tonne-km, vehicles >3.5t)	1.3	1.1	1.0	2.6	4.4
No. of goods road transport enterprises registered	76,670	81,275	78,664	75,034	79,430
No. of employees of goods road transport enterprises	226,932	245,104	267,217	257,644	284,316

Source: Eurostat (2012), GITD (2012) BAG (2012).

All data indicators regarding the size of the Polish transport market show significant increases following the lifting of interim restrictions on Polish hauliers. This is reflected both in terms of the volumes of goods transported by Polish lorries as part of cabotage operations, as well as the number of community licences issued (which is a proxy for the number of road haulage undertakings and number of vehicles undertaking international transport operations). A similar increase in the volume of cabotage can be observed in the Czech Republic which – like Poland – shares a long stretch of border with Germany. This suggests that both countries have used the lifting of the interim cabotage restrictions and the entry into force of Regulation (EC) No 1072/2009 to capitalise on their proximity to the EU15 Member States and to compete in their domestic haulage markets.

According to Eurostat data, Poland has reaped more benefits from the liberalisation of road cabotage rules than any other Member State, with 17.6% of all cabotage operations in the EU are carried out by Polish drivers (in 2011). Polish drivers have also taken over a significant proportion of two of the biggest cabotage markets in the EU – they now account for 32% of cabotage operations in Germany and 11% in France.

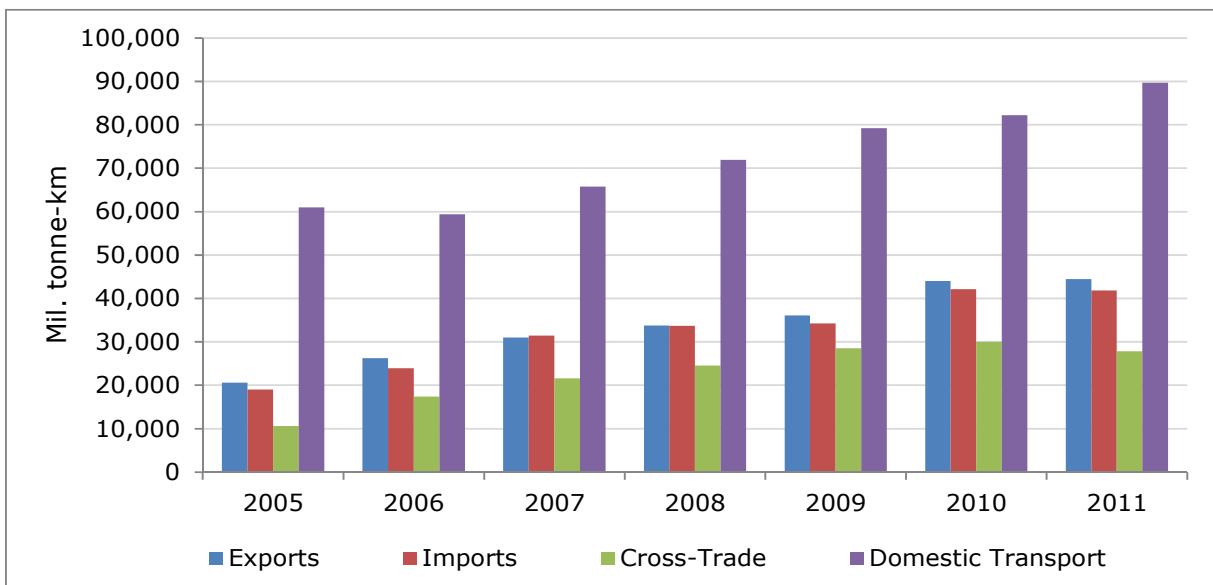
**Figure A. 9.1 Cabotage Operations Performed in Poland or by Polish Drivers Abroad, 2005-2011**



Source: Eurostat (2012).

As shown in the graph, while the volume of goods transported by road hauliers conducting cabotage operations in Poland has remained negligible, despite a 426% increase in tonne-km transported following the introduction of the Regulation. The opposite is true for cabotage operations conducted by Polish hauliers abroad – following the lifting of interim restrictions in 2009, the volume of goods transported by Polish drivers as part of cabotage operations increased by 180% year-on-year. The further liberalisation of the market fuelled a further 52% increase in volumes between 2009 and 2010. They then fell by 4% between 2010 and 2011, which is most likely a reflection of the overall economic situation in Europe. Despite this fall, Poland remains the largest net-exporter of cabotage services in the EU, exporting on balance 3.5 billion tonne-km of cabotage services in 2011.

**Figure A. 9.2 The Polish Road Haulage Market, 2005-2011**



Source: GUS (2011).

The Polish road haulage sector as a whole has experienced a period of relatively stable growth during the period 2005-2011. However, while the maximum year-on-year growth rate for the domestic haulage market since 2009 has been 10%, the international market (exports, imports and cross-trade combined) increased by 17% between 2009 and 2010. With Poland having entered the Schengen agreement at the end of 2007, a significant portion of this increase can be attributed to the liberalisation of cabotage rules as a result of the entry into force of the Regulation.

