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1ST FLORENCE ROAD FORUM SUMMARY

**"A EUROPEAN SINGLE MARKET FOR ROAD TRANSPORT? FROM
PATCHWORK TO A WELL-FUNCTIONING AND SOCIALLY FAIR EU
ROAD TRANSPORT MARKET"**

A SUMMARY OF THE PRESENTATIONS

Florence, 23rd January 2017

**Editors: Matthias Finger,
Nadia Bert, David Kupfer, Kathryn Bouchard**

PROGRAMME

- 09.00 - 09.30 **Introduction to the Forum**
Matthias Finger | FSR-Transport, EUI / Chair MIR, EPFL
Eddy Liégeois | European Commission
- 09.30 - 11.00 **How can the problem of “letterbox firms” in the road sector be tackled effectively?**
Myriam Jans | Dutch Association for Transport and Logistics
Jan Nemeč | International Road Transport Union
Round Table Discussion
- 11.00 - 11.15 Coffee break
- 11.15 - 12.45 **How to ensure proper enforcement of EU labour rules in the road sector?**
Gerard Schipper | Euro Contrôle Route
Round Table Discussion
- 12.45 - 13.45 Lunch break
- 13.45 - 15.00 **How can cabotage rules be made clearer and easier to enforce, so that the same rules apply across the EU?**
Joanna Jasiewicz | Transport and Logistics Poland / Gide law firm
Elizabeth Shovelton | Department for Transport UK
Round Table Discussion
- 15.00 - 15.15 Coffee break
- 15.15 - 16.30 **How to balance the free market and the protection of social rights of workers in the sector?**
Dirk Saile | German Road Haulage Association
Eddy Liégeois | European Commission
Round Table Discussion
- 16.30 - 16.45 **Conclusions of the Forum**
Matthias Finger | FSR-Transport, EUI / Chair MIR, EPFL

The present document summarises the content of the presentations delivered during the 1st Florence Road Transport Forum, and the following paragraphs offer short summaries of each presentation, illustrating the main points made and matters treated. The thoughts and opinions reported do not necessarily reflect the views of the contributors, as they have been collected by the authors of this summary.

To open the presentations, go to florence-school.eu, choose “transport” from the top menu bar and select “Forums” among the “activities”. Clicking on the title of the Forum will take you to the relevant page. Alternatively, by clicking on a presentation’s icon you may activate an internet link taking you to the full presentation, when available. Presentations are hosted on the FSR website by permission of the authors.

 <p>The slide features logos for European University Institute and Florence School of Regulation. The title is "A European Single Market for Road Transport?". The speaker is Matthias Finger, Director of FSR-Transport and of the Chair of Management of Network Industries (MIR) at EPFL. Contact information includes the website www.florence-school.eu and email FSR.Transport@eui.eu. The event is the 1st Florence Road Forum on 23.1.2017.</p>	<p>Introduction to the 1st Florence Road Forum</p> <p>PROF MATTHIAS FINGER, Director of FSR-Transport and of the Chair of Management of Network Industries (MIR), École Polytechnique Fédérale Lausanne (EPFL)</p>
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The Florence Road Forum took stock of existing initiatives and looked at new approaches to solve some of the most pressing issues in the European road transport market. Following the usual format of the Florence Transport Forums, in each session speakers and participants had the chance to contribute to the discussion moderated by Prof Matthias Finger (École polytechnique fédérale de Lausanne and European University Institute). Representatives of the European Commission, of major stakeholders as well as leading academics engaged in the discussion. The discussion addressed four central questions:

- How can the problem of “letterbox firms” in the road sector be tackled effectively?
- How to ensure proper enforcement of EU labour rules in the road sector?
- How can cabotage rules be made more clear and easier to enforce, so that the same rules apply across the EU?
- How to balance the free market and the protection of social rights of workers in the sector?



How can the problem of "letterbox firms" in the road sector be tackled effectively?

Myriam Jans
Manager European Affairs
Dutch Association Transport and Logistics (TLN)
Florence, 23 January 2017

How can the problem of "letterbox firms" in the road sector be tackled effectively?