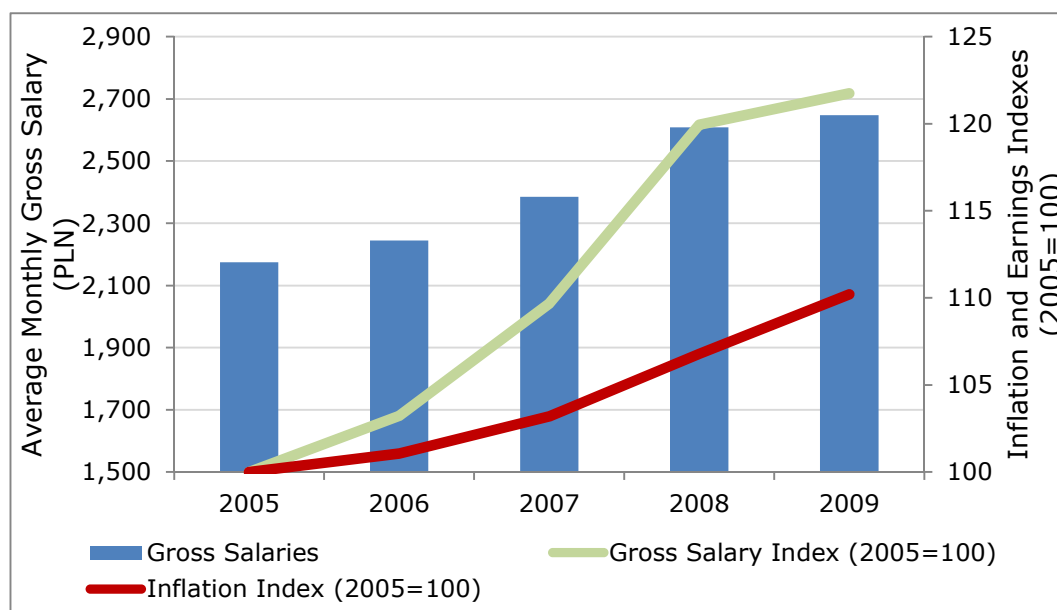
Aside from market liberalisation, an important factor in the success of the Polish goods road transport sector has also been the opening of new sections of motorways, as shown in Table 2. This has improved the competitiveness of the sector, and further reduced journey times for trips to/from Germany and Western Europe. Coupled with rising GDP this has resulted in a steady expansion of freight transported in Poland, both in terms of the number of companies and vehicles; and in terms of tonne-km transported.

Looking at the industry organization, the age structure of the Polish lorry fleet has not changed substantially since Poland's entry into the European Union. Looking at the number of semi-trailers (which are the most common type of lorry used for international transport, and hence cabotage operations abroad) in 2003, 49% of these vehicles registered in Poland were at most 10 years old, and 21% were at most 5 years old. In 2011, the proportion for the respective age categories was 50% and 30% respectively. However, the number of semi-trailers increased by 94% within that period, and totalled 238,700 at the end of 2011.

Most Polish road haulage undertakings, which undertake international transport activities, are relatively small. The average number of vehicles per undertaking (calculated by dividing the number of community licence certified copies by the number of licences themselves) in 2010 was approximately 5.5. The median number of lorries per enterprise in the whole of Poland in 2010 was 10-19 vehicles (Source: GUS).

Gross salaries in the Polish road transport sector are shown in figure below:

**Figure A. 9.3 Gross salaries in the Polish goods road transport sector, 2005-2009**



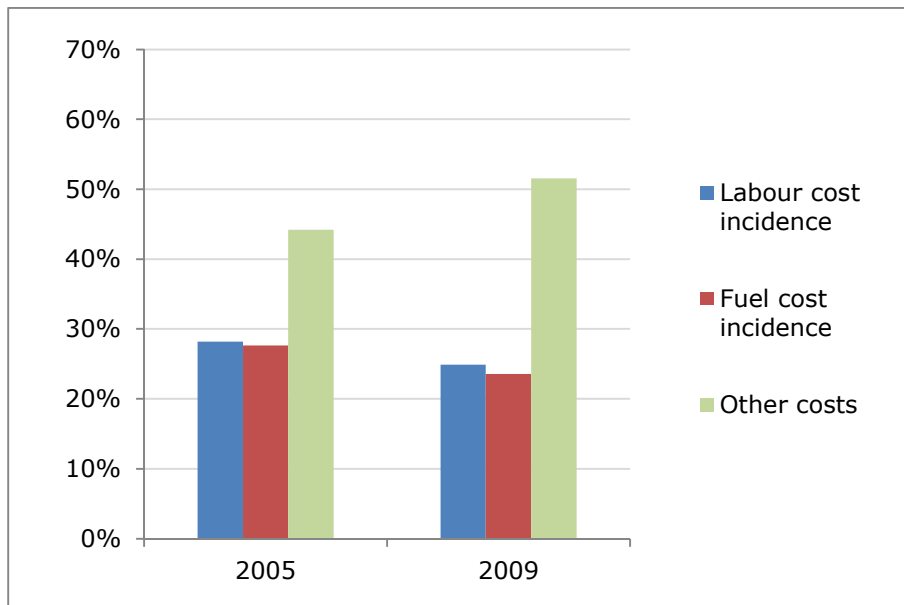
Source: GUS (2009).