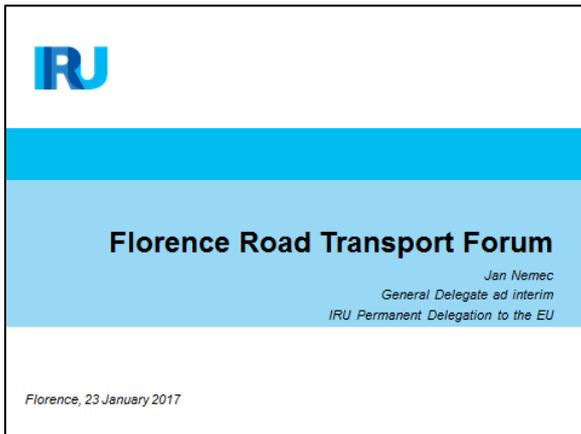
MYRIAM JANS, Manager European Affairs,
Dutch Association of Transport and Logistics
(TLN)

Ms. Jans began her presentation with an introduction to her organization, The Dutch Transport and Logistics Association (TLN), which represents 90% of the Dutch transport sector and comprises nearly 6000 members. TLN works to create collective bargaining agreements, provide advice and services for its members, and strives for improvement in the transport sector.

She described some of the problems her organization has come across recently, which included increased disagreement among Member States, increased protectionism, varied interpretations of EU legislation, social problems, and of course Brexit. However, she focused her discussion on the perceived issue of letterbox companies.

Ms. Jans posed some questions: where is data on letterbox companies coming from? Is the letterbox company legal? How many letterbox companies are there truly, and what is their purpose? She pointed out that real letterbox companies are perhaps today not as widespread as media sometimes would like us to believe. The problem here lies mainly in the definition of establishment and subsidiary and the conditions to be met to prove that the company is not a letterbox company but a company with a stable settlement. She stressed that common criteria need to be developed to understand the actual situation, citing examples of the different approaches to road transport establishments in some of the Member States.

She called for a clearly defined set of criteria that should be enforced throughout the EU. In particular, in her opinion it is the European Commission that should strive for uniform and harmonized requirements in order to come to a level playing field for entrepreneurs. She presented a checklist of criteria that TLN had developed as a possible solution to determine whether an establishment is letterbox or legitimate. She also presented the idea of a vehicle registration system (already present in Belgium and being worked on in the Netherlands) that would facilitate controlling companies' legitimacy. The vehicle registration system would function electronically and take advantage of the potential of already existing technologies that are, however, not yet in place. This system would allow controllers to type in a vehicle's plate number to obtain information about its company and its status, so that inspectors can immediately understand who they are working for and whether that company has an operational/authorization license, as well as whether the vehicle is actively working.



**How can the problem of
"letterbox firms" in the
road sector be tackled
effectively?**

JAN NEMEČ, General delegate ad interim,
IRU Permanent Delegation to the EU

Mr. Nemeč introduced his organization, the IRU, which has over 170 members in over 100 countries, including every EU Member State. Its mission is to represent bus, coach, taxi and truck operators to ensure economic growth and prosperity via the sustainable mobility of people and goods by road worldwide. Mr. Nemeč cited his experience in Brussels, pointing out the creativity of Member States when it comes to transposing EU regulation at the national level in the transport sector, and urged the Commission to engage in systematic checks of transposition across all Member States. He suggested that when new legislation is introduced that a dialogue be opened up so that Member States can send representatives to work with the Commission in Brussels to implement legislation in a coordinated manner.

Focusing his discussion on "letterbox firms", Mr. Nemeč noted the difficulty he had finding reliable statistics on the phenomenon. However, the statistics he did find showed that the problem is being misrepresented. He stated that the reality of the situation is that foreign, cheap labor is necessary for profitability. So, the real problem is a lack of exchange of information and a lack of regulated labor mobility among Member States, not "letterbox firms" per se. Mr. Nemeč noted that enforcement of regulation already in place is more important than trying to tackle a problem whose scale is difficult to ascertain, suggesting improved intelligence, e-documents (eCMR), company risk analyses and the exchange of information and cooperation between national authorities.

Mr. Nemeč then shifted his discussion to the issue of posting of workers. He asked who is targeted by protectionist measures, and who is affected by them. His organization has noted that those most affected by protectionist measures are the newer Member States who are operating legal businesses mainly in bilateral international transport. There is a mismatch of goals between stakeholders especially among the different Member States. He also mentioned that posting of workers is not an effective solution for the road transport industry, so innovative solutions need to be developed. Clear and enforceable sector specific provisions need to be developed, perhaps based on driving and rest time rules. Mr. Nemeč called for more research, and the development of a coherent body of statistics in order to compare data across Member States and improve the current situation.