As can be seen in the figure above, the gross salaries in the Polish road haulage sector have been increasing dynamically and much faster than inflation until 2008 – since then their increase has been more gradual. They still, however, remain well below the average Polish monthly salary which in 2009 was 3102 PLN (Source: GUS). The significant increase between 2007 and 2008 may have been caused by a change in the rules for obtaining Category C driving licences coming into force in 2009 – companies may have wanted to hire large numbers of drivers before that date, thereby causing a spike in demand and increase in salaries. Regardless of this, labour costs constitute a significantly lower percentage of total road haulier operating costs than in the EU15. A study by the Italian Ministry of Transport (2012) shows, that labour costs per vehicle-km of Polish hauliers are approximately 47% of Italian, French or Austrian hauliers, and approximately 55% of German hauliers. In contrast, labour costs for Romanian hauliers are 92.5% of those incurred by Polish undertakings.

The graph below shows the breakdown of operating costs for an average Polish road haulier.

**Figure A. 9.4 Breakdown of Operating Costs for Polish Road Hauliers, 2005-2009**



Source: GUS (2009).

### A.9.3. Economic and social impacts

As shown in Figure A.9.1 and Figure A.9.2, the volumes of international road haulage by Polish undertakings increased significantly from 2009 to 2010. Whilst this could have been partly brought about by improvements to the Polish road network and the continued growth of the Polish economy, a corresponding 180% increase in the volumes of cabotage performed by Polish hauliers abroad suggests the most significant cause of this increase was the implementation of Regulation (EC) No 1072/2009.

The increases in the volumes of cabotage and international transport have also contributed to a significant increase in the levels of employment in the Polish road haulage sector. As Table A.9.1 shows, employment levels within the industry rose by 10% between 2009 and 2010. With international traffic rising by 17% and cabotage volumes by 52% over that

period of time, it is clear that the entry into force of Regulation (EC) No 1072/2009 was a major contribution to this.

Polish road haulage companies also have a significant advantage in terms of labour costs over most EU Member States. Despite increases in the levels of remuneration within the Polish road haulage industry set out in Figure 3, labour costs remain at approximately 50%-60% of those in Germany, France or Italy. The gradual increase of salary levels will lead to an improvement of the social conditions of Polish lorry drivers, albeit it may also cause Polish haulers to be less competitive in comparison to drivers from other Member States.

The application of Regulation (EC) No 1072/2009 in Romania and Bulgaria will most likely have an impact on the Polish road haulers, as the labour costs within those countries' haulage industries are slightly lower than in Poland.

#### **A.9.4. Summary for Poland**

Poland was excluded from the EU cabotage market due to interim restrictions for new Member States between 2004 and 2009. Regulation (EC) No 1072/2009 came into force soon thereafter, in May 2010. The Polish road haulage market is policed by its own enforcement agency, and there is a clear system of sanctions for violating the cabotage rules written into the Road Transport Act, which governs commercial road transport activities.

Whilst there has not been much growth in the cabotage market within Poland itself, Polish haulers have taken over a large proportion of cabotage markets in the EU15 Member States, and are now the largest providers of cabotage services in the EU.

Polish stakeholders are broadly content with the scope of the current regulation. Whilst they are not against further liberalisation of the rules governing this sector, they are keen to shift the focus of the EU on the harmonisation of the implementation and enforcement of the existing rules.

Polish road haulage companies continue to be very competitive abroad, thanks to low labour costs in comparison with the EU15 Member States. Given the continued growth of the Polish economy throughout the economic crisis, this will drive the demand for Polish road haulage services both in international and cabotage traffic. Whilst the continued economic growth will lead to a gradual increase in the salary levels within the Polish road transport industry, increased competition from Romanian and Bulgarian drivers may keep Polish salary levels in check.

## A.10. CASE STUDY SPAIN

Spain is located in the Iberian Peninsula, bordering France and Andorra on the North-East and Portugal on the West. The Spanish population counts around 47 million inhabitants. The country's road network is 666,204 km long, including around 14,000 km of motorways.

Around 400,000 workers were employed in the road freight transport industry in 2008 and about 300,000 of these workers were employed in the 9,000 enterprises active in the transport of goods by road in 2008 (Eurostat).

### A.10.1. Legislative Background

Road cabotage in Spain is governed by Regulation (EC) No 1072/2009, applied from 14 May 2010, which confirmed the existing cabotage provisions contained in ORDEN FOM/2181/2008, as per Article 19 of the Regulation. The provisions existing in Spanish law prior to 2009 have remained unchanged as explained in Section 1.1.1.

Road cabotage has been gradually opened in Spain for hauliers of new Member States (MS) as detailed in Table A. 10.1 below.

**Table A. 10.1 Market opening to new Member States in Spain**

Country	Date cabotage allowed
Bulgaria	1 January 2012
Czech Republic	1 May 2009
Estonia	1 May 2009
Latvia	1 May 2009
Lithuania	1 May 2009
Hungary	1 May 2009
Poland	1 May 2009
Romania	1 January 2012
Slovenia	1 May 2004
Slovakia	1 May 2009

Source: SDG research.

### **A.10.1.1 New EU rules on road haulage (Regulation (EC) No 1072/2009)**

Spain introduced the regulation of cabotage activities ahead of the approval of Regulation (EC) No 1072/2009. More specifically, the provisions for cabotage in Spain were enacted by Ministerial Order ORDEN FOM/2181/2008 approved in July 2008. The Order, composed of only two articles, laid out the limits for cabotage operations (the “3 in 7” rule) and prescribed the documents required for foreign hauliers.

These provisions came within the legislative framework of Ley 16/87 (“Ley de Ordenación de los Transportes Terrestres- LOTT”) of July 1987 as approved by the Real Decreto 1211/1990 and as amended in later years. Before ORDEN FOM/2181/2008, the Article 109.3 of the LOTT which stated that “hauliers from the European Community shall be able to carry out domestic transport in Spain in conformity with community laws” was in force.

The provisions included in the Ministerial Order of 2008 were based on the most recent draft of Regulation (EC) No 1072/2009 and clarified an uncertain legislative landscape, for instance in relation to the temporary limits on cabotage. As a result, when Regulation (EC) No 1072/2009 was introduced, there was no specific amendment to national laws.

However a specific communication by the government (Informe Ministerio de Fomento) was issued on 6 May 2010, clarifying the general legislative framework ruling cabotage operations in Spain after the entry into force of the new Regulation. For example it clarified:

- the types and number of cabotage operations allowed in Spain as per the Regulation;
- the provisions ruling journeys related to combined transport services, which are not considered cabotage operations as per Directive 92/206/CEE.

Law 16/87 is currently being discussed in the Spanish Parliament and some modifications are going to be introduced by 2013. Nevertheless, these are not expected to directly reform cabotage provisions as Regulation (EC) No 1072/2009 is already in national law. Some of the outcomes that may affect the cabotage regime are discussed below.

### **A.10.1.2 The degree of enforcement of new and old rules and their impact on the EU road haulage market**

The **enforcement** of cabotage rules in Spain is overseen by the Ministry of Infrastructure and Transport (Fomento), and the Subdirección de Inspección del Transporte in particular. However roadside checks are carried out both by national (Guardia Civil) and by regional (Policías de las comunidades autónomas) policing bodies. The specific competences for roadside checks are set out in Table A. 10.2.

**Table A. 10.2 Road Transport – Control Authorities in Spain**

Items to be controlled	State police	Local police	Customs	Transport Ministry	Other bodies
Traffic regulations and driving licences	x				
Authorisations for international road transport	x	x		x	
Special authorisations for carriage of passengers and other related documents	x			x	
T1 documents or TIR Carnets	x		x		
Weights and dimensions	x			x	
Certificate for carriage of perishable foodstuff	x			x	x
Documents on veterinary and phytosanitary control	x				x
Road user charges	x				
Technical conditions of motor vehicles	x	x			x
Regulations on driving hours and rest periods	x	x		x	
Regulations on transport of dangerous goods	x			x	

Source: Adapted from IRU (2011).

The inspections related to cabotage are of two types: roadside checks and company investigations. The national police (Guardia Civil) as well as the policing bodies of some autonomous communities (Cataluña, País Vasco, and Navarra) are in charge of roadside checks. They are at times supported by the Road Inspectorate of the Ministry of Infrastructure and Transport.

In parallel, company investigations are carried out to uncover instances of illegal employment or “ghost companies” which set up subsidiaries in Eastern Europe to exploit the cost differences<sup>104</sup>.

The latest data on controls in Spain indicates that more than 2 million roadside checks were conducted in 2008 at the national level (involving both cars and trucks), while central and local administrations were responsible for the inspections of road enterprises. The most common sanctions reported relate to exceeding driving time regulations (55% of infractions) and misuse of the tachograph (44%). Data specifically on cabotage is not available.

<sup>104</sup> Stakeholder interview, Ministerio de Fomento.

The applicable sanctions for a violation of the provisions of the Regulation are outlined in Spanish law in Articles 140.1 and 143.3 of Ley 16/87 ("Ley de Ordenación de los Transportes Terrestres- LOTT"). These articles set out the following:

- If the relevant documents (i.e. driver attestation and equivalents) have not been completed correctly or have not been completed at all, and/or if EU hauliers are found to contravene the provisions of Regulation (EC) No 1072/2009 (i.e. number of cabotage operations within a time limit), a fine of €4,601 is imposed;
- A vehicle found to contravene the provisions of the Regulation may be impounded by the police authorities until the goods are unloaded or the haulier has provided the missing authorisations.

Every year, the National Inspection Plan (Plan Nacional de Inspección) is updated by the Inspectorate of Road Transport at Fomento. The Plan takes into account the submissions of several stakeholders and highlights any changes taking place in the law as well as signalling the priorities for road checks for the coming months.