How to ensure proper enforcement of EU labour rules in the road transport sector?

GERARD SCHIPPER, ECR general delegate

Mr. Schipper introduced his organization, the Euro Contrôle Route (ECR) – the European road transport enforcement organisation for public authorities. He gave a brief overview of its history, and set the scenery of European Road Transport legislation organization. Mr. Schipper presented a visual diagram of the various European legislative jurisdictions, mentioning possible problems moving forward following “Brexit”. Mr. Schipper presented the very complex problem of enforcing the various levels of European transport legislation in the road transport sector. Enforcement is traditionally handled at the national level, different than enforcement in the air and rail industries.

Mr. Schipper noted some of the reasons for the challenge of enforcement, including a vague, multi-level system, linguistic differences, and Member States’ using subsidiarity as an excuse, which leads to legal inequality and uncertainty. There is also the common lack of comparable data, which makes it difficult to compare situations among different Member States. It needs to be mentioned here too that, as a result of the worldwide economic downturn, the EU enforcement capacity was reduced with 75%.

Mr. Schipper delved further into the ECR’s mission: the cooperation of European public road transport enforcement authorities. ECR members seek to enhance road safety and compliance, ensure fair competition, and contribute to the well-being of road transport workers. The organization is made up of members, active observers (paying a fee) and passive observers. Mr. Schipper outlined the five pillars of the ECR, which are: coordinated cross-border checks, consolidated points of view and common interest in the decision-making process, communication and the enforcement of data exchange, education and training, and the harmonisation of control practices. He noted that the ECR is in the process of becoming an independent public legal entity within the next two to three years, following the rules set in the Regulation 1082/2006 on European Grouping of Territorial Cooperation.

In order to have a more coordinated enforcement area within the EU, the ECR would like to see the legal requirements surrounding road transport legislation as practical and unambiguous, with state of the art enforcement data exchange. They would like legal framework enforceability to be assessed and peer reviewed to contribute legitimacy. They would also like to improve the professional standards of control officers in the road transport sector. The European Commission is working to achieve these goals through regulatory fitness programmes, evaluation of road packages and social legislation, public consultation including impact assessments and subsequent amendments to applicable legislation. The ECR would like to see more cooperation and collaboration between itself and the European Commission.

New cabotage rules

A real need for an international transport sector?

Florence, 23 January 2017

Confidential

New cabotage rules: A real need for an international transport sector?

JOANNA JASIEWICZ, Transport and Logistics Poland/Gide Loyrette Nouel Law Firm

Ms. Jasiewicz began her presentation with an introduction of the organization Transport and Logistics Poland, and stated that she would be speaking on the Polish perspective with regards to cabotage. She noted that her organization does not see cabotage as a problem per se, but that we should focus on the more essential and current problem of the application of the posting of workers provisions to the highly mobile workers at the European level. She pointed out how some European Member States have introduced minimum wages, and extremely arduous requirements for drivers to cross their borders, sometimes including double or triple documentation and 24-hour wait times before being allowed entry. Therefore, cabotage rules should not be considered as a major current problem. She noted that the real focus should be on the enforcement of regulations already in place and increased cooperation among authorities.

Ms. Jasiewicz mentioned that in particular more clarification and coordinated implementation of existing regulation is needed, particularly in determining where/when cabotage actually begins. She noted that minimum wage requirements are not so much a problem either as much as clarification regarding how to comply with them. She introduced the fact that there is a general shortage of labour in the transport industry across Europe so protectionist measures are not an appropriate tool to regulate labour market. She called for more coordinated, clear laws at the European level in order to implement the rules correctly at the national level, something that today is not happening uniformly across countries.



**Clear and Effective
Cabotage – the UK approach**

ELIZABETH SHOVELTON, Head of Operator
Licensing and Roadworthiness

Ms. Shovelton introduced herself and her presentation which focused on the UK approach to cabotage issues. As an island nation, the UK has different problems than the rest of Europe. Their ability to enforce cabotage rules is easier because points of entry are more clear than mainland Europe, except in the case of the Northern Ireland/Republic of Ireland borders.