Road hauliers' associations in Spain have the opportunity to voice their concerns over existing rules during the annual consultation taking place ahead of the publication of the National Inspection Plan mentioned above. In this context, cabotage is often mentioned as the most difficult type of regulated road movement to control and monitor.

In 2011, the Plan explicitly referred to the need to improve the degree of enforcement of cabotage rules. In 2012, industry groups for road freight transport in Spain outlined their priorities for the 2013 Plan, indicating cabotage controls as number two. In particular, they asked for more exhaustive controls of Spanish companies which delocalise in Eastern Europe and then operate under the cabotage regime in Spain, undermining the national market's viability by exploiting more favourable fiscal and labour laws abroad<sup>105</sup>.

#### **A.10.1.3 The need for a review of the rules**

The reforms of the LOTT, initially approved in December 2012 and set to be rolled out in 2013, will not affect cabotage provisions directly. However, the main objective is to improve the competitiveness of the sector by reducing the number of authorisations needed and implementing an online system to speed-up bureaucracy.

In addition to this there will be a review of the existing sanctions which will re-align Spanish fines to European levels. Autonomous Communities will be granted new powers of controls and inspection in order to improve the effectiveness of controls at the local level.

Having adopted cabotage rules that were identical to those in Regulation (EC) No 1072/2009 ahead of the European legislator, Spain has enjoyed relative stability in the cabotage legislative framework in recent years. Nevertheless, national operators have become increasingly concerned about international competitiveness and hence the impacts of cabotage. Illegal practices are seen as being endemic, including the use of smaller vans (<3.5 t) and agricultural tractors in order to avoid using vehicles falling under the cabotage provisions.

Likewise the Spanish Government is currently not supportive of further market opening at the European level. Legislative efforts are currently focused on improving the effectiveness

---

<sup>105</sup> FENADISMER, 27 November 2012.

of controls and promoting harmonisation of rules and sanctions within the existing regulatory framework.

### A.10.2. Data analysis

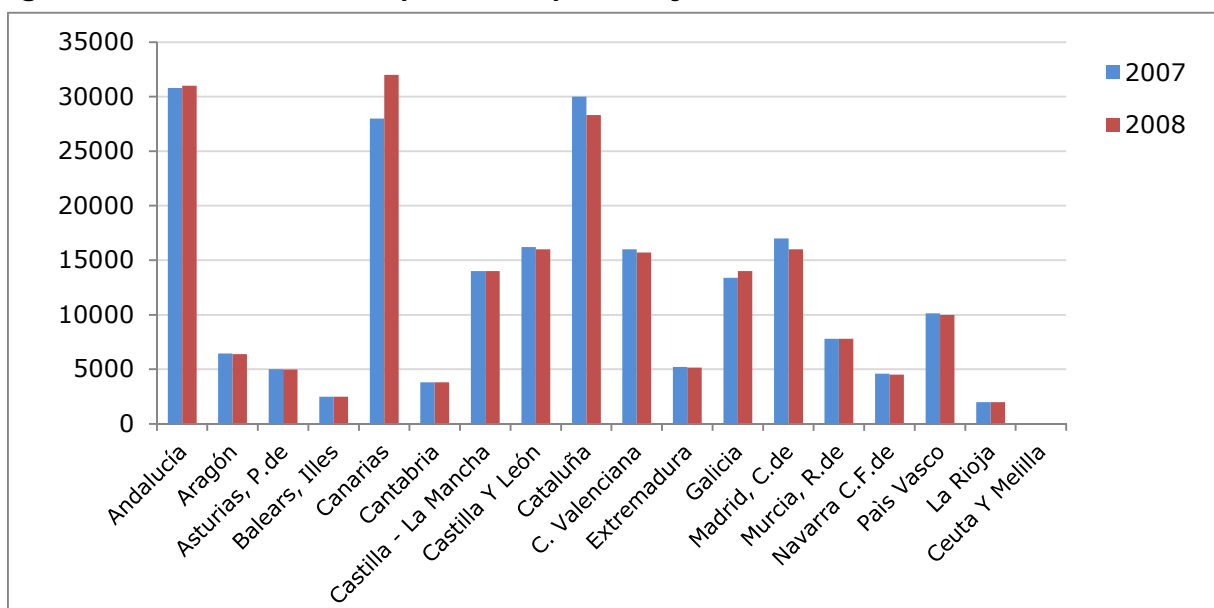
Total road freight traffic in Spain has been growing steadily between 2000 and 2007 but has been declining thereafter as a result of the economic crisis and in particular the downsizing of the construction sector. The traffic segment classified as international transport has shown signs of greater resilience, with a small recovery occurring between 2010 and 2011.

Employment statistics reveal that the Spanish road sector was the largest of any other Member State (MS) in terms of workers in 2008. Although the sector has shrunk in absolute terms since the late 90s, road transport employs more than 60% of all transport workers and consumes about 80% of the energy used by the transport sector.

However the number of authorisations granted to private transport enterprises in Spain has continued to decline in recent years. While there are no updated labour statistics, the fact that the number of licences in 2012 was back to the same levels of 1999 indicates an overall contraction in the number of employees is likely to have taken place.

The geographical distribution of road enterprises in Spain is shown in Figure 1 for the years 2007 and 2008. There does not appear to be any correlation between the geographical location and economic importance of the Autonomous Communities and the presence of companies. For example, the regions at the French and Portuguese border do not host a disproportionately larger proportion of enterprises as it is the case in other MSs such as Italy and Germany. However, there are some important patterns to highlight, for example 2 of the 3 regions with the highest number of enterprises have very large sea ports (Algeciras in Andalucía and Barcelona in Cataluña) and the region with the largest number of transport companies in 2008 was Canarias which has no land connections with the mainland but does have a favourable tax regime.

**Figure A. 10.1 Road Transport Enterprises by Autonomous Communities**

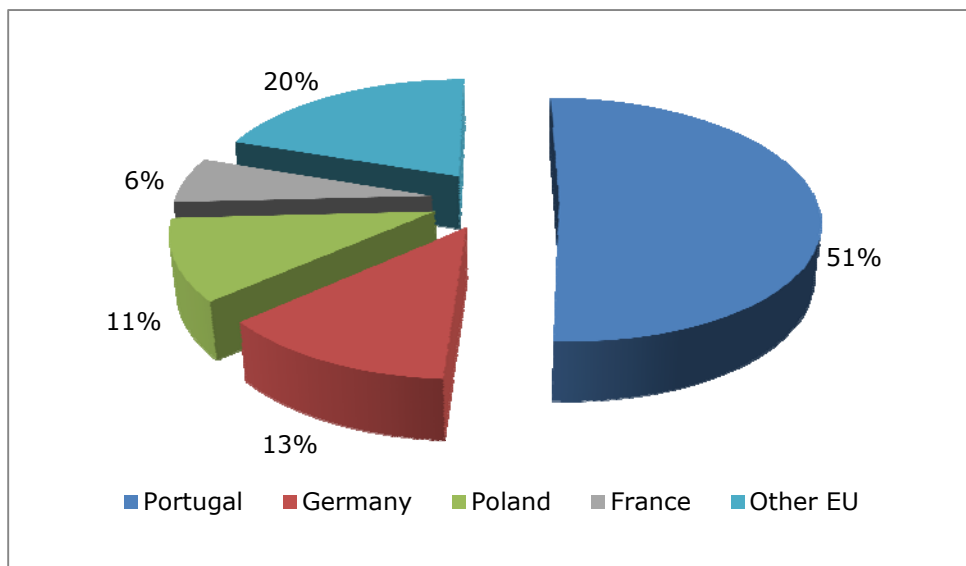


Source: CNR (2011).

Cabotage activity in Spain has seen a small boom and bust cycle throughout the 2000s, but overall levels have been equal to around 0.3% of total road freight traffic on the national territory.

The available data on cabotage operations (Eurostat 2012) between Spain and its neighbouring countries indicates two types of relationships. On the one hand, Portuguese hauliers perform around half of the cabotage that takes place in Spain with German and Polish hauliers being the most active on the Spanish market after the Portuguese.

**Figure A. 10.2 Share of cabotage activity in Spain by country of registration<sup>106</sup>**



Source: Eurostat (2012).

On the other hand, 84% of all cabotage operations by Spanish enterprises take place in France. The share of Spanish hauliers performing cabotage operations in France is equal to 1.4 billion tonne-km (2010) and around 20% of the total cabotage traffic taking place in Spain. Conversely, French hauliers perform only 6% of all cabotage operations in Spain.

These figures reveal that, overall, Spanish operators have a favourable position when compared to France but a less favourable position when compared to Portugal. This balance is partly the result of the average cost base, including labour costs. However it is also affected by other factors<sup>107</sup>, including trade flows (60% of trade movements between Portugal and Spain are carried out by Portuguese hauliers) as well as the level of internationalisation of the national fleet (75% of vehicles in Portugal carry out both national and international transport, while only 4% of vehicles in Spain do).

Operators have increasingly reported to the Ministry their concerns about the entry into the market of Romanian and Bulgarian hauliers. However no data is available to support this (market penetration data for these countries is confidential), even though the Ministry is likely to intensify controls over trucks from these Member States<sup>108</sup>. A summary of the relevant data at the national level is provided in Table 3 below.

The analysis of net cabotage (i.e. the difference between the total activity of Spanish hauliers in the EU and the total activity of EU hauliers in Spain) reveals that Spain has reversed its net-importer position since 2009 and is currently a net-exporter at the EU

<sup>106</sup> Excluding countries which do not provide data due to confidentiality.