Ms. Shovelton presented the UK's Driver and Vehicle Standards Agency (DVSA), which is responsible for the enforcement of cabotage rules. They check drivers for hours, tachograph offences, HGV levy payment, vehicle weight, condition and of course cabotage. She mentioned that the DVSA works in collaboration with other Member States, a method which has proven successful. She cited an example in which the DVSA worked closely with CEOs from another Member State to explain that they would not be allowed to continue operations in the UK without demonstrable improvement in conditions. She stressed that the UK strongly supports dialogue with other Member States (formal or informal) as well as collaborative, targeted operations to stop seriously non-compliant offenders.

She continued her presentation with the UK view on the future of cabotage. Any proposals for changes need to be carefully balanced, and not impose any changes which would present undue burden on business, or enforcement agencies. Ms. Shovelton made specific note that the UK is opposed to further regulation of small vans (under 3.5 tonnes). On the other hand, she stressed that the UK supports non-legislative measures, such as dialogue already going on, and the sharing of best practices among Member States.

Florence Road Transport Forum

Dirk Saile, Florenz,
23. Januar 2017



How to balance the free market and the protection of social rights of workers in the sector?

DIRK SAILE, Head Brussels Office, German Road Haulage Association

Mr. Saile introduced the German Road Haulage Association, which represents mostly medium sized companies in Germany. He tried to frame the problem the road transport industry is facing today. He presented some statistics, which showed how the European road transport industry has changed following the 2004 and 2007 enlargements. Labour costs became much more variable. Mr. Saile presented some figures that clearly showed how the cost of living and wages are both significantly lower in some of the newer Member States, which has contributed to a loss in market share in some of the older Member States across the EU. Therefore, the reason we are debating social dumping is clear.

Mr. Saile gave some examples, citing that some companies have vehicles operating on a permanent basis in countries without providing social protection for the workers, who are then forced to live on a lower wage despite their permanent presence in a country with a higher standard of living (and technically higher minimum wage requirements). Companies might have changed the license plates on their fleets thereby lowering operation costs. Today, there is no clear difference between the freedom to provide services and the obligation of establishment. So, Mr. Saile asked, is fair competition in place? Is it desirable? What should be the balance between freedom of service and the protection of the rights of drivers?

Mr. Saile asked some questions regarding "classic" international road transport, in which the vehicle begins in the country of establishment and ends in the country of establishment, after some time driving throughout Europe: how long can the travel last? How should it be measured? He suggested the application of a posting of workers directive, but that also presents questions: what should the reference period be? He noted that clear enforcement of criteria is crucial. Mr. Saile asked whether it might be prudent to use distance based criteria. Mr. Saile talked about the European Electronic Data Register, and posed questions regarding what might be included in such a register. He mentioned then the application of this data. He mentioned incentivising new technologies in order to collect positioning data. Mr. Saile then briefly mentioned that another important challenge is of course the "letterbox firm" problem, which is always linked to the criteria surrounding establishment.

How to balance the free market and the protection of social rights of workers in the sector?

EDDY LIEGEOIS, Head of Road Transport Unit, DG MOVE, European Commission

Three general remarks:

- 1) What are the key objectives of the Commission proposals that are currently in preparation?
 - Promote the internal market. This will bring benefits for the road transport sector and the economy in general.
 - Protect the rights of workers, which will have a positive impact on the sustainability and competitiveness of the road transport sector. Protecting the workers' rights actually means also making the profession more attractive.
 - Promote fair competition in Europe in a context where there are still important differences in terms of social security and level of salary between Member States.
 - It is not an easy task to reconcile these objectives. National measures recently adopted by certain Member States have a negative impact on the internal market and, therefore, have failed to find a right balance between these three objectives.
- 2) We have to balance these objectives.
 - The Commission will table proposals on very different issues: establishment of road transport undertakings, cabotage, periods of rest and working time, just to mention a few. The goal of the Commission will be trying to reach a balance for each measure.
 - It will also be important to find an overall coherence and complementarity between the different measures.
- 3) Commission proposals must be based on strong evidence.
 - There is a lot that can be learnt from the EU impact assessment methodology. It is useful to recall the most important steps of the preparation of an impact assessment, which starts with the definition of the problem and the understanding of the causes of the problem. Only once they are well defined, the Commission can elaborate on the possible options to address these problems, and then carry out an assessment of each policy option.
 - Many measures which were recently adopted by the Member States would probably not have passed this methodology with success. For example some national measures aiming at ensuring fair competition between hauliers from different Member States have finally proved to jeopardize the good functioning of the internal market while providing only few benefits for the workers.

Presentations and summaries from past events are available on the FSR website: www.florence-school.eu

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