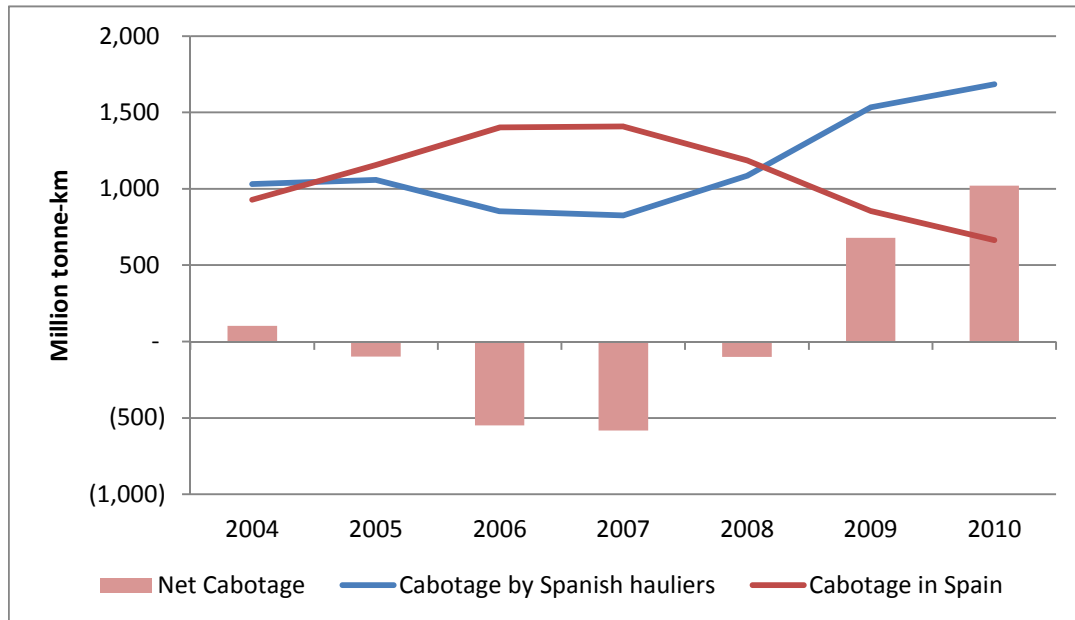
<sup>107</sup> OTEP (2010), *Sixth Report of the Cross-Border Observatory between Spain and Portugal*.

<sup>108</sup> Stakeholders' interview with the Ministry of Transport and Infrastructure (Fomento).



level. Contrary to most other MSs, Spain has reversed its position in the first year of the recession and of market opening to most EU12 countries. However this might be the outcome of both less attractive market conditions within Spain and a renewed interest for Spanish operators to look for opportunities abroad.

**Figure A. 10.3 Evolution of Spanish net cabotage volumes**



Source: SDG analysis of Eurostat data (2012).

**Table A. 10.3 Key statistical data – Road transport in Spain**

Year	2006	2007	2008	2009	2010
Length of motorway network (km)	12,073	13,013	13,518	14,021	14,262
No. of Community licences issued	:	:	22,048	25,223	25,808
No. of Community licence certified copies issued	:	:	88,429	98,935	100,809
National road haulage (billion tonne km, vehicles >3.5t)	174.6	190.6	175.2	151.1	146.2
International Road haulage by vehicles registered in Spain (bil tonne km, vehicles >3.5t)	31.6	27.0	28.6	22.0	26.5
Cabotage on Spanish roads (billion tonne km, vehicles >3.5t)	1.4	1.4	1.2	0.9	0.7
No. of goods road transport enterprises registered	133,912	138,599	139,527	134,917	:
No. of employees of goods road transport enterprises	278,967	295,203	293,811	257,186	:

Source: Eurostat (2012).

The growth of the road freight sector in Spain has stopped in recent years due to the economic crisis. The Spanish market has not been particularly exposed to cabotage activities by hauliers from other Member States. The reported volumes of cabotage have fluctuated in line with overall traffic volumes, suggesting most of the cabotage taking place in Spain is related to trade.

### **A.10.3. Economic and social impacts**

The economic crisis had a strong impact on the Spanish road transport sector between 2008 and 2012. Economic output, measured in GDP, has decreased every year except 2010 and industrial production has fallen sharply in the same period.

While there has been an absolute reduction in road traffic at the national level, international operations have suffered a less marked decline and available data suggests that Spanish cabotage operators have remained competitive, at least in neighbouring France.

However, the industry associations interviewed have expressed their concerns in relation to the impacts of the recent market opening to hauliers from Central and Eastern Europe. The increase in cabotage by Polish companies is well known and their current market share of cabotage operations in Spain is 11%. Cabotage relating to Bulgarian and Romanian hauliers, liberalised in 2012, is not yet available.

Nevertheless, overall cabotage activity in Spain has decreased substantially in recent years and the main reason why the road sector is suffering appears to be independent from it. These are highlighted in the reports by the Ministry on International Road Traffic, as well as by recent studies by the French CNR and the independent consultants.

These studies find that the road sector in Spain is weakened by high fragmentation, high financial risk and low profitability. Fragmentation takes place in the form of both average small company sizes and dispersed geographical distribution. For instance, 80% of enterprises had between 1 and 5 vehicles in 2009 and the average number of community licences per company was equal to 4, one of the lowest in Europe, in 2009.

In addition, the regulation of labour conditions in the work transport sector in Spain is ruled at the national level by the "Acuerdo General", a series of principles negotiated between the Ministry and the industry bodies. The latest agreement is dated March 2012. However the more specific provisions, such as those on minimum costs, are agreed at the provincial level and vary depending on the outcomes of negotiation between local stakeholders. As a result, Spanish companies have a degree of intra-national competition which is not present in other countries where stricter regulations are set out at the national level. This might also be an important factor affecting the location of enterprises reported in Figure 1.

The decline in economic activity, together with structural weaknesses, have thus resulted in a downsizing of road freight transport in Spain. The number of company licences in 2012 was back to the same levels of 1999 and, in 2010 alone, 8,600 enterprises left the Spanish market. There was an 11% reduction in the number of authorisations requested, and the most affected regions were Andalucía, Cataluña, Valencia, and Madrid.

When compared to other Member States, Spanish hauliers can compete favourably on price: the average driver's salary ranges from €1,200 to €2,000 per month and labour costs comprise between 25% and 35% of total costs for an average journey. This slightly lower cost base has allowed Spanish companies to compete in France and Germany until recently, although most of the international activity of Spanish cabotage operators has been linked to trade movements.

In this context, the calls by industry associations to reduce taxation on labour contributions and environmental damage, as well as to intensify controls on foreign hauliers performing cabotage in Spain, fall within the same overarching objective of preserving the competitiveness of national operators.

The CETM (Confederación Española de Transporte de Mercancías), the major industry representative in Spain, has expressed concerns about the asymmetric pace of reforms in Europe: on the one hand, cabotage has been partially liberalised across the EU27; on the other hand, there has been no parallel harmonisation of working conditions and labour costs.

While the association recognises that such harmonisation can only take place at the European level, they request improved controls across the country. In particular, they point out that enforcement is fragmented at the provincial level and that a larger share of controls should take place in the form of company inspections rather than road checks<sup>109</sup>.

In their submission to the consultation process carried out for the High Level Group Report, the industry association FEMADISMER stated that they would be in favour of a review of cabotage rules, including:

- removing the link between international transport and cabotage and
- removing the need for the completion full unloading before the cabotage operations start.

According to the CETM, the challenge for the years ahead will be to develop a more entrepreneurial sector that takes up growth opportunities in Europe. This reflects the current market situation in Spain where Spain is a net-exporter of cabotage. Thus the sector sees cabotage as much an opportunity as a threat.

#### **A.10.4. Summary for Spain**

In 2008, Spain adopted cabotage provisions very similar to those contained in Regulation (EC) No 1072/2009, with the Ministerial Decree ORDEN FOM/2181/2008. The entry into force of these provisions was needed to clarify the existing regulations in Spain which, prior to 2008, only referred to Community law at a high level with no detailed provisions. The government ensured, in consultation with stakeholders, that such provisions would be in line with the forthcoming European rules.

The responsibility for controls lies with the Ministry of Fomento, in coordination with policing bodies. However several enforcement problems exist in Spain. These include the issue of coordination between regional police and national authorities, as well as the difficulty to identify so called "ghost companies". A general fine of €4,601 has been set for cabotage infringements; however this is a lower sanction than in many other MSs.

Cabotage activities in Spain are not as wide-spread as in other EU15 Member States. Most cabotage is undertaken by Portuguese hauliers which enjoy a lower cost base and dominate cross-border trade activities, while Spanish companies are in turn more competitive in the French market. The Spanish market has become less attractive to foreign hauliers in recent years, particularly given the continued recession and the collapse of the construction sector. The whole industry is downsizing, with the number of certified licences in 2012 on the same levels as 1999. However a less attractive domestic market, together with higher cabotage activity by Spanish operators abroad, have resulted in positive net cabotage volumes for Spain.

A general reform of the road transport sector is going to be introduced by the Spanish government in 2013. Legislative changes will focus on increasing the competitiveness of the

---

<sup>109</sup> Stakeholders' interview with CETM.

sector by reducing the number of authorisations needed and implementing an online system to speed-up bureaucracy.

Cabotage will also be under review, considering that it was listed as the second most important area of reform in the 2012 National Inspection Plan consultation of stakeholders. In particular, industry associations advocate for improved controls in the Spanish territory and suggest that a larger share of controls should take place in the form of company inspections rather than road checks. These measures are advocated primarily to tackle illegal practices that industry groups claim are taking place regarding Spanish companies who delocalise to Eastern Europe and then operate under the cabotage regime in Spain, exploiting more favourable fiscal and labour laws abroad.

The Spanish government is currently not supportive of further market opening at the European level. Legislative efforts are currently focused on improving the effectiveness of controls and promoting harmonisation of rules and sanctions within the existing regulatory framework.



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

## POLICY DEPARTMENT **B** STRUCTURAL AND COHESION POLICIES

### Role

The Policy Departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

### Policy Areas

- Agriculture and Rural Development
- Culture and Education
- Fisheries
- Regional Development
- Transport and Tourism

### Documents

Visit the European Parliament website:  
<http://www.europarl.europa.eu/studies>

PHOTO CREDIT:  
iStock International Inc., Image Source, Photodisk, Phovoir, Shutterstock



ISBN  
doi: