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TRANSPO PROJECT (ROAD TRANSPORT SECTOR AND POSTING OF WORKERS)

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The inspection activity within posting of workers in the road transport: a guide for control authorities

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INTRODUCTION

This Guide has been developed within the TRANSPO project (*Road **T**ransport Sector and **P**osting of **W**orkers*), co-funded by the European Union (European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities under the Line of Action "Pilot Projects on Working and Living conditions of posted workers" – contract ref. no. VS/2010/0624).

The TRANSPO project was implemented by a partnership coordinated by ISTITUTO GUGLIELMO TAGLIACARNE (a foundation of the Italian Union of the Chambers of Commerce); the ITALIAN MINISTRY OF LABOUR AND SOCIAL POLICIES (DG for Inspection Activity and DG Labour Policies); the FRENCH MINISTRY OF LABOUR AND SOCIAL AFFAIRS (DG LABOUR); the ROMANIAN LABOUR INSPECTION.

In France, Italy and Romania, TRANSPO carried out short seminars, working groups and workshops on application of Directive 96/71/EC on posting of workers in the road transport. Project activities involved labour inspectors and other control authorities (ministries of transport, road transport authorities, road police, financial authorities).

The project's main objective was to follow up legal, administrative and practical aspects concerning controls on posted workers in the road transport sector in order to contribute to the effectiveness of inspection activities and to promote administrative cooperation at national and transnational level.

This Guide is the outcome of a 'transnational reflection' thanks to the officers of the three involved countries; it intends to offer an information and practical tool for authorities involved in controls.

The Guide is the result of a French-Italian-Romanian team: it gives an opportunity to improve mutual knowledge of respective legislations and procedures; it includes chapters mainly addressed

to the national inspection corps and chapters comparing the three countries with the aim of improving transnational cooperation as well.

The Guide is organised as follows.

SECTION I - The application of the Directive 96/71/EC in the road transport sector: the legal framework: this section provides an outline of the main legal aspects and open issues related to the application of the Directive 96/71 in the road transport sector; more specifically:

- **Chapter I.1.** is about a summary on key-aspects at EU level of application and applicability of the Directive 96/71/EC in the road transport and about the concurrent transport legislation as well;
- **Chapters I.2. I.3, I.4** follow up about national relevant legal frameworks in France, Italy and Romania.

SECTION II – Making inspection activities more effective: this section offers some specific suggestions for the inspection activities; in particular:

- **Chapter II.1.** presents three emblematic labour inspection cases occurred in the experience of TRANSPO partners institutions;
- **Chapters II.2; II.3 e II.4** propose an overview of inspection activities in the three TRANSPO countries also providing some specific suggestions to improve administrative cooperation in controls at national level;
- **Chapter II.5** offers practical information and suggestions to improve administrative cooperation at transnational level.

The Guide also contains three tools in Annex:

- **Annex 1:** comparative tables summing up main information on contribution regulation and contributory consequences in Italy, France and Romania;
- **Annex 2:** a proposal for a modular questionnaire to be submitted by inspectors to road

transport workers (available in 4 languages: Italian, French, Romanian and English);

- **Annex 3:** a comparative glossary (Italian, French, Romanian, English) of the main relevant terms.

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SECTION I – THE APPLICATION OF THE DIRECTIVE 96/71/EC IN THE ROAD TRANSPORT SECTOR: THE LEGAL FRAMEWORK

Chapter I.1. The Legal Framework at EU LEVEL

I.1.1. The Directive 96/71/EC: the key issues in the European debate on posting and the prospects for reform

The theme of posting within the EU, governed by Directive no. 96/71/EC is currently the focus of a considerable debate at European level.

Directive no. 96/71 is, in fact, the expression of a balance of EU and national interests that by many is considered as outdated and largely no longer consistent with equity principles. On the other hand, the agreement reached among Member States in 1996 reflected a political situation of the European process of aggregation that is very different from the current one. Today, EU member states are 27 and not 15 as in 1996, and the Community gap appears -or at least is perceived in some countries - as a potentially negative phenomenon, which ends up in legalizing social dumping, rather than as an opportunity for expansion of markets able to provide more opportunities for trade and employment.

Some of the rulings of the Court of Justice (in particular the Viking C-438/05 sentence of 11.12.2007, and the Laval sentence, C-341/05 of 18.12.2007) have aroused the concern of the social partners, and of the union organizations in particular. See, in this regard, the proposed revision of the Directive made by the ETUC / CES on 31/05/2010 ¹.

Member States, then, have not always been able to implement the Directive correctly, and they have introduced and used some national protectionist policies contrary to the Treaty and the Directive itself. These practices have been censured by the Court of Justice: see in particular the Ruffert judgment (Case C-346/06, of 03.04.2008) and Commission vs Luxembourg (C-319/06, judgment of 19.6.2008).

¹ Available on the web at www.etuc.org/IMG/pdf/final-report-ETUC-expert-group-posting-310510-FR.pdf .

The Commission itself has promoted a series of studies that on the one hand are designed to monitor the level of implementation of Directive no. 96/71/EC by the Member States (see, for example, "Comparative study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union"², and on the other tend to test the hypothesis of introduction of a new European regulation concerning transnational posting.

One critical element for the implementation and legal value of the rules on the community posting was - and still remains - the necessity of a stronger cooperation among Member States. The phenomenon of mutual mistrust and/or inaction in cooperation among the Governments of the Member States has led the Commission to introduce new instruments for cooperation among labour inspectorates at the national level. See in this respect the recent test of the Community Information procedure known as "IMI" System³, which aims at promoting the exchange of information among national labour inspectorates, for an effective control and prevention of circumvention practices of the regulation on posting by the undertakings operating across multiple national territories.

1.1.2. The European regulatory framework of transport and Directive 96/71/EC

The transport sector is heavily regulated at both European and national level.

From the perspective of transnational transport service operators, in fact, many of the possible competitive factors among firms are significantly regulated. In fact, European regulations concern competitive factors essential for this market, such as authorizations to market access⁴, the delivery

2 The study is published on the web at <http://ec.europa.eu/social/main.jsp?catId=471&langId=en>.

3 On the use of the IMI system for the exchange of information in the transnational posting of workers see also paragraph II.5.2 of this Guide.

4 EC Regulation no. 1072/2009, art. 4.

time⁵, the loading of vehicles (overload prohibition), the business organization⁶, and to a certain point the labour cost⁷. Therefore, and given the level of regulation of the transport market, the issues of compliance and effectiveness of controls are particularly important.

With specific regard to the matter of transnational posting of workers, the areas of greatest interest in terms of regulation and controls are certainly those of the verification of driving times and rest periods, but for which there is a specific common regulation having a general scope (EC Reg. no. 61/2006), on which the experience in terms of controls is certainly more limited.

At the level of EU regulations for this sector, the overall regulatory framework - at least with reference to standards that have a significant impact on work performance of transnational drivers - can be summarized as follows.

The representatives of the social partners, both employers and workers representatives, agree that the performance of international transport services are mostly made in the context of typical contracts, governed by the different national laws of the Member States, related to the transportation contract (provision of services which relates to the typical performance of transport), and the contract of shipment (from the carrier's obligation to conclude contracts for transport covered in the mandate without representation).

As regards the transport of goods, the legal regulation distinguishes the transportation of goods on own account from the transportation of goods for third parties. Concerning access to the road transport profession, the regulation is from the EU, and has seen numerous revisions, the last of which is the EC Regulation no. 1071/2009 dated 21.10.2009 "establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport

5 The application of the competitive factor on the speed in delivery times is severely limited by European legislation on driving times and rest periods (EC Regulation no. 561/2006), working hours (Directive No. 2002/15/EC), and national rules on speed limits.

6 As regards the business organization, for example, see the legal restrictions on the use of vehicle rental agreements (Dir 2006 / 1/EC) and the cabotage rules (concerning the transport of goods, see EC Regulation 3118/1993 and current Regulation 1072/2009).

7 On labour cost, see, where applicable, Directive no.96/71/EC on posting of workers.

operator (...)". The regulation for the access to the road transport for third parties includes a system of authorizations based on the requirements of good repute, financial standing and professional competence.

The licensing system at EU level is based on a "Community authorisation", which enables the transport of goods for third parties (article 4 of EC Regulation no. 1072/2009).

At European level, concerning the documentation certifying the regularity of the employment relationship, it was determined that drivers who are non-EU citizens must possess, and carry on board, a document attesting their regular employment relationship, called "driver's certificate" (EC Regulation No. 484/2002, and now Art. 5, EC Regulation no. 1072/2009). This document is not intended for drivers who are EU citizens, who only if they are driving a leased vehicles are obliged to keep on board proper documentation to establish their regular employment relationship (Directive 2006/1/EC).

In order to regulate competition at European level, the discipline of maximum driving times and rest periods required by the EC Regulation 561/2006 must be applied, while the discipline of working time is governed by Directive no. 2002/15/EC.

EC Regulation no. 1072/2009, referred to cabotage within transport of goods, (EC Regulation no. 1073/2009 governs the cabotage in the transport of persons) defines cabotage as limited to transports subsequent to an international transport. For road haulage, cabotage is the execution, in the case of entry of the vehicle with a load, in a maximum period of 7 days, a maximum of 3 internal transports in a country other than the country of establishment, following an entry by an international transport, and, within the seventh day, by the exit from the territory of that country; that is, cabotage is the making of an internal transport in a period of up to 3 days following an international journey with entry into a member country without a load.

Cabotage is a practice particularly important in the transport sector, since it is generally forbidden

to perform national transports in a Member State other than the state of establishment of the company – out of the hypothesis of cabotage – using a Community license. This is because, for the time being, to do this activity the company must be established in the country, and therefore registered in the national road hauliers register, according to the regulations of the country where the transport is made.

A special Community regulation is also planned for the lease of the vehicle (Directive 2006/1/EC).

1.1.3. The issues of the applicability of the Directive on posting to road transport

There are many issues about the implementation of Directive 96/71 as concerns international transport.

Road transport is not excluded from the scope of Directive no. 96/71 whose article 1.2 excludes seagoing personnel of merchant navy undertakings. Recital 17 of EC Regulation no. 1072/2009 refers to Directive 96/71 on the posting of workers in the framework of the provision of services as for cabotage only (the same provision is reported by Recital 13 of EC Regulation no. 1073/2009 for the transport of people). Therefore, Directive 96/71 applies in case of cabotage.

If, as mentioned above in §2, cabotage is necessarily subsequent to an international transport, one can wonder: what are the rules that could be applied to international transport drivers? Are they excluded from the scope of Directive 96/71 when they do not drive in the case of a cabotage transport? Does an international transport, especially if regularly repeated, fall in the provisions of Directive 96/71?

Trying to test the consistency of norms with the reality of business, in many cases, the scope of Directive 96/71 seems to be defined by a sort of provision of services (transnational transports) that could be declined as follows:

1. there is always a contract concerning the provision of services concluded by a transport

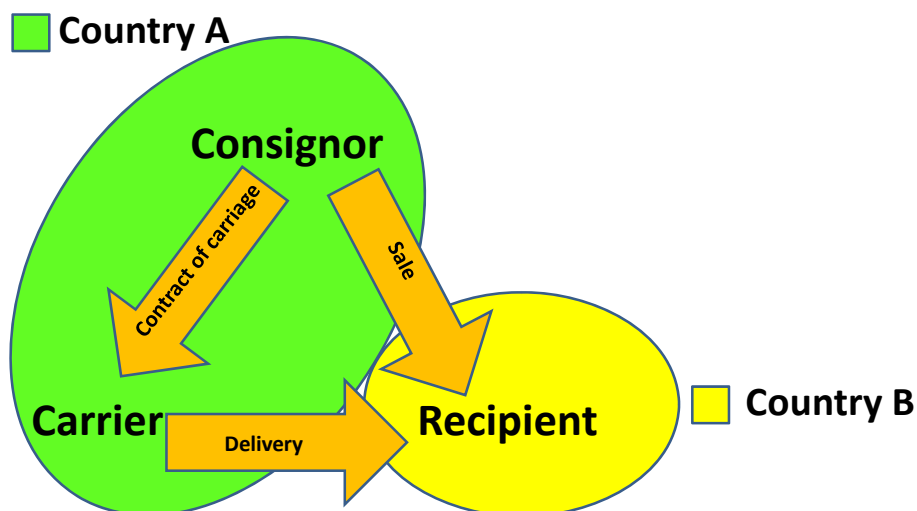
undertaker and a consignor as referred by article 1.3 a);

2. very often regularly repeated international transports seem to fall in the case of a posting of workers within a group which could be a transnational transport group, as referred by article 1.3 b). This might often happen in case of subcontracts of transnational transport, where carrier and sub-carrier are established in different Member States.

On the other hand, a positive solution may be easily given to the question concerning the applicability of the Posting Directive to the case of temporary work provided by temporary work agencies established in a member State posting workers to a different member State. In fact, that case literally falls within the application of Directive 96/71, article 1.3, item c).

At this stage of the subject, a more analytic approach is needed. Therefore, the four cases of transnational transport which follow are intended to give some possible contribution to the discussion on the applicability of Directive 96/71 to transnational transports.

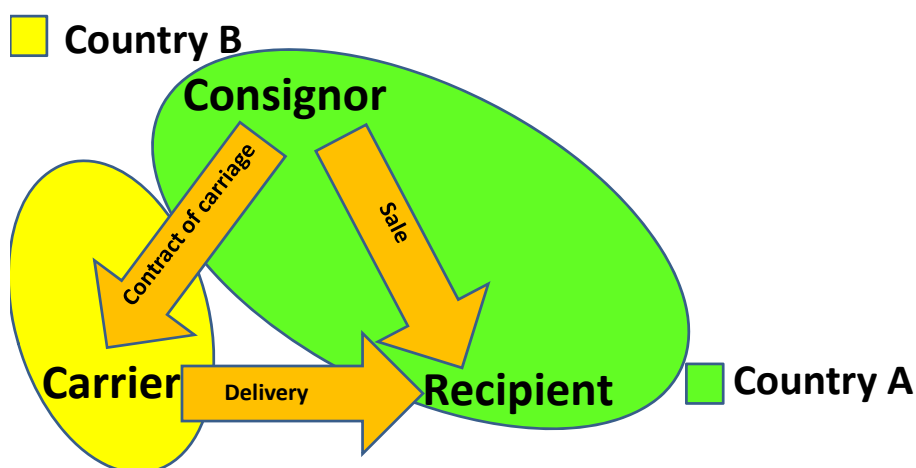
Transnational transport. Case A)



In this case, the parties of the contract of carriage (consignor and carrier) are established in the same Country (Country A), whereas the recipient to whom the carried goods are delivered is located in Country B. In contractual terms, the recipient is considered a third party, as he is not part of the contract of carriage between consignor and carrier. Generally speaking, a transnational sale between consignor and recipient completes the scheme of the economic transaction between the three subjects involved. In fact, no contractual relation is necessary between carrier and recipient, as the delivery is a mere fact, and not a contract (in many cases national legislation considers the recipient a third beneficiary in the respect of the contract of carriage).

All the national experts involved in the TRANSPO project agree that in this case Directive 96/71 does not apply. In fact, this type of transnational transport (from Country A to Country B) is not a “transnational provision of services” falling in the cases of art. 1.3 of the Directive. In fact, art. 1.3, case (a), is applicable to transnational contracts in which the undertaking “for whom the services are intended” is operating in a member State different from the one of “the undertaking making the posting”. On the opposite, in this case the two parties of the contract operate (are established) in the same Country. So, even though this is definitely a type of transnational transport, nevertheless it is not a posting of workers falling in the field of application of Directive 96/71.

Transnational transport. Case B)



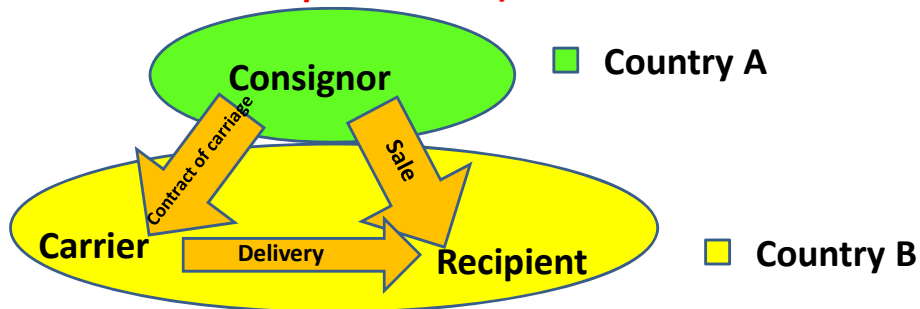
Case B defines a transnational contract of carriage corresponding to a national transport (within Country A), as goods are carried and delivered in the same Country (A). On the other hand this is a case of “transnational provision of services” perfectly falling in the hypothesis defined in art. 1.3.(a) of the Directive. In fact, not only are the parties of the contract of carriage established in two different Member States, but the carrier is also posting workers to the territory of a Member State different from his own of establishment, corresponding to the one where the party for whom the services are intended (consignor) is actually operating.

Moreover, case B perfectly corresponds to the case of cabotage operations, and therefore it falls in the application of Directive 96/71, as stated by EC Regulation no. 1072/2009, recital n. 17 (for passenger transportation, see EC Regulation no. 1073/2009, recital n. 13).

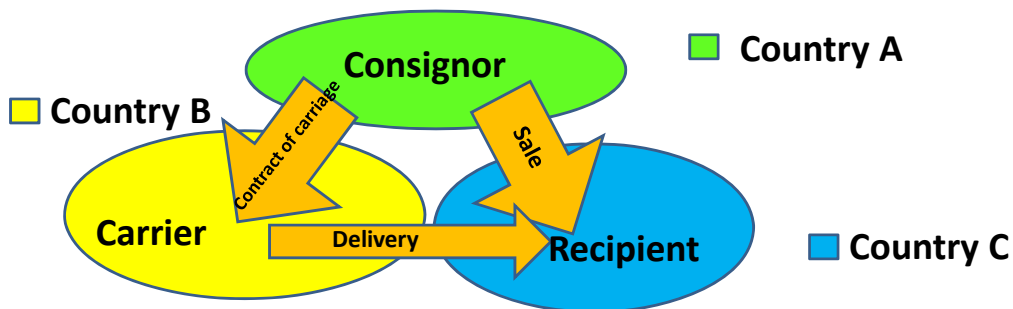
There is another argument to be pointed out: even though in case B the carrier is not fulfilling the legal requirements concerning cabotage (e.g. more than three national travels within 7 days), Directive 96/71 should apply, as there is no connection between the lawful (or unlawful)

performance of cabotage by the undertaking and the labour regulation concerning posted workers. In other words, even in that case, even though the unlawful behaviour of the undertaking should be punished, the Posting Directive should be applied to workers anyway.

Transnational transport. Case C)



Transnational transport. Case D)



Case C and Case D are typical examples of transnational transports. In Case C carrier and recipient are established in the same Country, whereas in Case D consignor, carrier and recipient are established in three different Member States.

Considering these two hypothesis, the main point is: except the case of cabotage, does a transnational transport, especially if regularly repeated, fall in the provisions of Directive 96/71?

Even though -following a systematic argument- some of the national experts in charge of TRANSPO project even argue that Directive 96/71 should apply to any single contract of transnational transport for the part of the journey that takes place in the territory of a Member State other than that of establishment, this solution, though possibly founded in legal terms, does

not appear to all the national experts completely sound and persuasive. On the other hand, all the experts as a whole consider this perspective as quite unsustainable in terms of effectiveness and enforcement.

Moreover, both from the undertaking's and from the worker's perspective this case might seem to be better framed in the regime of the international travel for business (giving him/her right to a travel allowance), rather than in that of the Community posting, especially in the light of the difficulties involved in the application of the domestic laws of a given country, for each trip segment - corresponding to the transit through the territory of that specific country.

In practical terms, even from the perspective of the Member State where the transport is performed, especially in case of occasional contracts of transports to be performed in its territory, what type of positive effects might be expected from a rule which would force undertakings in making complex counts in order to prepare transnational drivers' pay slips?

Anyhow, even though at this stage it looks quite unlikely to give an ultimate legal solution to the question concerning the applicability of the Directive to the above cases, in terms of enforcement, and therefore from the point of view of Labour Inspection, some more considerations might apply to these cases of transnational transports.

In case of a "transnational provision of services" (transport), regularly repeated for a relevant period of time (ex. sub-contracts of transport between the same undertakings, one of which established in a different MS), out of the case of cabotage, some alternative solutions may be possible:

1. the carrier chooses to keep the national law of the labour contract, but chooses to apply Directive 96/71 too;
2. (in case the driver's labour contract doesn't expressly contain the choice of the national law applicable: art. 8.1 Reg. Rome I) if it is the case, labour inspectors may consider

applicable “the law of the country (...) from which the employee habitually carries out his work” (art. 8.2 Reg. Rome I, as in the Koelzsch case, C-29/2010)⁸;

3. In case of fraud, under the national law of the place where the contract is substantially carried out, it might be considered “illegal work” (or “illegal workforce provision”), like in the Coquelle case, French “Cour de Cassation”, no. 10-82626, dated 12.10.2010).

It should be finally noted that solution no. 2 and solution no. 3, which may be taken by National Authorities in case of illegal and fraudulent behaviour of undertakings performing transnational transports, have nothing to do with the provisions of Directive 96/71, and consequently with the question concerning the applicability of the posting Directive to transnational transports.

⁸ The question of the law applicable to workers in transnational transports within the EC was recently pointed out -and partly solved- by the Court of Justice in the Koelzsch case (C-29/2010).

In fact, even though the Koelzsch case does not specifically concern the posting of workers, it gives specific important instructions concerning the law applicable to the individual labour contract in case a worker (driver) normally carries out his work in performance of transnational transports of goods. In that case, the Court specifies that the concept of “Country in which the employee habitually carries out his work in performance of the contract (...) is that in which or from which, in the light of all the factors which characterize that activity, the employee performs the greater part of his obligations towards his employer”.

Due to this broad interpretation of the Court, the law applicable to the individual labour contract could be the one of the Country “from which” the driver performs the greater part of his activity.

Chapter I.2. FRANCE: the national legal framework

1.2.1. The transport regulations

France has a whole body of laws and regulations relating to the various transportation contracts and laying down special conditions for some specific transport services.

1.2.1.1. The contracts of carriage

The contracts of carriage define the conditions for transport (places of loading and unloading, the consignor and consignee, the nature of the goods transported, the price of transport), the responsibilities of the parties and the compensation for damages.

The national contracts of carriage are governed by specific provisions of the Transport Code (Article from L 1432-1 to L 1432-14) that refer to such contracts, general or specific, depending on the nature of the goods.

Particular mention may be made of two particular types of contract.

- The contract of freight forwarding

The customer or the "intended beneficiary" of transport, within the meaning of the Labour Code, rather than directly concluding a contract of carriage with a carrier, may conclude with a forwarding agent a commission contract of carriage governed by the articles from L 1432-7 to L 1432-11 of the Transport Code. The forwarder will then, in his own name, enter a contract of carriage with a carrier. The forwarder then becomes the originator.

- The contract of sub-carriage

Contracts for sub-carriage of transports are governed by the general provisions on subcontracting foreseen by the Law of 12.31.1975 on the subcontracting and Articles 1432-13 and 14 of the Transport Code related to a contract-type defined by regulation.

In the case of subcontracting, two contracts co-exist:

- a standard contract of carriage between a client and a shipping company defining the conditions under which the transport mentioned above will be performed;
- a sub-contract between the main carrier and the sub-carrier, defining the reciprocal contractual obligations of both contracting parties. The sub-carrier performs the transport with his own means and manages it.

International transports in France are governed by the Convention on the Contract for International Carriage of Goods by Road (CMR) of Geneva dated 19.05. 1956.

1.2.1.2. The leasing of vehicles

These leases do not fall into the category of contracts of carriage per se, but may contribute to the achievement of transport. A transport company can in fact carry on its business by leasing vehicles with or without a driver from a rental company vehicle in France, but the latter must be registered as carrier.

In the case of rental with driver, unlike the sub-carriage contracts, the lessee of the vehicle retains control of the transport of which he is responsible and is subject to an obligation of result. The company leasing the vehicle with driver only provides a mean and a service. The rental company is solely responsible for the driving operations and is subject to an obligation of means.

Directive 84/647/EEC of 19 December 1984 replaced by Directive 2006/1/EC of 18 January 2006 gave an opportunity for Member States to provide less restrictive regulations concerning the use on their territory of vehicles hired by companies established in another Member State.

Until 2003, the Directive 84/647 cited above did not result in France to special regulations. By an order of May 5, 2003, France authorized the cross-border lease of vehicles with or without driver. That said, confronted with the consequences that this liberalization had brought, France banned cross-border lease of vehicles with driver by a decree of July 12, 2005 confirmed by Decree 2007-751 of 9 May 2007.

1.2.1.3. The cabotage

This is a transport service between two points in the territory of a Member State carried out by a company not established in that State. Cabotage operations must obligatory follow an international transport.

EC Regulation No. 1072/2009 of 21 October 2009 regulates the conditions of implementation of cabotage. They have been included into national law in articles from L 3421-3 to L 3421-6 of the Transport Code and by Decree No. 2010-389 of 19 April 2010 on cabotage in road and water transport.

This regulation allows carriers with a community license to conduct:

- in a Member State which is the final destination of the international transport, three cabotage operations within a maximum of 7 days from the last unloading of goods of an international transport;
- in a Member State which is not the final destination of the international transport, cabotage operations within a maximum of three days from the entry of the vehicle without load.

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 of the Labour Code. The Decree of of 19 April 2010 softened the rules of prior notification of posting foreseen by the labor code. Prior notification of posting is required only when the driver works in France over a period exceeding or equal to 8 consecutive days. Most of the road haulage companies posting employees in France to carry out cabotage operations will not have to file this notification.

Transport companies, authorized to perform cabotage in France who do not meet the conditions set by the transport code are guilty of illegal cabotage which is a crime punishable by a fine of € 15000.

1.2.2. Regulation on posting

As part of the implementation of Directive 96/71/EC, Articles from L 1261-1 to L 1263-2 and from R 1261-1 to R 1264-3 of the Labour Code, derived from Article 89 of Law no. 2005-882 of 2 August 2005 for small and medium enterprises and Decree no. 2007-1739 of 11 December 2007 issued under the above Law, set out the rules applicable in France to the transnational posting of workers. The DGT Circular letter 2008/17 of 5 October 2008 on the transnational posting of workers in France specifies the rules for implementing these provisions within a provision of services.

The posting, under the directive of 1996, covers all situations where a company duly established in a member state is involved in another Member State on a temporary basis with its own employees.

Of the four cases of posting under the 1996 directive, the posting in the framework of the execution of a contract to provide services is the one that can be applied in priority to

international road transport operations⁹.

In this context, the posting implies the creation of an international transport operation, under a contract concluded by a transport company (employer), regularly established in a Member State, with a "recipient of the service" (the originator), established and operating in another Member State.

The specifics of the posting are:

- the posting of employees is temporary: the texts, however, do not set a maximum duration for the posting, which can vary from one day to several months depending on the mission assigned to the posted worker;
- the employment relationship must have been established before the posting of employees (and must continue until the end of the posting period) and the relationship of subordination must be maintained for the duration of the posting of employees;
- the supplier has to demonstrate a significant activity in the Member State where it is established.

During the period of posting of their employees in France, employers established outside France must comply with the French rules in the following areas:

- individual and collective freedoms in the employment relationship,
- discrimination and equality between women and men,
- maternity protection, maternity and paternity leaves, leaves for family events,
- conditions of availability and guarantees due to employees provided by temporary

⁹ For clarity, the other cases of posting under the 1996 Directive are the provision of workers by a temporary employment agency and the intra-group mobility. The Labour Code also distinguishes the situation of the posting for own account (see Article L. 1262-1, 3), which could be encountered in the field of international transports when a single company acts both as carrier and as client.

- employment agencies,
- exercise of the right to strike,
 - working hours, compensatory leave, public holidays, paid annual leave, working hours and night work for young workers,
 - conditions of subjection to leave funds,
 - minimum wage and payment of wages, including bonuses for overtime,
 - rules on health and safety, age of admission to employment, child labor,
 - illegal work.

The "French rules" include:

- the laws and regulations,
- the rules of extended collective agreements and conventions applicable to French employees engaged in an activity similar to that made by posted employees.

1.2.3. Findings on the implementation of these two regulations

Regional seminars and working groups organized within the TRANSPRO project have identified a number of findings, summed up as follows.

a. Difficulties of articulation between the two regulations

On the one hand, general transport law is ineffective to determine the social status of drivers, mainly because it regulates the commercial aspects of transport operations and specifies the conditions for their realization, but the only point of reference is the vehicle or its load.

On the other hand, transport law and social law must be better articulated to fight more effectively against fraud.

The specifics of the contract of employment of the mobile workers need to have specific criteria

for determining the place of habitual exercise of activity, and where it takes place on more than one territory, the labour law that is territorially applicable. Both the French Supreme Court and the ECJ determined these criteria. These allow in France to apply the French law to standards contracts presented as belonging to other systems. This is an effective tool against fraud.

b. Directive 96/71 is part of a clear framework, which does not include all transnational provision of services, in particular in the transport sector.

The discussions focused, on the one hand, on the scope of application of the Directive to the transport sector (b.1.), and secondly, on the effectiveness of its enforcement (b.2.).

b.1. Regarding the scope of Directive 96/71, two issues have been particularly debated:

(i) Do the international transport showing situations of short "transit" with driver on one or more national territories fall in the scope of the Directive?

It should be noted that international transport in the light of European and international regulations, is defined as the delivery of goods upon payment by a vehicle whose places of loading and unloading are located in two different states.

The qualification of international transport is independent of the nature of the contracts to achieve it.

(ii) Can the benefits of the transport of goods be regarded as the provision of services within the meaning of Directive 96/71?

The regulation concerning the posting refers to a contract between a service provider established in a country and an undertaking receiving the provision of transport service within the territory of another state. However, the implementation of an operation of international road transport implies that there are several contracts.

At a minimum, three contracts shall be entered for an operation of international road transport, namely:

- a contract of sale or provision of goods passed between a client and an end user (business, etc.);
- a contract of carriage between the client and a transportation company;
- an employment contract concluded between the transportation company and the driver.
- In addition, depending on the situation, one or two other contracts can be added to these contracts:
 - a sub-contract between a main carrier and a sub-carrier;
 - a lease contract between the carrier (or sub-carrier) and a company providing car rental with driver.

Hence, the following questions arose:

- Which of these contracts can or should be considered to characterize the provision of services within the posting, under the Directive 96/71?
- Under what conditions does the provision of services lead to the implementation of the provisions of Directive 96/71?

b.2. With regard to the effectiveness of control on the implementation of the directive, several sources of difficulties have been pointed out.

- The intervention of several control authorities having different objectives, practices and skills may be a limit to the effectiveness of the control. Controllers of road transport and the police and gendarmerie are competent for roadside checks while labour inspectors are

competent for inspections in companies. Actually, it is the cross-exchange of data from all these types of controls that can allow to fight effectively against fraud.

- The control of compliance with the rules of minimum protection, in particular in the social sphere, means being able to identify in time and space the presence of a driver on the national territory. This detection is facilitated in road transport by the record sheets (tachograph), which allow to check the working hours.

However, it is more difficult to control the wages of a posted driver (as for all posted employees, regardless of their industry).

Payrolls are generally established at the end of each month and are not available especially during roadside checks. The steps to obtain these payrolls can also be dissuasive with respect to the investment they induce to control a few days or even hours of presence of a driver in the territory of the State responsible for the control (whether in the case of cabotage or transit, the evidence gathered during the control is then to be forwarded to the competent authorities of other countries).

In this context, the development of a Guide specifically addressing control of the transport sector has been welcomed as an interesting initiative to optimize the controls and for a more effective fight against fraud.

1.2.4. Some final proposals

From these observations and questioning, it emerged that the realization of an international transport not always involves a posting situation (as defined in the Directive 96/71) of the driver providing the transport in the countries visited, from the country where his employer is

established, to the country where the end customer is located and where the cargo will be delivered.

The key element to consider in determining whether a provision of transport can be regarded as a transnational provision of services within the meaning of Directive 96/71, leading to the posting of the driver, is the situation of co-contracting parties, the parties of the contract of carriage. Three cases are possible (the following points a., b., c.).

a. In the event that the sender and the carrier are established in the same state

If the client and the carrier (employer) are established in the same State, the Directive on posting is not applicable, even if it is a contract of international carriage (indeed, this hypothesis does not correspond to any case of posting under the Directive 96/71). In this case, the social law applicable to the driver is the law of the country where both the employer and the client are established.

b. In the event that the client and the carrier are located in two different states, several solutions can be proposed on the labor law applicable to the driver.

Possible solutions are:

- First solution: application of the rules of the hard core of Directive 96/71/EC of the country where the client is established.

If the client (who is the recipient of the transport service), is established in a State other than that where the carrier is established, the Directive may apply.

Since they are more favorable to the driver, one could consider that the rules of labour law (in the core subjects listed in the Directive) of the State of establishment of the principal shall apply to the global nature of the transport operation, regardless of the state where the goods are delivered (to the client who bought the goods), and whatever the States

crossed in transit at the time of this transport .

- Second solution: application of the rules of the labour law of the country where the carrier employing the driver is established.
- The third solution: application of the rules of the labour law of the country where the driver has the effective centre of his activities (within the meaning of the ECJ sentence on the Koelzsh case which interprets Article 8-2 of Regulation no. 593/2008 called "ROME 1" on the law applicable to contractual obligations).

None of the above solutions is "ideal": they can all three lead to social dumping more or less difficult to control and contain.

Each of these solutions could indeed encourage carriers to locate all or part of their business in countries with low labour costs.

If the first solution favors a certain equality of competition in the choice of the carrier by the client, it requires special care to control where the client is really established (difficult to implement) .

The second solution offers more control options as this may be the case of fictitious subsidiaries that act as an employment agency. In this case, the carriers can be sanctioned. If the subsidiary is in an EU country, EU rules on access to the profession apply immediately. Regulation no. 1071/2009 has added a condition: the requirement to establish the compliance with a range of criteria indicating that it is a real undertaking and not a fictitious subsidiary.

The third option seems the best in terms of control, as the KOELZSH sentence of 15.03.2011 has already provided clear criteria to precisely locate the "real centre " of activity of the employees (countries where the employee receives instructions on his mission and organizes his work, where the tools of his work are located and where the employee returns from his missions), modeled on the criterion of "base of operations", which exists in the air transport sector.

However, even if this solution was adopted, transport companies could choose to "locate" their drivers in low labour cost countries (by creating reserved parking spaces, from which drivers will receive their instructions, and conduct their transport services).

c. In the event that the transport company subcontracts the provision of international transport to a company in a fourth state.

In general, if the subcontracting of transport (as in case of vehicle rental with driver), the posting must relate to the employee of an employer (the subcontractor or the owner of vehicle) established in a State other than that of the beneficiary of the transport service.

It seems consistent to assume that the recipient of the transport service is, in the case of subcontracting, the main transport company.

Therefore, in terms of labour law applicable, in case of a subcontract, the three solutions presented in the earlier point b. may be implemented as follows:

- 1st solution: application of the rules of the hard core (as defined in the Directive of 1996) of the State where the principal transport company (recipient of the transport service) is established;
- 2nd solution: application of the rules of labour law of the State where the subcontractor (employer of the driver) is established;

- 3rd solution: application of the rules of labour law of the State where the effective centre of the road driver activity is located (within the meaning of Article 8-2 of the ROME 1 Regulation, as interpreted by the ECJ – KOELZSH sentence of 15.03.2011).

Similarly, in case of vehicle rental with driver, the recipient of the transport service would be, as appropriate, the transport company or the subcontractor.

Chapter I.3. ITALY:the national legal framework

1.3.1. An outline of the road transport market

At the start of the TRANSPO project some qualitative interviews have been made with representatives of social partners¹⁰ - representatives of transport companies and representatives of Trade Unions - in order to gain an overview of the national transport market and identify its critical issues with respect to the scope of Directive 96/71/EC.

From the description given by the respondents, the state of the market of road transport in Italy appears to be rather complex and certainly critical.

A major problem encountered by Trade Unions concerns the presence of drivers from different countries of the European Union of whom we do not know the regularity of employment or the social security regime actually applied to the drivers, even in case of road checks.

In particular, the Unions point out that a fundamental problem is the fact that competition now takes place among domestic operators as well as increasingly among domestic and EU operators primarily on the basis of the variable labour costs. Unions denounce in particular that, given a series of fixed costs by transport companies, such as the cost of vehicles and fuel costs, pricing policies are now in fact determined on the basis of the sole cost of labour, with widespread use of undeclared or irregular work practices. This seems particularly relevant at the level of transnational transports and cabotage, where the Community carrier enjoys advantageous remuneration schemes, and roadside checks often substantially ineffective in terms of checking the correctness of the employment relationship.

The ability to compete, then, is certainly affected by the size of the transport market in Italy in

¹⁰ To this end we would like to thank: ANITA, FILT CGIL, FIT CISL, UIL TRASPORTI, UETR.

terms of large numbers of operators (190,000 businesses) and their small size.

In essence, the Unions complain about the strong presence of exploitation phenomena (constant demand of hours of driving exceeding the legal limit) and self-exploitation (owner-operators). These phenomena were already present in the internal market and seem exacerbated by the presence on the territory of Community hauliers, who significantly affect the supply of services by leveraging on their labor cost differential.

The social partners, especially trade unions and workers, therefore welcome the interests and the initiative of a verification work on the applicability of the rules laid down in Directive no 96/71/EC in the field of road transport. This is to help ensure transparency in the system of rules to be respected by all stakeholders (including international ones), and to make more effective the controls by the competent authorities.

1.3.2. The commercial contracts

A necessary analysis for the present discussion concerns the contractual instruments that are actually used by transport companies.

1.3.2.1. Contract of carriage

The main contract used in the transport of goods by road is certainly the contract of carriage governed by art. 1678 of the Civil Code. This is a special contract falling among those contracts for the provision of services, whose purpose is transport.

Some remarks are necessary. Being a typical contract, it is explicitly defined in law, and it is believed that institutions that govern contracts similar but distinct and therefore different, such as the legal discipline on solidarity, not waivable by the parties (Article 29, paragraph 2 of Legislative Decree no. 276/2003), which governs the procurement contract, may not be applicable

to this type of contract (especially for the paucity of legal judgments to that effect).

The negative interpretation could be based on the reasoning that includes that regime of solidarity in the framework of the procurement contract, without the intent of the law to extend this regime to other trade in services contracts, as it is the case of transport. On this point please see the in depth examination at the end of this chapter.

In addition, the contract of carriage has its own characteristics relevant to the ascertainment of any responsibility in subjects other than the main obligor. In fact, by its nature, the contract of carriage binds a person (carrier) to make one or more transports on behalf of another person (sender). The recipient of transport, in turn, does not necessarily coincide with the sender, but it is often a third party unconnected to the contractual agreement. In this case, the recipient is a third party beneficiary of a real obligation in favor of the third party.

Moreover, the sub-contract of carriage, or sub-carriage, is typical of this commercial practice. The case law so far has ruled on the nature of the sub-contract of carriage in favor of the reconduction of this contract in the framework of the main contract of carriage. Therefore, the rules applicable to the subcontract of carriage are those of the contract of carriage.

It must be noted, in this connection, also the fact that the obligation typical of the contract of carriage is the "obligation of transfer"¹¹ of persons or things, and that for the purposes of qualification of the contract, the fact that the carrier undertakes the transport on his own behalf or through the use of another carrier for the execution of the contract has no importance.

¹¹ So M. Riguzzi, Type of contracts in the transport and shipment of goods, various authors, Road haulage, Egaf 2011, 180.

1.3.2.2. Shipping contract

The shipping contract, governed in our domestic law by the articles 1737 and following of the Civil Code, is a contract whereby one person (the agent) is obliged to conclude a contract of carriage on its own behalf and on behalf of the other contractor (principal). The object of the obligation is the conclusion of a contract of carriage. This is a special contract which falls in the framework of the mandate (Art. 1703 of the Civil Code), and therefore it is ontologically unrelated to the procurement contract.

Although the shipper is certainly an essential player in the transport chain, in most cases it remains essentially out of the contract of carriage, and it is certainly unrelated to it as concerns the regularity of the management of labor relations of employees of the carrier who performed the transport itself.

Yet, in the case of labour inspection activity, one must keep in mind the fact that the shipper can physically take personal obligation of the transport, and therefore it is fully in the transport chain, according to art. 1741 of the Civil Code about the function of shipping carrier.

1.3.2.3. Contract of logistic services

The market trend to merge multiple services into one contract transaction is more and more relevant for the achievement of "global services", with the obvious benefit for customer businesses to have a single interlocutor for outsourced services. For the purposes of this work, the so-called "contract of logistic services" becomes increasingly important. It includes a range of services ranging from warehouse management and its loading and unloading operation, to transportation, and administrative activities related to the organization and management of transportation.

It is very important to note that the "contract of logistic services", unlike the previously mentioned

ones, is not a typical contract, but it is the expression of the freedom of the parties under Article 1322, paragraph 2, of the Civil Code.

Since it is not a typical contract, it is expected that the contract of logistic services falls within both the discipline of the contract of carriage, which is part of the obligation assumed by the "service provider", and the discipline of the procurement contract, which represents the other aspect of the obligations assumed by this contract¹². In this sense, in the case of application of this type of contract, the legislation on joint liability may also operate, pursuant to art. 29, paragraph 2, of Legislative Decree no. 276/2003. This issue, during the inspection, should be analyzed on a case by case basis, verifying the prevalence of the supply of services versus the transport activity.

1.3.3. Problems of application of Directive No. 96/71 in Italy and issues open by Legislative Decree No. 72/2000.

With the enactment of Legislative Decree No. 72/2000 Italy transposed Directive No 96/71/EC. In this regard, we note that the judgments of the Court of Justice - in recent years - have sharply limited the scope for intervention by the national legislators, reaffirming the primacy of the EU principles of free movement of services and freedom of establishment, which are the basis of the provisions contained in Directive 96/71/EC on the community posting.

Please note that Article. 3, paragraph 1, of Legislative Decree No. 72/2000 provides for the application, "during the period of posting, of the same working conditions provided by laws, regulations or administrative provisions and collective agreements concluded by trade unions or employers' associations and most representative at the national level", without reference to the

¹² Entirely different is the following hypothesis: a minority of case law considered a type of contract called the "service contract of carriage" that would be realized in the case of transport activity to which other relevant ancillary activities are added as included in the contract. This matter is quite controversial and therefore not acceptable, as the general discipline of the service contract would substantially overlap with the special discipline of transport, without a sufficient clear boundary between contract of carriage and contract of services .

specific matters referred to in the Directive.

In this regard it is noted that in the Ruffert case (C-346/06, Judgment of 3.4.2008), the Court of Justice has clearly stated that the application of the principle of collective bargaining universally applicable in the country of performance of the posting (article 3.1 of the Directive) must be interpreted in a restrictive way (even the principle of art. 3.7 of the Directive, opened to the legislation providing the highest protection, must be interpreted in a restrictive way). Then, in the case of the Commission vs Luxembourg (C-319/06, Judgment of 19.6.2008), the Court held that the concept of international public order, narrower than that of domestic public order, must be harmonized with EU principles, and therefore its application can be subject to review by the same Court of Justice.

Thus, the issues foreseen in art. 3.1 of the Directive, for which it is possible to apply the general regulations and collective bargaining provisions of the country where the worker is posted must be interpreted as absolute, as they represent an exception to the general principle of free determination of the parties about the legislation applicable to the individual employment relationship (Art. 8 Rome I Regulation), and therefore are not susceptible of analogical interpretation.

Another observation concerns the special rule of the joint liability in art. 3, paragraph 3, of Legislative Decree No. 72/2000, as the same would seem to be interpreted in the light of the current general system of joint liability foreseen in the provisions of art. 29, paragraph 2 of Legislative Decree No. 276/2003. It appears, therefore, possible to say that the general joint liability regime established by the legislator in 2003 has in fact passed and repealed the provisions of art. 3, paragraph 3, of Legislative Decree No. 72/2000, at least with regard to posted workers within the European Union. This provision could continue to be applicable in our system, with reference to the transnational posting by companies established outside the European Union (see,

in this sense what Italy has provided for in the recent questioning of the Ministry of Labour no. 28 of June 27, 2011).

Furthermore, some observations on the administrative management of the employment relationship and the documentation required by law are necessary, always in the light of the EU case law on this subject (in particular, see the above mentioned case of Commission vs. Luxembourg, 19.6.2008, and the sentence Commission vs. Germany, 19 January 2006, Case C - 244/04).

On this issue, see what expressed in a recent interpretation by the Ministry of Labour on the Community posting¹³.

On this issue, we here limit ourselves to observe that the undertakings under a Community posting regime can not be subject to a document management system of the employment relationship different from that in force in the country of establishment.

On the basis of the regulatory and interpretation principles so far recalled, it can be observed that, notwithstanding the application of the national law chosen by the parties, many important aspects of the employment relationship are still governed by the Italian law. In particular, the Italian law applies to essential aspects of the employment relationship such as the national collective bargaining with regard to salary tables set out therein. Although the provision of universal application of collective bargaining pursuant to art. 39 of the Constitution has not been implemented in Italy, however, as per settled case-law, the identification of the principles of proportionality and adequacy of the remuneration provided for by art. 36 of the Constitution is done referring to the salary foreseen in the national collective bargaining. Therefore, always through case-law, our country applies what envisaged by the Directive on the general application

¹³ See on this point: the Guidebook "Posting of workers in the European Union" fulfilled within the Empower project Project Contract no. VP/2009/015, November 2010 - <http://www.lavoro.gov.it/NR/rdonlyres/94673012-D332-4D64-BDB7-C809650E529A/0/Vademecumdistaccocomunitario.pdf>.

of collective agreements, only as concerns the remuneration aspect foreseen in national collective bargaining agreements, and the remuneration aspect foreseen in territorial employment contracts (see also in this regard the provisions of art. 3.8 of the Directive). Of course, the situation is different in the case of remuneration aspects that may be provided by the enterprise-level collective bargaining, which can not be applied outside the company that has contracted them.

On the method of calculating remuneration determined by national collective bargaining and to be used as a benchmark for a comparison with the wages of workers posted to Italy, the Ministry of Labour has already stated in its interpellation No. 33/2010 the principle that the comparison between the posted worker's salary and a minimum wage foreseen in collective bargaining should be made by reference to gross pay. The same interpellation, then, invokes a provision of the directive which has not been explicitly transposed into our national legislation, and in particular the fact that even any accessory pay item, identified as posting or transfer allowance, must be computed within the minimum wage on which to make comparisons with the minimum rates of pay foreseen in the tables (Collective Bargaining Agreements)¹⁴.

Another important practical problem in terms of regulation of the community posting concerns the specific organizational arrangements of commercial contracts under which the posting is achieved, and therefore the applicability of Italian law also to commercial contracts, which are the basis of the community posting. The question arises in matters governed by national law in a special way with respect to EU legislation, and reference can be made to national legislation which lays down, in the labour law, the conditions of legitimacy of the contract (art. 29, paragraph 1 of Legislative Decree no. 276/2003) and of the trade agreement on the posting of workers (Article 30, paragraph 1 of Legislative Decree No. 276/2003).

¹⁴ It is what foreseen in art. 3.7 of Directive 96/71 "Allowances specific to the posting shall be considered to be part of the minimum wage, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging."

Probably, some help to solve the issue of harmonization between the two legal systems, national and Community, can come from the Rome I Regulation, and in particular the international discipline of mandatory rules (article no. 9 EC Regulation 593/2008). In fact, while respecting the international rules of the contract under the national law chosen by the parties, the rules of the country where the contract is performed still apply, and therefore the Italian law, in the case of mandatory rules whose "respect is regarded as crucial (...) whatever the law applicable to the contract. "

It must be considered that the mandatory provisions do not prevent the adjustment of the contract under the foreign law (as opposed to the rules of international public order that prevent the application of foreign law), but rather impose to the contract governed by foreign law the application of the domestic law notwithstanding the law of the contract.

In this sense, some basic rules for the regulation of production outsourcing could probably fall under the mandatory provisions, in which Community posting is a phenomenon now very significant. In particular this refers to art. 29, paragraph 1 of Legislative Decree No. 276/2003, which defines the criteria of legitimacy of the contract (organization of means and business risk on the part of the contractor) in order to distinguish the contract from the provision of workforce. The same can be said for art. 30 Legislative Decree 276/2003, which regulates the posting in domestic law, detecting in the temporary factor and in the interest of the posted worker the criteria of legitimacy of this institution.

At a different level than that of mandatory rules, we find the typological distinction between self-employment pursuant to art. 2222 cc and employment pursuant to art. 2094 cc, whose applicability to Community posting cases is not so much assessed on the basis of the provisions of art. 9 of the Rome I Regulation, but rather expresses a specific provision of the Directive 96/71/EC, that in art. 2.2 states that "For the purposes of this Directive, the definition of a worker is that

which applies in the law of the Member State to whose territory the worker is posted." In this sense, therefore, the contract qualification of a Community worker as a self-employed person and not as an employee, made by the parties, must still respect the principle of non-availability of contract classification, which is not subject to the self-determination not only of parties but also of the autonomous Regulatory law (the principle is established by the Constitutional Court no. 121/1993), and therefore also of the foreign law that may be chosen by the parties to settle the contract. In essence, then, the community undertaking can not support the non applicability of Directive 96/71/EC concerning the community posting, arguing that the directive does not apply to self-employed people but only to employees, if the employment relationship defined by the parties or awarded by foreign law as that of as self-employed person is not really genuinely and objectively a self-employment but in fact falls within the paid employment pursuant to art. 2094 of the Civil Code.

At this point, also in terms of national regulations applicable to transnational commercial contracts, specifically as regards the transport chain, a very important problem concerns the relationship between the governing contract of carriage and any sub-contract of carriage, called sub-carriage, with specific reference to the discipline of the applicability of joint and several liability under art. 29, paragraph 2 of Legislative Decree No. 276/2003. In fact, in the case of assignment of a transport service by a national subject to a transport company established in a EU State other than Italy, Directive 96/71/EC and Legislative Decree No. 72/2000 apply, as this falls in the broad scope of article. 1 of the Directive.

However, in the case of transport, the possible application of the joint liability regime expressed in the above mentioned article 3 (or art. 29, paragraph 2 of Legislative Decree No. 276/2003) does not appear unambiguous, based on the literal argument that such responsibility relates (according to the letter of both regulations) only to the contract, while the transportation contract would be

a type of negotiation with a separate discipline, not providing for joint liability of the sender to the obligations of the carrier. The conclusion given here is the one generally accepted in legal doctrine and case law ¹⁵.

On this point, however, a totally contrasting solution could also be applied, which could accept the argument of the application of the statutory scheme of joint solidarity within the sector of transport contracts. The argument in favor of this thesis could be based on two observations: the first one, of a substantial / systematic type, is based on the nature of the contract of carriage that would provide a "*facere*" performance by one company (the carrier) on behalf of a person (the sender). The obligations of the "*facere*" action can fall within the scheme of the contract, which, also at the systematic level of its placement in the civil code, represents the model of this type of contract, from which transport differs primarily for the object of the service (transport) and not for its nature. It is also noted that in the case of contracts of carriage and subcarriage, a scheme of transfer of the business risk from the operator (carrier) "economically more robust to the more fragile" on the market is realised. This fact, which objectively is part of the rationale of the law on joint and several liability, could then substantially justify the application of the system of joint liability under Article 29, paragraph 2 of Legislative Decree No. 276/2003 also to the contract of carriage (so, the Court of Bolzano, May 13, 2011).

Based on the above observations, however, the possibility of extending to the transport sector the liability regime provided for the contract appears to date a doubtful and uncertain solution.

Therefore, in the case of transport, the feasibility of the hypothesis to apply to the Italian sender any provision of formal notice for the obligations of pay that the carrier (or sub-carrier) has in

¹⁵ For completeness, as to the possible number of arguments on this point, we report a case-law remained rather isolated - Court of Appeals of Turin, July 5, 1991 – that ruled that "when a person is obligated to perform continuous provisions of services consisting in the transport of goods, by his organization and at his own risk, we are not in the presence of a plurality of transport services, but of a contract ranging from the procurement and provision of services".

relation to its employees, according to the scheme of interpellation No. 33/2010 now appears also dubious, although not devoid of legal basis.

On the contrary, the regime of joint liability involving the domestic sender could be applied with more certainty in the case of a contract for logistics services. This is, in fact, an atypical contract, based on the applicable rules and regulations of the contract or the providing of workforce (art. 1559 of the Civil Code). Thus, when the logistic services will move from being merely ancillary to transport or shipment into complex operations which are not resolved in a simple storage, but are articulated into many packaging operations, collection of orders, transfer, management of the conservation of goods, storage, delivery to different recipients, then these logistic services become a very relevant activity, with respect to which the buyer and the lender of such services may be subject to the provisions of the contract, including the joint liability regime .

Finally, it is believed that since the Directive 96/71/EC (and in Italy the Legislative Decree no. 72/2000) is certainly applicable in all cases of transnational temporary work provisions (Article 1, paragraph 3, point c, of the Directive), to the workers provided, apart from the minimum protections foreseen in the "hard core" of the Directive, must also be applied the principle of equal pay and equal conditions between posted workers and the employees of the user (Article 23, paragraph 1 of Legislative Decree No. 276/2003) and the principle of joint responsibility between the provider and user as concerns the retribution due to the posted workers (Article 23, paragraph 3, of Legislative Decree No. 276/2003).

1.3.4. The interpellation No. 33 of 12.10.2010

On the Community posting, the Italian Ministry of Labour has issued the interpellation No. 33/2010 which provided some important operational details on the actual implementation of Directive 96/71.

In fact, in this interpellation, elaborated in response to a question raised by the Federal Union of transport, shipping and logistics, the Ministry of Labour stated the applicability in Italy on the principle of equal minimum rates of pay (Art. 3, paragraph 1, letter c, Directive 96/71), as established by the salary scales of the collective contracts. These are in fact universally applicable in Italy on the basis of the constant case-law interpretation of the principle of proportionality of pay contained in Article. 36 of the Constitution.

In addition, the Ministry of Labour stated that the comparison with the salary actually paid to the worker posted to Italy must be made "before any deduction and contribution," according to the definition of "paid employment income" valid for tax purposes.

It also makes it clear that the concept of social security tax is outside the scope of Directive 96/71, but it pertains to the Community regulation which specifically relates to the determination of the applicable contribution regime (Article 12 of EC Regulation No. 883/2004).

Finally, the interpellation specifies that, if in the inspection it is revealed that a posted worker under Directive 96/71 concretely perceives a lower salary than that established in Italy by the National Bargaining Contracts, the labour inspector may impose the measure of the notice to pay pursuant to Article 12 Legislative Decree 124/2004, which is notified to the (community) employer offender and, if provided for in Article. 3, paragraph 3, of Legislative Decree No. 72/2000 and art. 29, paragraph 2 of Legislative Decree no. 276/2003, also to the principal as joint debtor.

Chapter I.4. ROMANIA: the national legal framework

I.4.1. Regulations on labor relations and occupational safety and health

I.4.1.1. Posting of workers in the transnational provision of services

The national regulation on the posting of workers in the transnational provision of services became necessary when Romania joined the European Union, as a constitutive element of the '*acquis communautaire*'.

Community and national regulations must ensure the fulfillment of a fundamental objective of the European Union, namely the elimination of obstacles to the free circulation of persons and services between member states. The promotion of the transnational provision of services requires fair competition between international and local businesses and measures to ensure respect for workers whose labor is used in the host state.

In the absence of such specific regulations, the provisions of EC Regulation No. 593 of June 17, 2008, *on the law applicable to contractual obligations* (Rome I) would apply. They establish that the law applicable to employment relationships is chosen by the parties or, failing an agreement, the law of the State where the worker normally operates would apply.

In this context, Law No. 344, 19 July 2006 *concerning the posting of workers in the transnational provision of services* entered into force on January 1, 2007, the date of the EU accession of Romania. This law transposes the Directive of the European Parliament and Council Directive 96/71/EC of 16 December 1996 *concerning the posting of workers in the provision of services*.

Which workers are subject to Law No. 344/2006?

The normative act shall apply to undertakings established in a Member State of the European Union or European Economic Area (EU or EEA), which in the transnational provision of services,

post in Romania their employees with whom they have an employment relationship.

These are employers based in Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom of Great Britain, but also Iceland, Lichtenstein or Norway.

Which categories of workers are concerned?

Law NO. 344/2006 shall apply to **employees**, according to the definition of this term provided by art. 10 of Law No. 53/2003 - *Labour Code* (R), this means any natural person who enters a contract of employment with an employer (the individual employment contract is a contract under which an individual named *employee* undertakes to perform work for and under the authority of an employer , natural or legal person, for a remuneration called *wage*).

This definition of employee applies regardless of the definition of the employment relationship of the person posted in the State where the undertaking is established.

Please note that the legislation in Romania does not use the term **worker** (defined at domestic level by Law No. 319/2006 *on safety and health at work*) as in Directive 96/71/EC, limiting its applicability to **employees** only. This approach excludes the applicability of Law No. 344/2006 to civil servants, members of cooperatives and other persons who perform work on other contractual relationships than an individual employment contract.

The posted worker is the employee who usually works in a state other than Romania, but for a limited period of time operates on the territory of our country.

The term "*posted*" as used in the transnational provision of services is not always related to the *posting situation* governed by the law regulating labour relations which in Romania is Law no.53/2003 - *Labour Code* (R).

According to the *Labour Code*, the posting is the act of changing temporarily the workplace of an employee, for the unilateral decision of the employer, at the premises of another employer, for the execution of work in the interest of the latter. The individual employment contract with the employer that posts the employee is suspended on the initiative of the employer for the period mentioned above.

Transnational posting has the following forms:

- an employee carries out some work for a limited period of time in Romania, on behalf of a foreign company and under its direction, under a contract concluded between the posting undertaking and the recipient of the provision of services operating in Romania, if there is an employment relationship, for the period of posting, between the employee and the posting undertaking (as regulated by Articles 43 and 44 of Law No.53/2003 - *Labour Code* (R));
- work carried out in Romania by an employee, at an establishment located in Romania or a company belonging to a group of companies located in Romania, if there is an employment relationship, for the period of posting, between the employee and the posting undertaking (as regulated by the Articles. 44 or 43 or posting situation ruled by Articles. 45 to 47 of Law No.53/2003 - *Labour Code* (R));

This form may result in two practical situations, differentiated on the basis of the *Labour Code*:

- The first situation is the ***delegation***, in which, even if the employee works in Romania at subsidiary of the parent company , and to some extent he is integrated in the staff and functional relations of the host company in Romania, the worker will nevertheless continue to be in close contact with the employer of origin, from whom he will receive instructions and to whom he will write his report, and from whom he will receive his salary along with other benefits resulting from the employment relationship; this case fits

perfectly in the provisions of Law No. 344/2006, and only the working conditions that constitute the "*hard basis*" corresponding to the legislation and collective bargaining agreements in Romania will be applied;

- The second option is the one specific of **posting**, as that term is governed by the *Labor Code*, in which for a fixed period the employment contract with the original employer is suspended, the posted employee is fully integrated in the host organization, under the latter's authority and subordination; and the work done is for the benefit of the host employer who pays the corresponding salary, although according to the level determined by the company of origin at the beginning of the posting period; the relationship kept with the original employer is manifested only through the liability of this latter to pay the salary rights and his obligation to resume the same contract of employment (termination of suspension) on the expiry of posting. The interaction of the two national legal systems on posting can create conflicts of application not sufficiently clear at present; in this case, with direct reference to the concrete ways in which the employment relationship takes place on territory of Romania, it is possible to fully implement the Romanian legislation, and not only those elements that constitute the "*hard basis*";
- performance of some activities for a limited period of time on the territory of Romania by a temporary worker provided by a temporary employment agency (as this activity is regulated in the country of origin), at a user's undertaking established or operating in Romania, if for the period of posting there is an employment relationship between the employee and the temporary employment agency (employment through a **temporary work agency**, governed by the Articles 88 to 102 of Law No.53/2003 - *Labour Code* (R), as regards the conditions of the activity of the temporary worker and his relationship with the user).

Exceptions to what above are:

- The personnel of commercial marine shipping companies, as to all matters governed by Law No. 344/2006;
- Qualified employees and / or specialists of supplying undertakings, if the posting period shall not exceed 8 days, for work of initial assembly and / or first installation of an asset that forms part of a supply contract of goods and is needed to start the operation of the asset provided, only as regards the provisions relating to minimum paid annual holidays and the minimum wage, including overtime compensation or payment (the exception is valid for construction activities having as their final purpose the construction, repair, maintenance, alteration or demolition of buildings).

What are the working conditions applicable to these employees?

Regardless of the law governing the employment relationship, the employee posted to Romania will benefit from the working conditions in force in Romania and set by the law and / or through the applicable collective agreement (the elements that constitute the "*hard core rights*") in relation to:

- Maximum and minimum work program and periods of rest;
- Minimum paid annual leave;
- Minimum wage, including overtime compensation or payment;
- The definition of minimum wage is prescribed by law and / or applicable collective agreements;
- Specific allowances for the posting shall be considered part of the minimum wage, to the extent that they are not paid to the employee to cover expenses related to the posting, such as transport, accommodation and meals;

- The conditions for the availability of employees, in particular by temporary employment agencies;
- Safety and Health at Work (Law No. 319/2006 *on safety and health at work*);
- Protection measures with regard to working conditions for pregnant women or those who have recently given birth and for children and young people (Law Decree no. 96/2003 *on maternity protection at work* and Decree No. 600/2007 *on the protection of young people on the workplace*);
- Equal treatment between men and women and other non-discrimination provisions (Law No. 202/2002 *on equal opportunities and treatment between women and men* (R) and Law Decree No. 137/2000 *on preventing and sanctioning all forms of discrimination* (R)).

Prior to entry into force of Law no. 62/2011 - *Social Dialogue Law*, Law No. 344/2006 referred to the *collective labour agreement at national level* and the *collective bargaining agreement at the sector level*. Given that these types of collective agreements are not provided by the law governing collective bargaining, collective agreement concluded at sectoral level alone may have general application.

The collective agreements concluded at sectoral level can be made binding to all employers in their specific sector, through an order of the Minister of Labour, Family and Social Protection.

There are situations where the rights enjoyed by employees in the state in which they usually work are higher than those required by the law of Romania. A higher minimum wage, a longer period of paid leave, a longer duration of rest periods or shorter duration of working time can be determined by law or by the collective agreements applicable in the state in question.

In such situations, the provisions of Law No. 344/2006 do not limit the application of more

favorable working conditions for employees posted in Romania and cannot constitute justification for reducing the rights of employees.

Which is the relevant authority?

The Labour Inspectorate, through labor inspectors in territorial labor inspectorates, is the public authority that shall verify the implementation of the provisions of the current Law, in order to ensure respect for the rights of employees posted on the territory of Romania in the transnational provision of services.

An undertaking established in an EU or EEA member state that posts workers to provide services in Romania is subject to the control of labour inspectors, being administratively liable and subject to sanctions for the violations of the legal provisions establishing the working conditions regulated by Romanian law.

Posted employees and/or their representatives may address contact the territorial labour inspectorate and the general Labour Inspectorate if they consider that their rights on working conditions are violated.

In the cooperation mechanism established by Directive 96/71/EC, the Labour Inspectorate fulfills the role of a *liaison office*, allowing for the exchange of information with labour inspection bodies in the EU or EEA member states, as well as with the European Commission.

1.4.1.2. The specific procedure for posting of workers in the transnational provision of services

Government Decision No. 104/2007 to regulate the specific procedure for the posting of workers

in the transnational provision of services in of Romania is the legal instrument which sets legal obligations and responsibilities for both the posting undertaking established in an EU or EEA member state, and the beneficiary of the provision of services in Romania.

What are the liabilities of providing services in Romania?

Undertakings established in an EU or EEA member state that post workers to provide services in Romania, under Law No. 344/2006, have the following obligations:

- they must have a legal representative in Romania or appoint one of the employees posted to Romania as a liaison with the supervisory bodies, and this liaison will have all the obligations set for a legal representative;
- they must send a written notification in the Romanian language concerning the posting of employees to the Territorial Labour Inspectorate in which work will take place, at least 5 days before the start of the activities of posted employees in Romania, and not later than the first business day (notification shall be made on a form including the identification data of the EU or the EEA company and the beneficiary in Romania, the identity and contact details of the posting company's representative in Romania, the identity of the posted employees, the purpose and the period of posting):
- A copy of the notice will also be sent to the beneficiary of the provision of services on the same date in which it is sent to the territorial labour inspectorate;
- Any changes in the initial communication will be sent to the territorial labour inspectorate in the area in which work takes place within 5 days from its completion;
- If the company posts a worker who is a citizen of a non-EU or EEA Member State, this company shall render a supplementary declaration, stating that the employee satisfies the legal conditions of employment in the EU or EEA member state in which the foreign firm is

established.

- The legal representative in Romania is required to hold the documents needed for the control of the conditions of employment set out in the Romanian regulations and to provide them to labour inspectors, at their request, whenever necessary;
- The legal representative in Romania is required to hold and provide to labor inspectors, upon request, the written contract for the provision of services between the posting undertaking and the recipient of the services operating in Romania (first form of posting, under Article 4 letter a to the Law No. 344/2006);
- Even if the decree-law No. 104/2007 does not impose an obligation to do so, it is recommended that the legal representative in Romania holds:
 - Documents certifying the posting of foreign citizens in Romania, signed by the foreign company posting the workers and the unit / firm in which they will work in Romania. These documents will also include a list of names of posted employees (the second form of posting, under Article 4 letter. b of Law No. 344/2006), *or*
 - the written contract concluded between the temporary employment agency and the user of the foreign employee in Romania (the third form of posting, under Article 4. Lett. c of Law No.344/2006).

What are the obligations of the Romanian beneficiary of services?

The Romanian beneficiary of the services rendered by the undertaking established in an EU or EEA member state which posts workers for this purpose in accordance with Law No. 44/2006 is required to hold and provide to labour inspectors, upon request, one of the following documents (or all of the following documents):

- The written contract for the provision of services stipulated with the undertaking

established in an EU or EEA member state (the first form of posting, under Article. 4 letter. A of law No.344/2006);

- The documents certifying the posting of foreign citizens in Romania, signed with the foreign company that posts these workers, which will also contain a list of names of posted workers (the second form of posting, under Article. 4 letter . b of Law No. 344/2006);
- the written contract concluded with the temporary employment agency or foreign company (third form of posting, under Article. 4 letter. C of Law No.344/2006).

1.4.1.3. The General Register of employees

Evidence of work performed under an individual employment contract shall be carried out under general register of employees. The register is electronic and is managed via a computer software provided to employers by the Labour Inspectorate, or own applications that meet the technical specifications set. Data from the register shall be forwarded by the employer through labour inspectorates or through electronic mean (*online* or on electronic signature) to a central database managed by the labour Inspectorate.

From 1 August 2011, the entry into force of the Decree Law No. 500/2011 *on the General Register of employees*, electronic records of individual employment contracts contain periods of posting of employees their record being made solely by the employer that posts them.

Thus, in the case of Romanian employees posted to another EU or EEA Member State for the transnational provision of services, such posting periods will be indicated in the general register of employees.

For situations where an undertaking established in an EU a EEA member state posts employees to provide services in Romania, in accordance with Law No. 344/2006, there is no obligation to

complete and send to the General Registry of Employee the data of the posted employees. Evidence for this category of workers is done on the basis of data reported under the procedure established by Decree Law No. 104/2007.

1.4.1.4. Occupational safety and health of posted workers

Health and safety risk management for drivers of the road transport sector can be problematic because they work in isolation, away from having to face the dangers of traffic, besides many other risks that are difficult to control.

Working in the road transport sector requires a high level of skills and competences. In addition to regular driving conditions, drivers organize and coordinate the loading and unloading, fix technical problems, should have some language skills, know safety data sheets for hazardous goods transported and be trained to respond in case of road accident.

Occupational risks in road transport

Road transport is one of the most dangerous sectors: accident statistic data in the CARE database indicate that, in Europe, about 10,000 people lose their lives every year in road accidents. These figures refer, on average, to 1,300 bus drivers, drivers of heavy cargo vehicles and trucks.

The main risk factors to which drivers are exposed are vibration, prolonged static postures, noise, the risk of inhalation of vapours and fumes (defective exhaust systems, fuel supply systems), hazardous goods, extreme weather conditions, fatigue, aggressive driving behaviour of other drivers, psychosocial risks (stress caused by the need to meet deadlines of transport contracts, the security of cargo, of the vehicle, the controls of authorities), family problems and routine.

Employer obligations arising from legislation on occupational safety and health

The employer is required to ensure the safety and health of workers in all occupational aspects, in accordance with Art. 6, paragraph (1) of Law No. 319/2006 *on safety and health at work*, by taking the necessary measures for:

- the safety and health of workers;
- prevention of occupational risks;
- information and training of workers;
- providing the necessary organization means for health and safety at work.

The measures relating to occupational safety and health should not imply any financial obligations on the part of workers.

The employer shall arrange for first aid, fire fighting and evacuation of workers and establish the necessary links with specialized services, especially in terms of first aid, emergency medical service, rescue and fire-fighting services.

The employer must inform as soon as possible all workers who are or may be exposed to a ***serious and imminent danger***, the risks involved and the measures taken (or to be taken) for their protection, to offer employees the opportunity to stop work and / or immediately leave the workplace and move to a safe area in case of serious and imminent danger, not to impose workers to resume work if there is still a serious and imminent danger, with the exception of limited cases and for justified reasons.

Workers who, in case of serious and imminent danger, leave the workplace and / or a dangerous area must not be penalized and must be protected against any negative and unjustified consequences.

The workers' obligations arising from legislation on health and safety at work

Each worker must operate in accordance with his education and training and instructions of the employer, so as not to expose himself to danger of injury or occupational diseases or expose others who may be affected by his actions or omissions during work.

In particular, to achieve the objectives mentioned above, workers have the following main duties:

- The proper use of machinery, equipment, tools, safety devices, hazardous substances, transport equipment, other means of production and the personal protective equipment provided;
- Immediately inform the employer of any work situation they have reasonable grounds to believe a danger to health and safety and any deficiencies in protection systems or injuries suffered by them;
- To learn and comply with health and safety regulations and their implementing measures.

These requirements foreseen by Romanian laws apply, as appropriate, to other participants in the work, according to the activity they perform.

Road events

The **event** is the accident that resulted in death or injuries, occurred during the work time or in the performance of work; the situation of persons declared as missing; any road accident where employees are involved; any accident that can cause occupational diseases or diseases related to one's profession.

The procedure to be followed in case of a road event in Romania, as well as the liability in case of involvement of an employee of a Rumanian employer in an event that occurred in another state is governed by Decree Law no. 1425/2006 *concerning the approval of methodological norms for*

applying the provisions of the Law No. 319/2006 on Safety and Health at Work.

Any event will be immediately notified to the employer by the local work manager or any other person who is aware of it (driver or another mobile worker).

The employer is required to report events to the territorial labour inspectorates, the insurer and the organs of criminal investigation, if necessary. If among the victims there are also employees of other employers, the event will also be communicated to their employers by the employer of the place where the event occurred.

In case of traffic accidents on public roads, where the victims are performing job assignments, the competent traffic police will send, upon request, a copy of the on-scene report to the territorial labour inspectorates within 5 working days from the date of request. If the accident caused the death of the victims, the victims also being people who were carrying out work assignments, the traffic police services will automatically notify the event to the territorial labour inspectorate of the district where the accident occurred.

The communication of events occurred abroad involving employees of a Romanian employer will be made in the same way: the employer is required to report the event also to the diplomatic mission or Rumanian consulate of the country in question.

Any event occurring on the territory of another State involving Romanian posted workers or worker provided by Romanian employers to foreign employers to perform work on the territory of another state shall be notified immediately by the Romanian employer to the diplomatic mission or Romanian consular office in that country.

Romanian employers posting or providing workers to foreign employers (foreign users) are required to include in the content of international conventions and bilateral agreements with foreign partners the clauses relating to the reporting of events.

Any event occurring in Romania and involving foreign nationals in the performance of their duties

will be immediately reported to the territorial labour inspectorate where it occurred, by the employer or any other person who is aware of it. The territorial inspectorate that receives communication will notify it to the diplomatic mission or consulate of the country of origin of the injured person.

The investigation of the events is mandatory and will be conducted by the employer, in case of events that have caused temporary inability to work; by territorial labour inspectorates in case of events that have caused obvious or confirmed disability, death, collective accidents, hazardous accidents, in case of events that have produced a temporary inability of employees and in missing persons cases; or it will be notified by the General Inspectorate in case of collective accidents caused by special events, such as failures or explosions.

The employer that has arranged the transport is required to carry out the investigation on a road accident that resulted in a temporary disability.

A delegate of Romania's diplomatic mission or consular office can participate in the investigation on events occurred outside the borders of the country in which employees of a Romanian employer are involved. In case of events causing disability, death, or collective accidents, the General Inspectorate of Labour may delegate some representatives to carry out on-site investigations.

The employer that has signed a contract with the foreign company is required to prepare investigation reports in the case of work performed by Romanian staff.

In these cases, the investigation file will also include:

- Copies of the investigation documents, issued by the competent authorities of the country on whose territory the event occurred, as well as their translation into Romanian;
- A copy of the contract with foreign undertakings, indicating the parties involved, the object, the work performed, the duration, location of work, the provisions relating to

safety and health at work, the way in which communication is made and the recording of accidents at work.

The investigation of events occurring in the territory of Romania with foreign citizens who are performing a work is made by the territorial labour inspectorate where the event occurred, together with other relevant bodies, including representatives of the foreign employer involved in the event or the General labour inspectorate. A representative of the diplomatic mission or consulate of the country in question may participate in the survey.

The territorial labour inspectorate that carries out the investigation will forward copy of the original investigation recording to the diplomatic mission or consulate of the country of origin of the injured person .

1.4.1.5. The rights of the labour inspector in control activities

The controls of labour inspectors on the activities of undertakings established in an EU or EEA member state that posts employees to provide services in Romania are held on the basis of Romanian laws and procedures.

Labour inspectors operate in the territorial labour inspectorates and at the General Inspectorate of Labour. In their inspection work, labor inspectors are vested with the exercise of public authority, performing the role of State Labour Inspection Authority in the control of labor relations and occupational health and safety.

Under Law No. 108/1999 *on the establishment and organization of Labour Inspection* (R) and Decree Law No. 1377/2009 *on the approval of the organization and functioning of Labour Inspection, as well as measures of organizational setting, as amended and supplemented*, labor inspectors have the following rights:

- free access, permanently and without notice, at any time of day and night, to the premises of any employer, person or entity, and to any place where they have reasonable grounds to conduct controls or investigate events;
- to obtain evidence, to conduct investigations or examinations, to require submission of the documentation they deem necessary and to temporarily seize it;
- to request information, either alone or in presence of witnesses, from any person and on any matter object of control;
- to take pictures and audio and video recordings, to identify, based on documents that prove identity, people on workplaces or in other places under control or investigation and to require the filling in of a complete identification sheet;
- to request immediate cessation of production processes and / or to stop all work equipment, if they find that the violation of legal requirements on safety and health at work put in danger the lives, health and safety of workers;
- to enjoin employers to take all mandatory measures to amend all ascertained irregularities within a specific period of time.

By conferring these rights to labour inspectors, the law wanted to ensure they could have all necessary tools to ascertain violations. For this reason, an employer who should in any way hindrance labour inspectors to exercise their rights established by law, performs an act that is considered an offence and can be sanctioned.

Controls are carried out sometimes with the support of the police, the gendarmerie, in cooperation with inspectors from the Road Traffic Authority, the Romanian Tax Police or other control authorities.

Evidence obtained from controls and investigations, as well as the measures ordered by the labour

inspectors are recorded by them in their minutes, that contain also the mandatory measures requested to remedy nonconformities. Offenses, are recorded by the inspectors in their minutes to sanction them and criminal offenses are notified to criminal investigation and prosecution authorities.

In case of repeated serious violations of labor legislation or health and safety regulations at work, the General Labour Inspectorate may request the employer to be removed from the the trade register.

1.4.1.6. Sanctions and administrative procedures

The sanctions corresponding to the coercive measures applied by inspectors follow the procedure established by the Decree Law No. 2/2001 *on the legal regime of contraventions*, as amended and supplemented.

The ascertainment of offenses and the application of penalties are made by signing a written report directly notified to the offender via registered letter or display on public boards.

An appeal can be addressed to the court, but in case of nonpayment of the fine, the collection of outstanding fines is enforced by tax authorities.

Compulsory measures ordered by labour inspectors to employer to remedy a specific period of non-conformity and the immediate stop of production processes and / or work equipment can be appealed following the procedure established by the Administrative Law No. 554/2004 *on administrative claims*, as amended and supplemented.

1.4.2. The legal system governing the road transport

Road transport is carried out in compliance with the provisions of Decree Law No. 109/2005 *on road transport*, as amended and supplemented, the relevant EU legislation, the regulations in

force on road transport and the international agreements and conventions ratified by Romania.

As of December 4, 2011, Decree Law No. 109/2005 shall be replaced by Decree Law No.27/2011 *on road transport*.

The Romanian Road Authority (ARR), a public authority with legal personality subordinated to the Ministry of Transport, was established by Decree Law No. 95/1998 *on the establishment of public institutions subordinated to the Ministry of Transport*, and the legal framework for its organization and functioning was established by Decree Law No. 625/1998 *on the organization and functioning of the Romanian Road Authority*, as amended and supplemented.

In carrying out its duties, the ARR, will take measures to improve control efficiency, to eliminate weaknesses, to ensure safe road transports, to enforce order and discipline, including the non-discriminatory sanctioning of those who do not meet the conditions of access to road transport activities, as they are set out in European regulations.

1.4.2.1. Licensing of carriers, routes and vehicles

International road carriage is performed only by companies / firms that have a license as road transport operator. A company can obtain this license after demonstrating its possess of honourableness, proper *financial capacity* and *professional competence*.

Road passenger transport operations through regular road services at national level are carried on long distance routes by road carriers only under a license issued by the Ministry of Transport, that has the same duration of the transport program, i.e. 3 years.

For each vehicle used in road transport activities, the carrier will ask the ARR territorial agencies the issuing of a true copy of the previously obtained transport license with a minimum validity of one year.

1.4.2.2. Certification of drivers

A professional competence certificate evidencing the required level of knowledge established by the competent authority is granted upon passing a compulsory written examination which may be supplemented by an oral examination in the form prescribed by the competent authority. This knowledge must be updated regularly through appropriate training courses.

Having regard to Directive 59/2003/CE *on the initial qualification and periodic training of drivers and certain road vehicles for the transport of goods or passengers*, the provisions of Decree Law no. 109/2005 *on road transport* and the Ministry of Transport Order No. 42/2006, as amended and supplemented by MT Order No. 1548/2008, any driver who carries out road transport is required to attend training courses whose subject and method of organization are established by the competent authority; these courses will be concluded by an exam.

1.4.2.3. Cabotage operations

Decree Law no. 109/2005 defines *cabotage* as a road transport operation performed by a foreign road carrier between at least two points of loading / unloading in Romania's territory; the traveling of an unloaded road vehicle between two consecutive international transport operations is not considered cabotage.

Since Romania's accession to EU, international road freight transport operations between Romania and other Member States as well as cabotage operations carried out in Romania by vehicles registered in other Member States will be performed under the provisions of *the Treaty for Romania and Bulgaria's accession to the European Union*, signed on 25 April 2005 and ratified by Romania with Law No. 157/2005, under the bilateral agreements with Member States and according to Regulation 882/92 (EEC) *on market access in road transport of goods within the*

Community to or from the territory of a Member State or passing across the territory of one or more Member States, EC Regulation No. 3118/93 establishing conditions under which non-resident carriers may operate national road transport services in a Member State.

Officially, the EU is a free market as concerns intra-community road transport of goods, regulated only by the balance between supply and demand. The only restriction is the regulation of cabotage. Cabotage is strictly limited within the borders of each state, with an interval of up to 7 days after completion of each cargo transport and it is restricted to a maximum of three cabotage operations in a given period, usually three months, with special exceptions for drugs and strictly necessary products and only in cases of force majeure. Transitional periods of road cabotage prohibition were set for Romania, Bulgaria, Poland and the Czech Republic, countries that have asked themselves transitional provisions relating to road transport. On the contrary, Malta, Cyprus and Slovenia were not requested a transitional period due to a reduced transport market in those countries.

Transitional periods foresee that in the first three years after accession, Romanian carriers do not have access to road haulage markets in current and future member states, which in turn will not have access to the Romanian market. Moreover, in the *Accession Treaty* is agreed that Member States are allowed to extend the ban on access to cabotage for another 2 years upon a simple request by sending a notice to the European Commission. These provisions have two more specific additions. The first foresees that, during the transition period, Member States can authorize cabotage solely on the basis of a bilateral agreement, or they can fully liberalize cabotage, or, in urgent and exceptional cases of strong market distortion, they can suspend the implementation of the *acquis* for a fixed period of time, notifying the European Commission.

At the end of 2010, 13 member states have asked the European Commission to extend the ban of cabotage for another two years for both Romania and Bulgaria. Cabotage prohibition will be kept

for another two years in Austria, Poland, Spain, Belgium, Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, Lithuania and the UK.

Unlike the above and considering the definition of cabotage, all transport operations carried out in the EU territory by a carrier with registered office in one of the Member States, without his return to his country of origin for a long period of time, are not considered cabotage, but Community road transport activities.

1.4.2.4. Control actions

According to MT Order No. 1892/2006, as amended and supplemented, in carrying out inspections to which they are entitled, traffic inspectors have the right to control the traffic in parking areas or in permitted stopping areas, according to current legal provisions, at points of embarkation / disembarkation of passengers and at crossings of the state border, on all vehicles engaged in road transport of persons or goods, including those registered in other states, as well as vehicles used by driving schools for practical training where activities related to road transport are carried out, at premises of road transport operators and at the premises of driving schools.

1.4.2.5. Fines and administrative measures

In carrying out its duties as a technical body designated to ensure compliance with regulations in road transport, the Romanian Road Authority enforces administrative sanctions, and additional sanctions and fines.

Administrative sanctions are:

- Suspension of the right to use the vehicle; this measure is implemented through the retention of the vehicle registration certificate and registration plates of the vehicle. The suspension shall cease if the following conditions are met :

- at least 30 days have elapsed from the date of the retention report;
 - evidence of payment of the fine is submitted;
 - after the expiry date of a period of suspension notified, if proof of payment of the fine is not given, the suspension can be extended for another 6 months;
- suspension of the true copy of the transport license / transport certificate for a period of 30 days;
 - declaration that the person charged with the management of the transport activity is unfit;
 - Withdrawal of own transport license / transport certificate or route license.

The sanctions are governed by the provisions of art. 57 ² and 58 of Decree Law No. 109/2005, as amended and supplemented, of art. 8 Decree Law No. 37/2007, as amended and supplemented, of art. 37-39 Decree Law 1175/2007 *for the approval of the road transport of dangerous goods in Romania* (in this case offenses are divided into three categories, classified by size of risk posed by each risk category; category I include offenses with the highest level of risk).

Violations are ascertained and punished by a report on infringement of regulations, subject to the requirements of Decree Law No. 2 / 2001, as amended and supplemented.

Additional penalty of immobilization of the vehicle is ordered in cases provided for in art. No. 18 of MT Decree Law No. 1058/2007 *for approving the methodological norms to monitor the compliance with driving times, breaks and rest periods for drivers and users of recording devices.*

1.4.3. The legal framework established by the Highway Code and related rules

1.4.3.1. Obligations of the driver and the foreign carrier, in Romania

Given the scale lately reached by road transport of foreign carriers in our country, there was the need to strictly control the legality of their conduct and their compliance with our legal framework and road rules.

Foreign road transport operators can perform international road traffic having Romania as the destination country, road transport across the Romanian territory or road transport in the border traffic area in Romania only in compliance with Romanian legislation, bilateral or international agreements and conventions on road transport, ratified by Romania (European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport - AETR, done at Geneva on 1 July 1970, to which Romania adhered by Law No. 101/1994).

Foreign drivers are subject to the same legal framework as Romanian drivers in respect of traffic rules applicable in Romania.

Agents or police officers have the right to stop vehicles that carry out road transport in the conditions discussed above, subject, of course, to the procedures established by the administrative provisions.

In addition to a document control, usually in collaboration with representatives of relevant institutions, when a foreign driver is stopped by the road police, the agents will require: his identity card, driving license, professional certificate, vehicle registration certificate, vehicle insurance and international transport permit.

1.4.3.2. The sanctioning procedure

The control of foreign road transport operators or road vehicles registered in other countries and operating in Romania is performed by the personnel of the relevant control authority.

When, during the inspection, violations of legal provisions governing road transport are found, the vehicle will be stopped in compliance with road safety conditions, and its registration plates and certificate of registration will be retained until the legal conditions for continuing the transport activity are restored, and an appropriate sanction will be applied for the violations found. Permission to resume activities is granted subject to payment of the fine imposed under

the terms of the regulations in force, or subject to payment of an equal amount directly to the inspectors who have imposed the sanction; in accordance with the law, this amount will be returned or paid to the State Treasury, upon final decision of the court if an appeal is filed.

The offender can pay half of the minimum fine within 48 hours from the date of notification of the report of infringement.

1.4.3.3. Information systems and databases used

In order to control foreign drivers, the investigating authorities may currently rely on six contact points, as follows: the Galati Trilateral Contact Centre, the Artand Contact Point, the Cenad Contact Point, the Giurgiu Contact Point, the Oradea Contact Point and the Porubne Contact Point. The disadvantage of these checks is that the road transport vehicle must be stopped (for several hours) while awaiting the results.

In the future, once Romania joins the Schengen area, access to the vast database "SISone4ALL" will be provided and it will permit a quick query, at international level, on goods and people.

1.4.4. Conclusions on the harmonization of laws on labour relations and occupational health and safety with those of road transport: possible transport situations

The issue of posting of workers in the transnational provision of services is in itself an issue not sufficiently analysed in Romania, as the situations encountered in practice are rare and cover a small percentage of the lucrative local business. In most cases, wage levels, the core of the analysis, is lower in Romania than in other EU or EEA countries, which can reduce the competitive pressure of foreign providers, based on this competitive factor.

When the posting of workers in the transnational provision of services is implemented in road

transport, given the specific mobility features of this activity, new elements of uncertainty and doubt in the application of legal norms arise.

International carriage means by definition the crossing of one or more borders of several EU or EEA countries by a vehicle with driver. Shippers or consignees of goods, points of embarkation and disembarkation of passengers are usually in different states.

Specific European rules apply to the transport activity, since this performance of services is excluded from the scope of Directive 2006/123/EC *on services in the internal market* and it is regulated separately by EC Regulation No. 3118/93 *laying down the conditions under which non-resident carriers may operate national road transport services of freight within a Member State* or Directive 96/26/EC *on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations* (EC Regulations No. 12/98, No. 1071/2009, No. 1072/2009 and No.1073/2009).

Directive 96/71/EC and Law No. 344/2006 *concerning the posting of workers in the transnational provision of services*, apply also to road transport activities.

Even if current regulations do not provide for a clear differentiation of situations that may occur in international road transport, a clear distinction is nevertheless necessary to apply a proper legal treatment.

When the provision of services in international road transport takes place in the usual way, including roads crossing multiple states, or repetitive routes, and in both cases the points of departure and arrival of the vehicle is in the country of origin, we can not speak of a transnational provision of services as defined by European directives and their national transpositions.

The applicability of these European rules occur when the transport activity differs from what stated above, and there are domestic routes (loading / unloading within a same State other than their state of origin - ***cabotage activity***) as part of an international route, or business focus on a geographical area other than that where the business is established.

Law no. 344/2006, clearly applies to international road transport activities in a cabotage regime.

A carrier based in another EU or EEA country performs consecutive loading / embarkation and unloading / disembarkation of goods and passengers in Romania, under transport service contracts. Basically, this carrier does internal transport activities in Romania, an activity subject to special treatment for foreign road carriers.

Combined transport is similar to cabotage and occurs when one of the transport links is solely on the national territory. Goods are transported by ship or ferry to the port of Constanța, and from there the containers are attached to tractor heads and transported to Bucharest. Even if the internal road is integrated in successive transport operations to carry goods from sender to recipient, we are dealing with a supply of service falling under the scope of the provisions of Law no. 344/2006.

The specific procedure for the posting of employees in the transnational provision of services in Romania, established by Decree Law No. 104/2007, shall apply to cabotage and combined transport activities, such as those described above.

In the absence of special provisions for road transport activities, given the mobility and the provision of services across the territory of several counties, notice of posting of employee will be submitted to the Labour Inspectorate of the county where the transport begins (cargo loading or boarding of passengers) and will state the entire route.

In the absence of a legal representative of the carrier in Romania, one of the drivers will be appointed to represent the carrier in relation to supervisory authorities.

Other posting situations within international road transport, to which the provisions of Law No. 344/2006 can be applied, refer to other industries, where the specific nature of mobility does not affect the nature of legal relations.

This is the **posting of a car driver** from the “parent” company in a EU or EEA State to a subsidiary carrier in Romania or the provision to a Romanian carrier of a **driver by a temporary work agency** of another state.

SECTION II – MAKING INSPECTION ACTIVITIES MORE EFFECTIVE

Chapter II.1. Inspection cases

II.1.1. Introductory note

In this part of the Guidelines, three highly significant cases on the transnational use of workers in the transport of goods by road have been included.

The three cases that follow have a minimum common denominator: the use of foreign labour at a low cost.

The artful establishment of a legal entity operating as a workforce supplier, with registered office in a country where labour costs are much lower, or the use of a company under the guise of the provision of services or even the simulation of the conclusion of several commercial contracts (eg lease or rental of vehicles) to carry out what in reality is a supply operation of drivers of vehicles, represents a practice for many years now firmly established among road transport companies.

This explains, at least in part, the phenomenon of the fragmentation of transport companies, which determines a reality made up of many companies with a small number of employees (definitely not sized to the company's actual turnover). This will happen at least until every individual Country sets up a minimum wage and until joint liability remains outside the contract of carriage.

The three cases that follow are the result of a selection that the project team has made among many concrete cases experienced either directly or through stories told by the industry operators (institutional supervisory bodies, workers and trade unions, employers and their industry organizations).

By these cases, and with no claim of exhaustiveness, we intend to offer labour inspectors a linear and clear method of interpretation for some of the most frequent and common practical

assumptions that we find in supervisory activities. This reading of actual cases wants to be a natural complement to the indications given in the previous sections of these guidelines.

Although each of these cases highlights the specific characteristics and peculiarities of the legal system of origin, the exposure of the three experiences follows a logic path that starts from the narration of the facts that those in charge of institutional controls have been able to establish and continues through a (necessarily) brief analysis of the regulatory framework in both transport and social legislation. Finally, each case comes to a conclusive solution, sometimes a judicial one, other times an administrative and inspective one (leaving alternative conclusions still open, and perhaps useful to the reader as further food for thought).

II.1.2. French case no. 1

A group of three road haulage companies based in France established a subsidiary in Poland with as business purpose the carrying out of road haulage activities.

The Polish subsidiary made use of about one hundred drivers employed under a contract of employment, according to the Polish regulatory regime. At the conclusion of each individual contract of employment the parties entered into a verbal agreement, stating that the place of performance of the service was France.

These drivers, of Polish nationality, often performed their services on the French territory, observing work cycles of six weeks of service and a week of rest, in Poland. During each working week, they had six days of service, separated by a rest day.

The company that provided the vehicles bore the cost of fuel and, for each of the drivers, bore the expenses for a trip a year between Poland and France. In addition, during the period of service in France, this company provided accommodation to the Polish drivers.

The Polish subsidiary was not the owner of the vehicles which belonged to the group companies, that granted the availability and use of these vehicles under a lease contract. The Polish subsidiary, in turn, sublet them to the group companies, with a Polish driver.

Analysis of the case from the viewpoint of transport regulations

In France, the lease (or rental) of a vehicle with driver was allowed during the period between May 5, 2003 (according to a Ministerial Decree of the same date) and July 12, 2005 (the date on which a subsequent Ministerial Decree repealed the one mentioned earlier). Later on, the case of the rental of a vehicle with driver was expressly prohibited by Ministerial Decree 9 May 2007.

Analysis of the case from the viewpoint of labour law

The Court of Cassation (Criminal Chamber) ruled in relation to this matter, emphasizing the existing relationship between the French companies and the Polish drivers, whereby the latter:

1. gave orders and directives to the Polish drivers, controlling the execution of their work and exercising a disciplinary power in case of their violation of the orders given;
2. organized the work schedule and planned the rest periods of the Polish drivers;
3. delivered to the Polish drivers the necessary cards to pay for fuel and tolls, as well as mobile phones for which the French companies bore the costs.

Outcomes of investigations

Based on these clues, the criminal court has ruled that there was a real employment relationship between each Polish driver and the French companies.

The failure to disclose the relationship in question to the URSSAF (the agency collecting social security contributions) constitutes the crime of "concealed" work (travail dissimulé).

The Court also found that the leases of vehicles between the French companies constituting the group and their subsidiary established in Poland had the sole purpose of providing drivers of Polish nationality to the French companies. That said, the judges concluded that the French companies carried out transactions for profit, solely designed to use workforce in violation of the rules governing temporary work and thus were guilty of the crime of unlawful delivery of workforce (prêt de main d'oeuvre illicite). It ensues from this illegal provision that only the user can be qualified as employer (hence also the crime of concealed work.)

Finally, the Court held that the illegal supply of labour has caused damage to the Polish drivers resulting from the failure of application, to them, of the laws, regulations and collective bargaining agreements, with particular reference to the issue of wages and social protection. For these

reasons, the French companies were found responsible for the crime of subcontracting in work performance (*délit de marchandage*).

The companies that used these drivers were sentenced to pay the sum of 175,000 euros in compensation for damages and interests to the damaged social security agencies, which, in turn, have initiated proceedings for the recovery of a sum equal to 2,000,000 euros in unpaid social security contributions, in relation to the drivers involved in this case.

Concluding remarks

The case examined here is a very topical one and is often found in the practice of road transport operations, with different variations.

The core of the matter in this case (determined on the basis of many material clues), primarily focused on a real employment relationship between the French company and the Polish drivers, allows on the one hand to overcome the problem of the legitimacy of the lease contracts for the vehicles (argument used by the counsel for the defence of the French companies) and, on the other hand, prevents the application of Directive 96/71/EC for such an operation, allowing exclusive and complete application of the French social legislation, only with respect to French companies and not to the Polish subsidiary.

To this we must add the subsequent recovery, from the French companies, of the social security contributions, which represents the bulk of the economic and financial interest of this case.

II.1.3. French case no. 2

A French road haulage company (established in France) establishes a subsidiary in Slovakia.

The contract regulation provides that the drivers hired by the Slovak subsidiary shall work for five weeks in France, with a week of rest in Slovakia. However, the controls showed that the working period lasted from thirteen to fifteen continuous weeks, during which drivers were resting in the cabins of their vehicles.

Each Slovak driver had access to the sanitary structures of the parent company (the company established in France). In such spaces, each had a locker, bearing his name.

Next to the lockers were posted rules - both in French and Slovak - on the procedures the drivers had to follow in the provision of their services. In addition, the Slovak drivers received directives and orders through the computer systems installed on board of the vehicles and via mobile phone.

The company established on the French territory entrusted the execution of contracts of carriage entered into by it, to the subsidiary established in Slovakia, a situation that can be defined as : what can be defined as subcontracting or sub-carriage. The Slovak subsidiary only carried out road haulage services entrusted to it by the French parent company; it did not carry out an independent transport business. The entire fleet of vehicles available to the Slovak subsidiary was supplied by the French company.

Analysis of this case from the viewpoint of transport regulations

Subcontracts (or sub-carriage contracts) between the French parent company and its Slovak subsidiary are apparently lawful.

However, even if the agreements formally define the conditions for the execution of the subcontract, they clearly lack independent commercial purposes. In fact, the subsidiary ruled by

the Slovak law does not organize autonomously the transport operations entrusted to it with the autonomy that should characterize a genuine entrepreneur. In reality, the subsidiary follows the determinations of the French parent company, and is in total service of the latter. Hence the only purpose of the sub-carriage contracts concluded is to create a supply of labour at low cost.

In conclusion, these contracts are illegal.

Analysis of the case from the viewpoint of labour law

In the light of the total subordination of the Slovak company to the work organization and planning of activities determined by the French company, and considering also that the modalities and timetable of work performance for the Slovak drivers, formally hired by the Slovak subsidiary, are established and controlled by the French parent company, it must be evidenced an employment relationship of the Slovak drivers directly with the French company which, in principle, exercises with them all the powers of the typical employer.

Outcomes of investigations

The consequent sanctions which the French company may be liable of are:

- crime of concealed work (*travail dissimulé*), for the re-qualification of sub-carriage contracts between the two companies in employment contracts between the French company and the Slovaks drivers, not declared to URSSAF (the agency collecting social security contributions);
- illegal supply of labour (*prêt de main d'oeuvre illicite*), because the only purpose of the sub contracts concluded between the two companies was to supply workforce by one company (the Slovak one) to the other company (the French one) for profit (represented by the labour cost savings achieved by the French company). This supply of labour is not in

- conformity with the provisions of the Labour Code relating to temporary work;
- subcontracting in labour supply (*marchandage*), for damages suffered by Slovak drivers as a result of the failure of application to them of the rules of French law.
 - Upon what outlined above, the URSSAF can start a recovery procedure for the contributions and payroll taxes not paid (for the period not covered by prescription).

Concluding remarks

The reconstruction of the case as described above is much more effective and is by far a greater deterrent than the application of Directive 96/71/EC to it.

If, in this case, the Community rules on posting should be applied, the sub-carriage contracts between the two companies should be included among the "contracts for the supply of services", pursuant to art. 1, Directive 96/71/EC. However:

- the Slovaks drivers had not carried out any work in Slovakia, for the Slovak company, prior to their posting;
- the work performed by the Slovak drivers, as configured in this case, violates the French rules on temporary work and agency work, avoiding specific public policy provisions, the observance of which is the basis of application of the "Directive concerning the posting of workers".

In conclusion, there conditions for the application of Directive 96/71/EC are totally lacking.

It should be noted, finally, that the re-qualification of the sub-carriage contracts into employment contracts (see above), allows the opening by the URSSAF of a recovery procedure against the French transport company.

II.1.4. Italian case

An Italian road haulage company (established in Italy) performs road transport services for third parties, using its own vehicles often driven by drivers hired by the Italian company itself, other times by drivers employed by a Portuguese company (established in Portugal), that carries out road haulage services.

The Portuguese company has a number of employment contracts with its drivers and the company assets also include the ownership of vehicles for road transport of goods for third parties.

In this case the Italian company enters into lease contracts for its vehicles with the Portuguese company, granting the latter their use in road transport operations on the Italian territory as well as in the international arena. The Portuguese company undertakes to pay a rental fee.

The vehicles leased by the Italian company to the Portuguese company are always and exclusively conducted by drivers who have an open-ended contract of employment with the Portuguese company (in accordance with art. 2, para. 1, Letter D) , Directive 2006/1/EC).

Special characteristics of the lease contract

An analysis of the contract agreed between the parties has been able to identify, through interpretation, two groups of clauses:

1. terms of burden sharing. In particular:
 - a. the cost of fuel, lubricants, tolls, routine maintenance, replacement or maintenance of tires, liability insurance, fire and theft is borne by the Italian company, owner of the vehicle;
 - b. the cost to the custody of the vehicle and the costs arising from liability for breach of the rules governing Highway Code and the violation of the rules governing the employment relationship with the driver shall be borne by the Portuguese company, the

user of the vehicle .

2. exclusivity clauses. In particular:

- a. The rented vehicle can be driven only by drivers regularly employed and paid by the Portuguese company (this is required by art. 2, para. 1, Letter d) Directive 2001/1/EC);
- b. The rented vehicle can only be used in transport operations commissioned by the Italian company owner of the vehicle, related to transport contracts concluded by the same Italian company.

Analysis of the case from the viewpoint of transport regulations

The lease of the vehicle between two road haulage companies is allowed and protected in national law and EU law.

In this case the discipline ruling the lease of vehicles to be used in road transport operations between two companies belonging to two different EU countries must be applied.

First of all, it must be specified that the lease of the vehicle is allowed only "without driver" (art. 2, para. 1, Letter B) Directive 2006/1/EC). In this case, in the light of EU and national legislations, in force in the leasing of vehicles for international transport of goods, the two companies formally implement a lawful case.

However, the contractual commitment undertaken by the Portuguese company to use the leased vehicle solely for the performance of transport contracts concluded by the Italian company and the clause according to which it is up to the latter to determine and manage the operations show that the role of carrier is exercised by the Italian company. In short, this anomalous profile sees that the Italian company is the one that enters into contracts of carriage with the different consignors and, at the same time, it is also the owner of the vehicles.

On the other hand, the fee paid by the Italian company to secure the exclusive use of the leased

vehicle in transport contracts entered by the Italian company is designed to finance the rent that the Portuguese company pays. In this perspective, some of the costs incurred by the Italian company, related to the use of the rented vehicle, play the same function as "financial provision" to support the rental fee of the vehicle. In fact, there appears to be a lack of consistency (although there is no specific prohibition to that effect) in the fact that the costs of the use of the leased asset (cost of fuel and lubricants, road tolls) and those attributable to its routine maintenance (eg replacement or maintenance of the tires), are borne by the owner-lessor (the Italian transport company) and not, more logically, by the user (the Portuguese transport company).

For this reason, the focus of the inspection should be on gathering evidence on the fictitious nature of the lease. The latter, in fact, seems designed to mask a substantial operation of supplying of drivers by the Portuguese transport company, in favour of the Italian company.

Analysis of the case from the viewpoint of labour law legislation

The fictitious nature of this commercial operation, with the substantial and exclusive qualification as carrier of the Italian entrepreneur, can be tested by analysing labour documents as well as by checking the commercial documents. In particular, as mentioned, the investigations must be intended to demonstrate the artificiality of the lease, whose cost is funded with the payment of certain sums by the Italian owner of the vehicle. This could be proved by analyzing the invoices issued:

1. by the Italian company, attesting to the payment of the rental fee for the vehicle by the Portuguese company;
2. by the Portuguese company, attesting to the payment, made by the Italian company, of the ordinary operating expenses for the vehicle (usually borne by the user of the leased property), as specified in the contract;

3. by the Portuguese company, proving the payment of a remuneration by the Italian company to ensure the exclusive execution of transport operations commissioned by the Italian company.

The lease, in short, would be entered for the sole purpose of formally justifying the presence of a driver not directly hired by the Italian company.

In the reality of the relationship between the two companies, the leased vehicles have never been in complete availability and financial management of the Portuguese entrepreneur, who was confined to providing drivers employed by him, to be used to drive the vehicle (only formally) acquired for lease, but whose commercial use was in every respect managed and determined by the Italian entrepreneur.

Possible outcomes of the investigations

The TRANSPO working group identified two possible alternative conclusions, which seem both consistent with the existing legal framework, also because there are no indications of administrative practice and specific jurisprudence. In particular:

1. exclusion of this case from the scope of the Directive 96/71/EC, for the absence, depending on the length of service of Portuguese drivers on the Italian-owned vehicles, of a real connection with the Portuguese company (even in the presence of a formal employment relationship with the Portuguese company, but not, however, in relation to the operations carried out in connection with the use of the Italian vehicles). There are no elements of a real posting under the above-mentioned Directive. Framing of the work performance of drivers involved in many contracts of employment between them and the Italian company, based on the real and functional hired work these drivers performed on behalf of the Italian company, which shapes in all respects their relations. Criminal sanctions: illegal use and supplying by the

Portuguese company as well as by the Italian user. The consequences of unpaid contributions are ruled by the provision contained in Art. 5, EC Regulation No. 987/2009, under which the A1 form attesting to the payment of social security contributions to the Institute of origin of the worker, must be accepted "*by the other Member States*". Therefore, according to current regulations, once fully established the existence of the employment relationship in Italy, a full recovery of the contribution due to the Italian social security agencies can be started, only after the "removal" of the contract declared as invalid by the Member State where it is issued. However, such a conclusion could be hampered by the absence of an immediate exercise of managerial , executive and disciplinary power by the Italian company towards the Portuguese drivers, who, while carrying out the transport activity in the only and exclusive interest of the Italian company, claim to receive directives from the Portuguese entrepreneur, with whom, beyond their use on Italian vehicles, there is a real working relationship, characterized by the accomplishment of actual transport operations on behalf of the Portuguese company;

2. restatement of the case in the framework of labour supply, where the supplier is the Portuguese company, who occasionally acts as such. The latter, since it is established in a State other than Italy, cannot be obliged to prove to possess the legal and financial requirements necessary for those agencies established in Italy. The case, however, may not be considered an illegal labour supply, although it is not carried out by a supplying agency (not even under the Portuguese law) because (and until) it is not recognized as such.

Therefore, to the Portuguese company (which would operate as a de facto supplying agency) would be applicable the regime of equal treatment foreseen in art. 23, paragraph 1, Legislative Decree n.o 276/2003, also in accordance with art. 4, paragraph 1, legislative Decree no. 72/2000, and to the Italian user the joint liability, pursuant to art. 23, paragraph 3, of the abobe mentioned Legislative Decree. This reconstruction would allow to implement, for the

ascertained wage differences, the measure of formal notice of enquiry referred to Article 12, Legislative Decree no. 124/2004, towards the Portuguese company, as main liable person (the formal employer, acting as supplier) and towards the Italian company, as jointly liable person (the employer de facto, acting as user) ¹⁶.

Concluding remarks

The two alternative solutions stated above seem to offer a more adequate protection to workers involved in a transnational posting, compared to the application of the rules laid down in Directive 96/71/EC, implemented in Italy by Legislative Decree No. 72/2000, which in the specific road haulage issues does not seem likely to ensure:

- equal pay and equal treatment, because pursuant to art. 3, paragraph 2 of the above stated Legislative Decree, the Directive refers only to subcontracts and moreover to those characterized by their performance "within companies";
- the involvement of the user in the joint liability. In fact, apart from the applicability of the liability connected to the "*rights of workers*" (for which is unclear whether they include social security contributions and insurance premiums), joint and several liability, as set by art. 3, paragraph 4 of the above mentioned Legislative Decree refers "*to the employees of the transnational contractor*" and not to the workers under a contract of carriage, which as noted, by choice of the Legislator, shall constitute a separate contract, characterized by elements such as to justify a separate discipline.

¹⁶ On this point, see "The posting of workers in the European Union - Handbook for labour inspectors and businesses, Ministry of Labour and Social Policy", 2010, pp.23-24 (Project Empower ref. VS/2009/0476, November 2010). <http://www.lavoro.gov.it/NR/rdonlyres/94673012-D332-4D64-BDB7-C809650E529A/0/Vademecumdistaccocomunitario.pdf>.

Chapter II.2. The inspection activities in FRANCE

II.2.1. The French system of labour inspection

The French labour inspectorate is called “Directorate General of Labour” because of the three following characteristics:

- Officials of the Directorate General of Labour must ensure the enforcement of “labour regulations” provided both by the state (the Labour Code) and by conventional sources, including collective bargaining;
- The labour inspection service is responsible for all establishments, except those for which the Labour Code provides a specific organization. In general, the Directorate General of Labour does not intervene in the public sector.
- The French Directorate General of Labour takes action in all the aspects of the employment relationship: working conditions, individual and collective labour relations, and employment conditions.

II.2.1.1. Organization of the Labour Inspectorate

The Directorate General of Labour is connected to the Ministry of Labour. And it is responsible for the preparation, management and coordination of employment policies to improve labour relations and working conditions and the quality and effectiveness of the law that governs them.

In the field of labour relations, it carries out the function of central authority for labour inspection.

It also provides support and assistance to enforcement officers in carrying out their duties.

The territorial administration to which the services of the Directorate General of Labour are connected is the DIRECCTE (Regional offices for enterprises, competition, consumption, labour and employment).

The local presence of DIRECCTE is secured by territorial units. They address the issues on labour, employment and economic life raised by companies, employees and their representatives at departmental and local levels.

The labour inspection office is its territorial level of intervention in companies.

In 2010, there were 785 of these inspection offices with a total of 2595 inspection agents.

Each office consists of a labour inspector or a Deputy Director of Labour, and one or more inspection officers who exercise their powers under the authority of the labour inspector.

II.2.1.2. The two priority areas of work of the Ministry of Labour on posting

As concerns posting, the Ministry of Labour directs its actions towards strengthening the effectiveness of the implementation of Directive 96/71. The action is especially aimed at:

- (i) Improving information for the actors of posting;
- (ii) Developing o cross-border cooperation among supervisory bodies.

(i) Improving information for the actors of posting

General Information, available in 6 languages (French, German, English, Portuguese, Romanian, Polish) on the law applicable to posting situations, is currently available on the website of the Ministry of Labour (employment (www.travail-emploi-sante.gouv.fr), under the heading of practical information (see box, "Practical advice on employment law," and the heading "posting of workers").

The ex ante declaration form for the transnational posting of workers in the framework of a cabotage is available on this site, like all other modules.

For a more accurate and appropriate information to all actors of the posting (employees, service providers foreign companies, French companies wishing to send their employees abroad, clients in France ...), it is underway a revision of the web page on the posting on the website of the Ministry of Labour.

The Directorate General of Labour also provides good information to labour inspection services on the applicable law, and assists them to overcome the difficulties that may occur during the controls (language barriers, complexity of legal institutions, difficulty in obtaining the required documents, short-term periods of employment of posted workers in France .. .), in particular through the National Liaison Office. A guide for the specific control was prepared for them (available on SITERE).

(ii) The development of cross-border cooperation among supervisory bodies

As part of the implementation of Article 4 of Directive 96/71/EC concerning the posting of workers, each Member State shall designate a **Liaison Office** to allow the exchange of information between administrations with the aim of a more effective implementation of the rules of posting.

For France, the liaison office is ensured by the Directorate General of Labour and all control agents authorized to investigate and record violations of unlawful employment can address it.

France has signed bilateral agreements with **Germany** (May 31, 2001) and **Belgium** (May 9, 2003), establishing close cooperation between the border services responsible for the control of transnational posting of workers. Under these agreements, regional liaison offices have been appointed as direct contacts with their transnational counterparts, **respectively**, at the Regional

Directorate of the companies, competition and consumption, labour and employment (DIRECCTE) North Pas de Calais (exchanges with Belgium) and of' Alsace (exchanges with Germany).

On this model, and in order to extend the device of enhanced cooperation among labour inspectorates of other neighbouring states, in recent years negotiations have been carried out that led to the signing of:

- a statement **of intent between France and Spain** on September 22, **2010**, which established new territorial liaison offices on both sides of the border: two on the French side (one in Aquitaine and one in Languedoc-Roussillon), and four on the Spanish side (one in each border region);
- the declaration of cooperation between France and Luxembourg on February 15, **2011**, which established a liaison office at the DIRECCTE of Lorraine;
- the statement of cooperation between France and Italy on September 27, 2011, which established new territorial liaison offices: two in France (one in PACA and another in Rhône-Alpes), and two in Italy (Liguria and Piedmont).

II.2.1.3. The public transport of goods by road in France

The sector of public road transport of goods accounts for:

- 36 000 companies carrying out transport for third parties as their main activity
- 1 000 companies carrying out transport or freight activities.

80% of these companies have fewer than 10 employees and 3% more than 50 employees.

Every year, 200 billion tons-kilometres are transported/travelled by vehicles registered in France, 80% of which are done by vehicles hired to third parties.

The truck fleet consists of 430 000 vehicles.

The sector of third party transport employs 330,000 workers.

II.2.1.4. Cooperation in controls in France

For the Department of Transportation

The introduction of new regulations on cabotage in 2011 has encouraged the development of new control practices. In France, this has led to provide specific objectives to controllers of land transport.

The Department of Transport has in fact a specialized control service: the road transports controllers. They ensure the proper implementation of European social regulations, regulations on free circulation and those provisions relating to the organization of the profession and access to the road transport market.

France is a member of Euro Control Route (ECR) and in this framework it participates in common border controls, particularly with German and Spanish authorities. These actions are extended through joint training and exchange of practices and procedures for the monitoring and enforcement of social regulations in transport.

For the Ministry of Labour

The fight against illegal employment and use of drivers originating from countries with low labour costs are part of the struggle against all forms of fraud.

This is a government priority mentioned by the Minister of Labour to the prefects of regions and departments.

Specific targets were given to labour inspection services, particularly in terms of minutes (for instance, they have to maintain at 25% the amount of the reports produced by the common

controls that are shared by at least two supervisory bodies).

In this context, the services of DIRECCTE and DREAL were encouraged to strengthen their partnership.

The posting statements received by these services are seen as very inferior in number to the labour reality of the citizens of some EU countries.

The services mentioned some difficulty of monitoring due to language and a real level of complexity in those investigations that involve multiple control services.

The departmental anti-fraud committees (CODAF) can help develop joint actions of the whole body of supervisory authorities.

In addition, a directive was signed on March 31, 2009 by the Directorate General of Labour, the national delegation for the fight against frauds, and by the Central Social Insurance Agency (ACOSS). It aims to strengthen cooperation in particular between the labour inspection services and social security agencies, based on the National Charter, signed on September 9, 2005. This directive provides a local variant of the Charter of cooperation implemented in a concrete way through the organization of regular joint inspections.

Chapter II.3. The inspection activities in ITALY

II.3.1. Introductory note

The supervisory activities in the road transport sector is aimed at verifying compliance with the regulations dealing with taxation, traffic and road safety, and social contributions.

An investigation capable to focus all the aforementioned aspects shall necessarily involve institutional bodies, specifically responsible for the checks, on the basis of their jurisdiction in the matter: the Guardia di Finanza for tax and fiscal matters, the Ministry of Interior (traffic police) and the Ministry of infrastructures for the traffic and road safety, the Ministry of Labour, for the pension contributions.

The investigations of labor inspectors in this area would focus more often on the verification of driving times and rest periods and working time observed by drivers falling within the scope of Regulation (EC) no 561/2006 and Directive 2002/15/EC, as implemented by the Legislative Decree No. 234/2007. In addition, following the specific provisions contained in Directive 2006/88/EC, the inspection activities of officials of the Ministry of Labour are conducted on the premises of transport companies.

However, a significant part of the activities of the aforementioned officials will deal with transport companies established in Italy but using drivers from different EU countries or from countries outside the EU. Almost always, these drivers are employed by companies based in countries other than Italy, where labour costs are lower. The companies hiring these drivers are not always engaged in road transport: they are sometimes specially established outside the Italian border for the purpose of supplying drivers to Italian undertakings.

II.3.2. Institutions involved and the need for concurrent cooperation

Especially with reference to the findings concerning the genuineness of those operations related to the posting of transnational workers, a finding on the genuineness or, conversely, their fictitious nature involves delicate activities able to straighten out a mosaic of clues, involving all the institutional bodies seen above.

So, on those occasions when labour inspectors had to concentrate on posting cases, solely designed to supply low-cost labour, evading the national legislation regulating the establishment and management of labour relations, collaboration between different institutions has proved very useful and necessary to establish the different regulatory "segments" relevant for the productive sector under consideration.

Let us think (but it is just an example) of the "denial" of a vehicle lease, signed by an Italian shipping company, owner of the vehicle, in order to use a driver formally assumed by another company - the pseudo-lessor of the vehicle - and then the Italian company totally manages the transport and consequently gives directives to the driver.

The reconduction of such an operation into the statutory scheme of the employment relationship, in which the worker is directly employed by the Italian entrepreneur, or into the scheme of unlawful supply of workforce, involves a delicate reconstruction of a framework of circumstantial and factual evidence in which the institutional cooperation among agencies and bodies empowered with specific competences and technical knowledge in the field of tax assessments (Financial Police) and supervision of traffic and road transport (Ministry of the Interior - Road Police - and Ministry of Transport - Department of Land Transport) emerges in all its usefulness and needs.

The extreme mobility of the operations is another element characterizing and influencing in a decisive way the findings in the road transport sector. In this context, the investigations conducted

at the undertakings do not always prove effective. It seems that the presence of labor inspectors on the "road" is likely to prevent, at least in part, the practice of reciprocal communications "per competence" (necessary for the fragmentation of powers), where the public authority receiving the communication is called to act, with its power of investigation, only after the receipt thereof, at a time in which, often, evidence can be no longer found.

That's why public officials involved in the investigation believe that the most effective method of operation (and probably also the cheapest) is that of **concurrent and joint investigations** to be carried out in "key" places of transport and logistic operations.

Moreover, the simultaneity of the findings in the same timeframe, by the various institutions, seems to be currently needed by the recent legislative provision in Article. 7, paragraph 1, letter A) of the "Legislative Decree on development", which literally states: *"To reduce the burden on businesses and taxpayers in general (...) except for extraordinary cases of controls for health, justice and emergency situations, the administrative control in the form of access from any competent authority must be unified, it can be done maximum twice a year, and cannot last more than fifteen days. The acts committed in violation of the above are, for civil servants, disciplinary offence. Codifying the practice, the Guardia di Finanza officers, when investigating at the premises of companies, operate as much as possible in plain clothes";*

II.3.3. The sites of inspection activities in the road transport sector

As seen above, the main place to perform checks on the proper conduct of transport operations involving the use of non Italian drivers in Italy is certainly "the road". It has been said that in this area the cooperation with law enforcement authorities, through the provision of appropriate checkpoints, is very important. In these places labour inspectors can gain significant benefit from the verification of the documentation that must be present on board of the vehicle, together with

the acquisition of information by the driver of the vehicle (and any co-driver to the present), through the minutes of the statements. In addition to the usual information on the establishment of the employment relation and its performance, the indications that the driver can provide are of fundamental importance:

1. the party from whom the driver receives his orders (identification of the person who tells the driver the route to follow, gives him the list of recipients, organizes his rest periods etc.);
2. the party that entered the original contract of carriage, if the inspector collects a declaration of a driver employed in a contract of sub-carriage.

Other possible checks can be done at the premises of the undertaking (its registered office and any branch offices with administrative departments) where the administrative offices that keep the required documentation are to be found.

However, control activities can be particularly effective if concentrated during the course of transportation and logistics operations. That's why ports, dry ports, logistics platforms and car parks, as well as border crossings are considered as the best places where to perform checks, as it is highly probable to find violations there. Last but not least, it must be highlighted the possibility to check the contracts of logistics services at the legal and operational offices of major clients or in the yards or premises of major retail companies, which are often the recipient of the transport activity.

II.3.4. The relevant documentation

With regard to the documentation on which to focus inspections, the labour inspector meeting with a non-Italian driver will have to ascertain the regularity of his employment relationship. The most common practical cases in which a non-Italian driver is found to perform road transport

activities on the national territory can be classified as follows:

1. foreign driver, an employee of a company not established in Italy, which operates on the MS territory in a regime of cabotage, using a vehicle registered abroad, owned by a foreign undertaking;
2. foreign driver, an employee of a company not established in Italy, which operates on the national territory in the framework of an international transport.
3. foreign driver, an employee of a company not established in Italy, which operates throughout the country using a vehicle registered in Italy, owned by an Italian company.

With reference to the first situation, it must be verified the conditions and compliance with the limits established by EC Regulation No. 1072/2009 on cabotage in the road transport of goods. In this respect, the aforementioned EC Regulation, at Recital 17 states the applicability of the provisions of Directive 96/71/EC concerning the posting of workers in the provision of services, to transport companies carrying out cabotage.

With reference to the second situation, in theory, the regulations in force in each territory of transit should apply. However, for general and consolidated practice, it is considered more reasonable and practical that in cases of international transport (i.e. transport through the territories of multiple Member States), the transport shall be considered as an international transport subject to the international law applicable to the driver's employment relationship.

Certainly the third situation raises the issue of verifying the genuineness of the posting, or the actual transnational provision of services, or a transport activity designed to conceal an employment relationship with the Italian carrier, who is the real employer. In particular, any lease (rental) of the vehicle by the Italian company (owner-lessor) in favour of a foreign undertaking (user-lessee) can be a formal trick (well established in the practice of sub-carriage services) to

circumvent the law regulating employment relationships.

In such cases, for a reconstruction of the situation based on circumstantial evidence, it may be useful to examine the documentation required to be kept on board and to be shown to control services. In particular:

1. **the transport card**, or documentation including the same information as in the transport card. It is essential that the examination of the transport card is made during a road check, during the transport of goods, since this document is not subject to mandatory conservation, once the goods are delivered to the recipient;
2. **documentation for international transport:** international consignment (CMR), customs documents, any other document that must necessarily accompany the international transport of goods, in accordance with Community legislation, international agreements and conventions;
3. **documentation relating to employment**, which is different depending on whether:
 - the driver works for a company established in Italy. In this case, the list, contained in the table approved by the Central Committee of the Roll of drivers, is compulsory. That table lists all documentation that must be on board of the vehicle, depending on the type of service to be performed by the driver of the vehicle (i.e. based on the employment relationship between driver and transport company);
 - the driver (a EU driver) works for a company established in an EU Member State. In this case, no documentation is foreseen. However, many have considered that, even in this situation, the provision of a document equivalent to the driver attestation, or even a real driver attestation should be compulsory. This requirement is also clearly manifested in Regulation (EC) No 484/2002, Recital 3, where we read: "*it is therefore appropriate to establish a driver attestation, to limit the scope of this Regulation to drivers who are*

*nationals of non-member countries and to decide subsequently, **on the basis of an assessment by the Commission, whether or not the Regulation should be extended.***" In

short, the EU Regulation requires the Commission to examine the effects of law enforcement on driver attestation only for citizens non-EU nationals, in order to present any proposals for amendment of the regulation, in the sense of extending the attestation also to EU drivers involved in international transport operations;

In this case, if the vehicle is leased by a EU undertaking, in addition to the lease, on board of the vehicle there must always be present also the employment contract (or its equivalent), proving the employment relationship between the driver and the lessee of the vehicle. Otherwise, the administrative offence of illegal transport can be ascertained and be punishable pursuant to art. 46, L. No 298/1974.

- the driver is a non-EU national and works for a company established in Italy, or in any other EU Member State, carrying out international transport operations. In this case, the driver must be in possession of the driver attestation. This document is issued:

- to the transport company;
- in relation to each non-EU driver;
- by the in charge territorial office of the Labour Ministry - DPL – Province Department of Labour (depending on the location of the registered office of the applicant company, or the operating office by which the driver is hired or for which he works, or the operating office of the user company in case of a driver provided by an employment agency).

4. **lease of the vehicle** that must necessarily be onboard of the vehicle. The Highway Code provides at Art. 94, paragraph 4 - *bis* inserted by art. 12, paragraph 1, lett. a) Law No. 120/2010, that "... acts (...)resulting in a change of the holder of the logbook, or involving the

availability of the vehicle for a period exceeding thirty days, in favour of a person other than the holder himself, in the cases provided by the regulation the assignee must declare this situation, within thirty days, to the Department for Transport, shipping and information and statistics systems so that it can be entered on the logbook and in the national archive " of vehicle set up at the Department of Land Transport.

Moreover, always as concerns the lease, it is observed that:

- in the case of Italian undertakings the lease can be entered into only by undertakings that are both registered in the national Roll of road haulage businesses operating the transport of goods for third parties;
- within the EU, the lessee company established in Italy may also lease a vehicle from a company not established in Italy, which is not engaged in road transport, provided that the vehicle is in good standing with respect to the legislation of the Member State of establishment of the lessor company, and complies with the rules of the Italian State on administrative authorizations necessary to carry out the planned activities of international transportation.

Finally, in terms of content, according to Directive 2006/1/EC (which finds its implementing source in the Decree of the Minister for the Coordination of EU policies of 16.02.1994, no. 213, in particular, Art. 3 and 4) the lease of the vehicle shall disclose:

- a. the name of the lessor;
- b. the name of the lessee;
- c. the date and duration of the contract;

If the driver is not hired by the company that has signed the lease, the driver's employment contract or his last pay slip, or a certified extract of the contract including:

- a. name of employer
- b. name of employee
- c. date and duration of the employment contract

must be present onboard of the vehicle.

In this respect, the Circular Letter of the Ministry of Infrastructure and Transport - Land Transport Department - Directorate General for the road transport of persons and goods, no 63/m4, 8 May 2006, states that *"the Community provisions identify with precision the elements of the lease agreement that, therefore, must be regarded as" essential elements "of the contract. Consequently, the lack of even one of these elements determines the radical nullity (absence) of the legal transaction. During the checks, therefore, Art. 46, Law no. 298/1974 shall be applied"*.

It should also be noted that, pursuant to art. 4 of Law no. 136/2010, for the building sector, in order to make it easy to identify the ownership of the vehicles used to transport materials for the construction sites, the delivery note of the materials must indicate the registration number of vehicles and the name of the owner of vehicles.

II.3.5. Strengthening inspection methodologies

The improvement of inspection methods consists primarily in a systematic planning of controls in the places mentioned above:

- ports;
- dry ports;
- logistics platforms;
- places of loading and unloading;
- municipal car parks;

- customs areas;
- border crossings.

The controls aimed at areas in which excise tax is still applied (e.g. transport of mineral oils, tobacco, alcohol), may be particularly effective as it currently exists for these areas an obligation to have the carriage note (administrative document of excise tax or simplified administrative document).

It could therefore be appropriate to carry out a control aimed at transport companies that have requested the intervention of the CIGS (special unemployment redundancy fund), claiming to suspend their activities. In particular, the control in this case would focus on the verification of the use of vehicles by other carriers in order to ascertain the "circumvention" of the legislation on CIGS, the apparent suspension of transport operations, accompanied by a substantial use of vehicles through the rental of these vehicles (e.g. by way of hire) to third parties with respect to the undertaking receiving the CIGS treatment.

A check of the number of vehicles reported to the Roll of transport companies and the number of active employees may be significant. If the vehicles are more numerous than the employees, it is possible that the undertaking uses workers under the transactional posting regime, or uses its own vehicles by renting them (in relation to which the possibility of fraudulent use of the vehicles should be considered).

Another significant check could be the acquisition from ANIA (National Association of Insurance Companies) of the names of the persons driving the vehicles involved in accidents, to verify their employment situation.

Another important element of control concerns the compliance with the minimum operating cost parameters, as they may be prescribed pursuant to art. 83 - *bis of* Decree No. 112/2008, conv. with mod. by Law No. 133/2008.

Finally, from a more strictly organizational perspective, it would seem appropriate that the various control services of the various EU Member States had access to a common online platform dedicated to the collection of data from digital or analog tachographs recorded at roadside checks or at the premises of the company.

Chapter II.4. The inspection activities in ROMANIA

II.4.1. Introductory note

The control powers of labour inspectors cover all activities involving the workforce, being limited only by the territory of the State, the Labour Inspectorate for which they work, and not including military areas, which have their own control system.

The road transport sector shows some peculiar features, due to the mobility of the work done by the workers involved. For this reason, inspection visits, as the central element of the inspection, are carried out in particular ways, according to the activity performed and the procedure.

II.4.2. Authorities involved in inspection activity

The **Romanian Road Authority** (Autoritatea Rutieră Română: ARR) has set up a Specialised Technical Department of the Ministry of Transport and Infrastructure to deal with road transport until 04 December 2011.

Since March 2005, the AAR has the status of active observer in the European organization of this industry, the Euro Control Route - ECR, of which it has become full member since January 2007. The organization aims at implementing similar control procedures, training of inspectors, organizing joint actions and / or simultaneous control, exchange of experience, etc..

By adopting Ordinance no. 26/2011, **State Inspectorate for Road Transport Control (ISCTR)** (Inspectoratul de Stat pentru Controlul în Transportul Rutier) is, from December 4, 2011, the specialized permanent technical body of the Ministry of Transport and Infrastructure designated to provide inspection and monitoring compliance with domestic and international regulations on

road transport, with particular reference to:

- Conditions of the performance of road transport activities, and training of personnel with a view to obtaining a driving license;
- road safety and environmental protection;
- the technical conditions of road vehicles;
- the bulk and / or maximum size allowed on public roads and the maximum authorized total mass;
- Tolls and duties to travel on the national road network in Romania.

The ISCTR staff exercise the powers of inspection and control which in the past belonged to the inspectors of the ARR, the Rumanian Registry of Vehicles and the Rumanian National Motorways and National Roads Company, as well as the staff of the Ministry of Transport and Infrastructure with a mandate for this purpose.

The **Traffic Police** are part of the Rumanian Police , being the competent authority in traffic on public roads that formulates and promulgates specific regulations, that supervises to the implementation and the exercise of controls with regard to compliance with the regulations of this sector.

As concerns traffic controls, the Rumanian Traffic Police have the following core competencies:

- Guide, supervise and control compliance with traffic regulations on public roads, with the exception of what is exempted by law, and collaborate with other public authorities, institutions, associations and NGOs to improve traffic organization and road systems, to ascertain the technical performance of vehicles, to better train drivers and to take some measures of road safety education;

- Traffic Police keep a record of the fines and sanctions applied in accordance with the law;
- They use technical and scientific methods and tools in their on scene investigations where the offenses were committed and in their examination of evidence and evidence tools;
- They offer support, in accordance with the law, to the central and local public administration authorities;
- They cooperate with other agencies of other states in international institutions to prevent and combat transnational crime.

The Labour Inspectorate has signed **cooperation agreements** with the authorities involved in the control of road transport activities.

A **Protocol of cooperation by the ARR and the Labour Inspectorate** has been signed on 14.07.2010. The purpose of the Protocol is to establish a common and unified framework for collaboration and cooperation among the signatory authorities, to ensure safety and health at work, road safety, as well as the harmonization of competition rules among the various types of land transports.

The object of this Protocol is:

- Cooperation to conduct joint actions and traffic control and controls at the offices of transport operators, in accordance with the specific legislation on safety and health at work and in labour relations;
- Exchange of information on the investigation of cases of non-compliance with regulations on physical integrity, road safety, health and safety of employees and other participants in road transport activities;

- Initiate and develop joint programs in this area.

The Protocol of cooperation between the General Inspectorate of Romanian Police and the Labour Inspectorate was signed on 17.06.2006 and extended by amendment on 10/02/2011. The purpose of the Protocol is to ensure compliance with labour legislation as part of employment relationships, the selection and recruitment of the workforce, to combat undeclared work, the illegal selection and recruitment of workforce and other violations of regulations pertaining to this area.

The Protocol has the following purposes:

- Mutual referral, when, following checks when taken, violations of labor laws or criminal acts are found;
- support in identifying people avoiding controls;
- participation in joint monitoring and control activities ;
- expert assessments to determine which rules were violated, and who are the people responsible for those violations.

II.4.3. Control of road transport activities

In road transport, the probability that a transport company established in a EU or EEA member state be present with an office on the territory of Romania is very low. For this reason, traffic control is the main and more useful way of inspection.

It is possible to continue the checks at the headquarters of a transport operator based in another state only as part of a cooperative activity with the inspection authority of the other state.

II.4.4. Control activity

Traffic control is a specific road inspection activity and allows to control the activities of the car driver without previously warning him.

Given that labour inspectors are not allowed to stop vehicles in traffic, such inspections are carried out in cooperation with other authorities (Romanian Road Authority and Traffic Police). Traffic inspectors have the right to stop any vehicle, other than those exempted by law, running on the public highway and used to perform a road transport, as well as to stop driving school vehicles during the training of people to get a driving license.

When performing traffic control, traffic inspectors have the right:

- to stop the vehicle in a way that assures traffic safety;
- to suspend the right to use the vehicle by retaining registration plates and registration certificate;
- to retain transport licenses and authorizations and any other documents relating to road transport activity or the activity of preparing people to obtain a driving license.

Joint actions are conducted on the basis of cooperation agreements concluded with other institutions, based on joint control plans which set out the competences, information sharing and effective cooperation among control team members from different authorities.

Traffic control and control of rest / parking / maintenance areas shall be carried out according to a suitable procedure for the aim to be achieved, the place where the control takes place and the current situation, and may include the following activities:

A. Preparation of the control

- Information on the control objectives and the source of information held by the authorities participating in the control;
- Instructions to control team members based on the joint plan, including information on health and safety risks at work due to the presence of road traffic;
- Appropriate equipment for weather conditions at the time of control and visibility needs in traffic conditions;
- Ensure the functioning of technical means and equipment used (mobile and data communications, computer equipment, audio-video recording equipment, etc.);
- Provision of identification means (order of delegation of control), control documents and necessary forms;
- Organization of transport and travel activities to reach the place / area / route where the control shall take place.

B. The organization of the on the field control

- Positioning of road signs that will ensure protection of the control team;
- Stopping vehicles.

C. Communication with the people using the vehicle¹⁷

- Presentation and identification of control team members;
- Information on the purpose of controls, duration and main rights of labour inspectors, traffic inspectors and traffic police officers;
- Request of the certificates and documents needed for the control (identity card,

¹⁷ Main terms used in this paragraph are available in Annex II of this Guidebook where a questionnaire for road transport workers is proposed.

the vehicle registration certificate, proof of the last technical inspection of the vehicle, tachograph chart, driving license, a copy of the employment certificate or other document attesting the employment relationship, document stating the date and result of training on safety and health risks at work, the professional certificate, , document stating the date and results of last medical examination, customs registration documents, the last receipt / invoice for fuel, evidence of toll payment);

- Questionnaire on the subject matter of control:
- place and date of loading / unloading of goods and boarding/ disembarking passengers;
- Where and when was the driver's last rest day/week;
- For which transport operator the driver carries out his activities;
- Is there a written employment contract with the transport operator and what this is;
- What is the date on which the employment contract was signed and what was the first day of work;
- How is the driver paid (amount /time);
- If he receives other sums of money for the periods in which he performs his transport activities, and if he has to pay for his food and accommodation during the activity;
- What are his monthly / weekly hours of work as shown in the employment contract;
- If he has exceeded his work program and, if so, how is the overtime paid;
- What is the paid annual leave, to which he is entitled under the contract of

employment and how many days of paid vacation has he enjoyed during the current year;

- If he has been trained on the safety and health risks at work, when this training was last done and how long the training lasted;
- When he was last medically examined;
- The protective equipment he has been provided with and the contents of the toolbox present on board of the vehicle;
- In the case of "hazardous" goods, if he has received specific instructions;
- Whether or not another colleague travels with him.

D. Observation, Research, documentation

- Check the vehicle's equipment (protective equipment, emergency tool kit, other methods of fire fighting, first aid kit);
- Take photos, recordings, electronic copies or photocopies, or necessary evidence or samples required for verification and certification of findings;
- Operational documentation to verify inconsistencies or unclear issues identified, based on mobile access to databases;
- Exchange of information with other members of the inspection team;
- Request for additional information or documentation on driver and vehicle;
- Decision to terminate the inspection on vehicle and driver, return of all records and documents, allowing the continuation of the journey.

E. Summary and Analysis

- According to the preliminary results of the inspection, the inspection team will

decide whether to extend the checks at places of loading / unloading and collection/ delivery, the place of parking or rest, the place of repair / maintenance of the vehicle, the office of the transport operator on the territory of Romania;

- Checks may continue through access to databases available to the institutions involved in the inspection, or by seeking the help of other authorities;
- If it is ascertained that the driver is a posted employee of a "parent" company in another EU or EEA member state working with a Rumanian subsidiary, or temporarily provided to a Rumanian carrier by a temporary employment agency of another State, inspection activities will continue at the headquarters of the Rumenian carrier.

F. Visit inspection at the office of the Romanian carrier

This visit will follow the usual course of an inspection visit to an employer, and will also include specific checks:

- inspectors will request all those records and documents that the driver did not have onboard of his vehicle;
- inspectors will request specific records and documents relating to that specific road transport, which are usually kept at the headquarters of the carrier:
- inspectors will request establishment and transport licenses, and drivers' certificates;
- Transport documents from a previous period of employment to be determined by the inspector according to the situation (CMR and its registry, bill of carriage, route cards, transport orders);

- tachograph charts or their electronic equivalent, together with data extracted from digital tachographs for an earlier period;
- Training and health and safety records, risk assessment certificates and certificates on current standards on safety and health at work;
- Financial and fiscal documents related to the business (invoices, receipts, records of fuel payments);
- Other certificates and documents relevant to the inspection.

G. Conclusion

Inspections should provide sufficient data to the monitoring team to determine whether:

- transport is carried out in compliance with the established legal regulations for road transport;
- it complies with the laws relating to the safe deployment of road transport (driving and rest times of the driver, vehicle loading);
- the driver and other persons involved in the transport have a legal form of employment;
- this is a provision of services regulated by Law No. 344/2006 (on the track vehicle and driver work history);
- employees engaged in services are posted on the Romanian territory and benefits from the minimum employment conditions established by Law No. 344/2006, in accordance with our legislation (maximum duration of working time and minimum rest periods, minimum paid annual holidays, minimum wage, including overtime compensation or payment, conditions of workforce intermediation, in particular with regard to temporary work agencies, health and safety at work,

protection measures applicable to pregnant women or women who have recently given birth, as well as children and young people, equal treatment between men and women, as well as other provisions relating to non-discrimination);

- if the carrier established in another EU or EEA member state has sent the notification provided by legislative decree 104/2007.

Based on the findings, the team will determine the control measures to be undertaken in relation to the road transport activities checked:

- A written record of the findings during the inspection activities;
- Administrative measures against the driver or carrier;
- Application of sanctions, or law enforcement notification / investigation when there is suspicion of committing criminal offenses;
- Notification to other authorities if issues are found that do not fall within the competence of the institutions involved in the control;

Request the support of other national, or similar control institutions of EU or EEA Member State where the headquarters of the carrier are located.

H. Written report and communication

- Preparation of inspection reports and findings of violations. In case the offender does not know the Rumanian language, these documents shall be translated; translation is essential if the offender is present, since he must be notified the right to submit any objections, and the absence of such a procedure may void the sanctioning document, and a lack of understanding of the contents of the verbal report because of lack of knowledge of the language puts the legal representative

of the offender in a position to be unable to make objections; the sanctioning procedure does not include specific guidelines for these situations and the inspector must find a way to write the report that does not cancel out the offender's rights and that also guarantees the effectiveness of sanctions;

- There will be a direct control of documents when the offender's legal representative is present at the time of writing the report; in the case of writing of report in the absence of this legal representative, postal services provide transmission services with confirmation of receipt of the correspondence also for international shipments;
- For the enforcement of unpaid fines, penalties documents will be sent to the tax administration authorities, and based on a series of special procedures the payment of amounts due will be guaranteed.

II.4.5. Administrative and contraventional responsibility in labour relations and health and safety at work

In the field of labour relations and health and safety at work, sanctionable direct liability of the driver of the vehicle or another mobile worker is limited to a single situation: work performed by a person without a contract and individual work fine from 500 lei to 1,000 lei (art. 260, para. 1 lit. f of Law No. 53/2003 - *Labour Code* (R)).

For all other misdemeanor offenses, including failure on minimum working conditions set by Law No. 344/2006, the responsibility rests solely with the employer.

Mandatory measures in the field of labor relations and occupational health and safety are only available to the employer, and if they relate to work or conduct of an employee, the employer will

be responsible for their performance, and internal organizational mechanisms will determine the level of personal responsibilities.

Criminal responsibility typically belongs to the individual who is an employer's legal representative. In safety and health at work, on the occurrence of accidents at work, also the criminal liability of a worker involved in the event in question can be considered.

II.4.6. Measures to enhance control

The central element is the establishment of the transport controls that fit the specific situation verified. This activity can only be performed by reconstructing the real route of the vehicle and the history of the worker.

For vehicle route planning and driver work history, a series of preliminary data are necessary. They relate to:

- the current transport - where it started and where it ends;
- the previous transports made by that vehicles;
- the previous transports/ activities of that driver.

Information Category	Who has it	Contained in	When can be obtained
Place and time of loading and unloading of goods or collection/ delivery of passengers	<ul style="list-style-type: none"> - Car driver - Road transport operator - Beneficiary or intermediary of transport - Owners of the places of loading / unloading or collection/ delivery 	<ul style="list-style-type: none"> - CMR document - Information in digital tachograph - Declaration of the driver or of another mobile worker 	<ul style="list-style-type: none"> - during road inspection - afterwards
series of transports	<ul style="list-style-type: none"> - Driver - Road transport operator - Beneficiary or intermediary of transport 	<ul style="list-style-type: none"> - Transport Card - Information contained in the digital tachograph - Declaration of the driver or of another mobile worker 	<ul style="list-style-type: none"> - during road inspection - afterwards
journey made by vehicle	<ul style="list-style-type: none"> - Car driver - Road transport operator 	<ul style="list-style-type: none"> - GPS tracking system installed on the vehicle - Declaration of the driver or of another mobile worker 	<ul style="list-style-type: none"> - during road inspection - Afterwards
location and time where vehicle and driver were present to reconstruct route	- Rumenian National Company for Motorways and Roads	- Electronic verification of the <i>Rovignette</i>	- Afterwards
	- Other authorities (Police, CNADR, ARR, Border Police, Guardia di Finanza)	- Controls or sanctions applied in traffic from other authorities	- Afterwards
	- Traffic Police	- Fixed speed cameras of traffic police or sanctions applied in traffic	- Afterwards
	- Customs and Border Police Authority	- Recordings of inspections bodies at borders and customs operations	- Afterwards
	- Driver - Road transport operator - Merchant	-Fuel Receipt	- during road inspection - Afterwards
	- Driver - Road transport operator - Supplier / issuer	- Ferry tickets, bridges, piers access	- during road inspection - Afterwards
	- Driver - Road transport operator - Supplier / issuer	- Parking fees, car washin services, tire shops, small repairs	- during road inspection - Afterwards
	- Driver - Road transport operator - Supplier / issuer	- Vignette (toll stikers) or other payment of road taxes	- during road inspection - Afterwards

The reconstruction of the exact route of the vehicle and driver outlines a partial picture of the transport operator's activity. For an overview of transport operations, an inspection visit shall be carried to the office / place of business of the carrier or the monitoring of a greater number of

transport journeys over a longer period of time .

Deciphering how the carrier operates, the succession of journeys, itinerary routes, the location of the senders / recipients are important to define the *type of operation* (Section 4.4. of the National Regulatory Framework).

Legal regulations in the field of labor relations and occupational health and safety in transnational posting can not dissociated from the social security system applicable to the workers concerned. This legal framework transposes the fundamental principles of the European Union: freedom to provide services and freedom of labour mobility.

Starting from these premises, because the details provided in the European and national legislation regarding the posting of workers in the transnational provision of services are insufficient, applicable laws on social regime provides consistent reference elements (in particular Regulation (EC) No.987/2009). The notions that the applicable social regime can clarify are the following:

Substantial activities in the state of origin of the posted worker

The criteria are not exhaustive and may be tailored to each individual case, given the nature of the activities carried out by the state in which the company is established:

- The place where the company that posts workers has its registered office and management;
- The number of workers employed as administrative staff by the posting company in the State originating the posting and in the State of recruitment- the exclusive presence of administrative staff in the state of origin of the posting eliminates the possibility of applying the provisions relating to the posting in the case of the company in question;
- The place of recruitment of the posted worker;
- The place where most of the contracts with customers are concluded;
- The law applicable to contracts with customers and employees signed by the company originating the posting;
- The number of contracts executed in the country of origin of the posting and in the State of recruitment;
- The turnover realised by the posting company in the State of origin of the posting and in the State of recruitment, for a suitable period (for example, a turnover of about 25% of total turnover in the State originating the posting may be a sufficient indicator, whereas if the turnover is less than 25% it would require further analysis);
- The amount of time elapsed from the setting up the company in the Member State originating the posting.

Direct relationship between the company and the posted worker

- Responsibility of recruitment;
- There must be evidence that the contract resulting from the negotiations that led to the recruitment has been and continues to be applicable to the parties involved in its conclusion also during the period of posting ;
- The power to terminate the contract of employment (dismissal) must belong exclusively to the posting company;
- the posting company must retain the power to determine the "nature" of the work done by the posted worker, not in the sense of defining the details of the type of work that will be made and ways in which it will be made, but in the most general sense of establishing which must be the outcome of the work or service to be provided;
- The company that issued the contract of employment has the obligation to pay the worker (this does not affect any possible agreement between the employer in the state of origin of the posting and the company of the state of recruitment with regard to how payments are made to the worker);
- The power to impose disciplinary sanctions to the employee belongs to the posting company.

Situations where the application of posting provisions is absolutely impossible

- The company that hired the worker make this worker available to another company in the Member State in which this company is located;
- The company to which a worker has been posted makes this worker available to a company situated in another Member State;
- The worker is recruited in a member state in order to be sent by a company located in a second member state to work for a company located in a third Member State, but the requirements related to the prior registration to the social security system of the member state originating the postin have not been fulfilled;
- The worker is recruited in a Member State by a company located in another member state to work in the Member State where he has been recruited;
- The worker is posted to replace another posted worker;
- The employee has signed a contract of employment with the company where he is posted.

A significant part of the paid activity of a worker is carried out in a member state

- Working time and / or
- Remuneration
- If a general inspection makes it clear that at least 25% of the working time of a worker occurs in his Member State of residence and / or at least 25% of his salary is obtained in his Member State of residence, this means that a large proportion of all the paid activities of that worker is done in the State in question.
- Some workers in the transport sector have fixed work patterns, routes of transport and expected durations of transport. A person wishing to obtain a decision on the applicable social legislation should bring some reasonable arguments (for example, through the submission of lists of services or travel schedules or other information) to distinguish the activities performed according to the time spent in carrying out the activity in the state of residence and the time spent in in other member states.

If the work program in the Member State of residence is not available or the circumstances do not clearly indicate the performance of a substantial part of work in the state of residence, a different method from that of the work program can be used to determine whether a substantial part of the activity takes place in the member state of residence. In this sense, it is suggested to divide the activity into different parts or events, and to take a decision on the extent of the activity in the state of residence based on the number of elements registered in this state, considered as percentage of the total number of activities over a specified period (the number of loading and unloading of goods and the various countries in which such operations take place over a period of 12 months).

Registered office or place of business

In the case of road transport, the companies " that perform road transport activities must have a registered and permanent office in the territory of a member state". This requires a location at which the documents connected to the main business are kept: accounting, personnel management, driving times and rest periods, as well as any other document that the competent authority may require to see to verify the compliance with the provisions of Regulation n.1071/2009.

An analysis of the following criteria by the authority present in the place of residence is proposed, based on the information available, or in close collaboration with the authority of the Member State in which the employer has its registered office or place of business:

- The place where the company has its registered office and management;
- The amount of time elapsed from the setting up of the company in the Member State;
- The number of workers employed as administrative staff in this office;
- The place where most of the contracts with customers are concluded;
- The office that determines the company's policy and operational issues;
- The place where the principal financial functions, including bank operations, are performed;
- The office appointed on the basis of EU regulations as responsible for the management and conservation of the documents required by the regulations relating to the business sector of the company;
- The place of recruitment of workers.

Source European Commission: *Modernising social security system coordination at European level, Practical Guide: legislation applicable to the European Union (EU), European Economic Area (EEA) and Switzerland, May 2010*

Chapter II.5 Strengthening transnational cooperation

II.5.1. Improving mutual understanding of different national control agencies

In most cases, the control of the rules of posting in the road transport sector requires the involvement of multiple enforcement agencies and their coordination.

It is therefore essential that the various European control services, including services of labour inspection can identify their respective entitlements and know their main prerogatives of control.

Only then the complementarity of their respective missions and powers of each service can be fully exercised.

THE CONTROL BODIES RESPONSIBLE FOR POSTING

The control authorities in France

The empowerment of the various control bodies depends on the texts applicable to each of the offences that make up the undeclared work. The crime of covert work is the only offence that can be identified by a report of the inspection agents mentioned in Article Law No. 8271-7 of the Labour Code.

<p>Covert Work</p> <ul style="list-style-type: none"> ▪ police officers and criminal police ▪ Labour inspectors and controllers ▪ officials of the Directorate General of Public Finance ▪ officials of the Directorate General of Customs and Excise ▪ URSSAF agents, the MSA funds agents, the General Fund and the Social Security and pension social security scheme for self-employed people, ▪ officials responsible for the control of the land transport ▪ officials and sworn officers of Maritime Affairs ▪ technical officials of civil aviation agencies ▪ authorized and sworn agents of employment centres
<p>The Bargaining</p> <ul style="list-style-type: none"> ▪ police officers and criminal police officers ▪ Labour inspectors and controllers ▪ officials of the Directorate General of Public Finance ▪ officials of the Directorate General of Customs and Excise
<p>Unlawful supply of labour</p> <ul style="list-style-type: none"> ▪ police officers ▪ Labour inspectors and controllers
<p>Exploitation of vulnerability</p> <ul style="list-style-type: none"> ▪ police officers ▪ Labour inspectors and controllers
<p>Failure to comply with the posting regulations</p> <ul style="list-style-type: none"> ▪ police officers ▪ Labour inspectors and controllers

The control authorities in Italy

The competence in the control of posting is attributed to the Ministry of Labour and Social Policy,

that shall exercise such functions mainly through its labour inspectors, who also hold the status of judicial police officers, in the field of labour issues, social legislation and safety in the workplace. This expertise is added to the general powers granted by law for the application of administrative sanctions to all agents and criminal police officers, belonging to police corps with general competence. When the ascertained irregularities also involve contributory and social security aspects, the control can be exercised by officials belonging to the social security institutions (INPS and INAIL, mainly).

<p>Concealed work</p> <ul style="list-style-type: none"> ▪ Labour Inspectors of the Ministry of Labour and Social Policy ▪ Officials of social security institutions
<p>Protection of the working conditions of posted workers</p> <ul style="list-style-type: none"> ▪ Labour Inspectors of the Ministry of Labour and Social Policy
<p>unlawful use of labour</p> <ul style="list-style-type: none"> ▪ Labour Inspectors of the Ministry of Labour and Social Policy ▪ Agents and police officers belonging to police corps with general jurisdiction
<p>Failure to comply with posting conditions</p> <ul style="list-style-type: none"> ▪ Labour Inspectors of the Ministry of Labour and Social Policy
<p>Unlawful use of means of transport</p> <ul style="list-style-type: none"> ▪ Ministry of Infrastructure and Transport ▪ Traffic Police
<p>Discipline on driving and working times</p> <ul style="list-style-type: none"> ▪ Traffic Police ▪ Labour Inspectors of the Ministry of Labour and Social Policy

The control authorities in Romania

The control of how employers comply with the national legal provisions governing the posting of workers in the transnational provision of services, the Labour Code and the provisions relating to safety and health at work is carried out by the inspectors of the Labour Inspectorate, with the

exceptions listed in the following paragraph. Where labour inspectors found facts likely to have a criminal nature, the powers of investigation belong to criminal investigation bodies.

The Ministry of Defense, the military structures and facilities at which civil servants with special status working for the Ministry of Internal Affairs perform their activities, the National Prison Administration of the Ministry of Justice, the Romanian Intelligence Service, the Foreign Intelligence Service, the Protection and Monitoring Service, the Special Telecommunications Service and the National Commission for the Control of Nuclear Activities organize labour inspection activities through their own specialized services having exclusive jurisdiction only for what concerns the structures in question.

<p>Concealed work and / or undeclared work</p> <ul style="list-style-type: none"> ▪ labour inspectors ▪ officials responsible for traffic control ▪ judicial police officers and agents
<p>Unlawful employment of labour</p> <ul style="list-style-type: none"> ▪ labour inspectors ▪ judicial police officers and agents
<p>Unlawful supply of labour (employment agencies)</p> <ul style="list-style-type: none"> ▪ labour inspectors
<p>Exploitation of vulnerable groups</p> <ul style="list-style-type: none"> ▪ labour inspectors ▪ authorities responsible for child protection ▪ authorities responsible for protecting persons with disabilities ▪ judicial police officers and agents
<p>Failure to comply with of the rules on posting</p> <ul style="list-style-type: none"> ▪ labour inspectors ▪ Tax Police inspectors and financial inspectors as regards tax evasion

II.5.2. Developing exchanges of information at European level

A. The pilot project for the exchange of information in the transnational posting of workers.

The complex enforcement of Directive 96/71/EC by the Member States has led the European Commission, by decision of 19 December 2008, to establish a Committee of Experts on Posting. The objective of this Committee was to identify concrete measures to harmonize the application and enforcement of the provisions of Directive 96/71/EC. At the conclusion of their work, the Committee of Experts decided that the exchange of information on transnational posting between Member States would take place through the "Internal Market Information System" (IMI)¹⁸, an electronic information exchange network already used for professional qualifications (Directive 2005/36/EC) and for services (Directive 2006/123/EC).

The IMI is a free-of-charge software available via the web¹⁹ which allows a more rapid and efficient exchange of information on the posting, through standardized and simplified procedures and pre-translated texts in the different European languages.

On March 7, 2011, the European Commission launched the "IMI Services Directive pilot project with a specific module for the exchange of information in the area of transnational posting of workers". Under the pilot project, an ad hoc module containing questions on the posting, the posting of workers and posting companies, was implemented.

National coordinators (NIMIC) and legislative coordinators for the legislative area of posting (LIMIC) have been identified for each Member State and tasked with overseeing the management and smooth running of IMI at the national level.

For Italy, the NIMIC is the *Dipartimento delle Politiche Comunitarie (Department of Community Policies)* and the LIMIC authority is the *Ministero del Lavoro e delle Politiche Sociali - Direzione Generale Direzione generale per le Politiche dei servizi per il lavoro (Ministry of Labour and Social Affairs - Directorate General for employment services policies)*.

For France the NIMIC is the *Secrétariat général des affaires européennes* while LIMIC is the *Direction Générale du Travail - Bureau de liaison*.

For Romania, the NIMIC is *Departamentul pentru Afaceri Europene* while LIMIC is *Inspectia Muncii*.

¹⁸ On August 29, 2011, a proposal for a Regulation on administrative cooperation through the Internal Market Information Network ("IMI Regulation") was adopted. The objectives of this proposal presented by the Commission are: to establish a solid legal framework for IMI and a set of common standards to ensure its effective operation; to provide a comprehensive framework for data protection by setting standards for the processing of personal data in IMI; to facilitate the possible future extension of IMI to new areas of EU law; to clarify the roles of the various parties involved in IMI.

¹⁹ http://ec.europa.eu/internal_market/imi-net/index_it.html

B. Exchange of information in the field of labour law

Article 4 of Directive 96/71/EC concerning the posting of workers provides that Member States shall designate a liaison office for administrative cooperation among the competent authorities for the control of working and employment conditions of posted workers, also in terms of manifest abuses or possible cases of unlawful transnational activities.

This cooperation consists in particular in providing legal assistance, disseminating information on applicable law and its interpretation, and referral to other European liaison offices for the exchange of information and intelligence necessary for the inquiries and administrative investigations conducted by the enforcement authorities.

Such cooperation may also rely on a higher density of cross-border exchanges through agreements or arrangements for administrative cooperation between Member States, facilitating a local dialogue. For example, France has concluded agreements with Germany, Belgium, Luxembourg, Italy and Spain (see the section on inspection activities in France).

The liaison office responds to inquiries from control agents through foreign liaison offices serving as points of contact for the competent authorities.

The liaison offices in France²⁰

For France, the national liaison office is provided by the Directorate General of Labour.

By way of derogation, the functions of the Liaison Office are assured by the local liaison offices, which are:

²⁰ See Circular letter of the General Directorate of Labour , October 5, 2008.

- 📁 DIRECCTE in Alsace for relations with Germany;
- 📁 DIRECCTE in Nord-Pas de Calais for relations with Belgium;
- 📁 DIRECCTE in Lorraine for relations with Luxembourg;
- 📁 DIRECCTE in Aquitaine for relations with the Spanish Basque Country, Aragon and Navarre;
- 📁 DIRECCTE in Languedoc-Roussillon for relations with Catalonia;
- 📁 DIRECCTE in Provence-Alpes-Cote d'Azur, for Liguria;
- 📁 DIRECCTE in Rhone-Alpes for relations with Piedmont and Valle d'Aosta.

For other Italian and Spanish regions, the competent office is the national liaison Office.

All police officers competent to find violations of undeclared work (Art. Law No. 8271-7 of the Labour Code), and in particular the inspection services, the officials responsible for land transport, the police, gendarmerie and customs may contact the liaison Office.

Applications should be sent to the relevant liaison office, together with the European standard form, to which can be added the questionnaires now available on the intranet SITERE.

The data of the French liaison offices are available below in Appendix 1.

It is important, in this application, to highlight the nature of the necessary checks and clarify the context of control (legal and operational usefulness of the information and documents required, inability or difficulty in obtaining these items, the level of urgency ...)

The liaison offices in Italy

In Italy, the National Liaison Office for posted workers under Article 5 of Law Decree 25 February 2000, No. 72 for the "Implementation of Directive 96/71/EC on the posting of workers in the provision of services", is the General Directorate for employment services of the Ministry of Labour and Social Policy (segreteriaadgmercatolavoro@lavoro.gov.it).

The liaison office, upon receipt of requests for information, and following a check of the information contained in them, forwards them to the relevant territorial Labour Directorates, pursuant to art. 4, paragraph 2 of Decree 72/2000, and to the Directorate General for Inspections, for the appropriate controls.

Following the Agreement on cooperation in the control of transnational mobility of workers and fight against unlawful work signed by the Italian Ministry of Labour and Social Policies and the French Ministry of Labour, Social Policies and Health, on 27.09.2011, which also covers the posting of workers, the national liaison offices designated to implement the Agreement are:

- the Directorate General for Inspections (Via Flavia, 6 – 00186 Roma; tel. + 39 06 46837273; fax + 39 06 46837909; SegreteriaDGAttivitàIspettiva@lavoro.gov.it), as already liaison office for the entire non border zone with France;
- the Regional Directorate of Liguria (Via Roccatagliata Ceccardi, 4/16 – 16121 Genova; tel. + 39 010 518631-2-3; fax + 39 010 5186370; DRL-Liguria@lavoro.gov.it), decentralized liaison office for its border area including, for Italy, Liguria region and, for France, the Provence-Alpes-Cote d’Azur region.
- the Regional Directorate of Piedmont (Via Arcivescovado, 9/A – 10121 Torino; tel. + 39 011 545156-546140-531545-530525; fax + 39 011 543846; DRL-Piemonte@lavoro.gov.it) and Valle D’Aosta (Viale dei Partigiani, 18 – 11100 Aosta; tel. 0165 237811; fax 0165 237899; DRL-Aosta@lavoro.gov.it) decentralized liaison offices for their respective border areas including, for Ital Piedmont and Valle D’Aosta region, and, for France, the Rhone-Alpes region.

As specified in the Agreement, the authorities in charge for the two countries will cooperate in the following fields:

- coordinated prevention activities;
- mutual information about modifications in national legislation and administrative procedures;
- exchange of information on respective methods of controls and planning of coordinated control activities.

The liaison offices in Romania

In Romania, the activity of the National Liaison Office is guaranteed by the Labour Inspectorate, which carries out exchanges of information with the competent authorities in Member States of the EU and the European Economic Area. The members of the Liaison Office are appointed by letter n.246/17.07.2007 of the inspector general of the Labour Inspectorate, sent to the Department of European Affairs and International Relations of the Ministry of Labour, Family and Social Protection.

Within this cooperation, the Labour Inspectorate answers all motivated requests for information on the posting of workers in the transnational provision of services, including on cases of abuse or unlawful transnational activities.

The Liaison Office receives, by mail or electronically by IMI system, requests for information from the liaison offices of similar institutions in the EU, based on the European Standard Form.

Contacts

Office	Venue	Address	Level of action	Contact people
Biroul național de legătură	INSPECȚIA MUNCII	Str. Matei Voievod nr. 14, sector 2, București - 021455	National	(1) Daniela Eugenia GEORMĂNEANU (2) Eduard Traian NICOLAU

C. The exchange of information in the field of social security law

As with the labour law, each state has an agency responsible for the exchange of information regarding the affiliation of posted employees with the social security institutions of their country of origin.

France

The CLEISS (Centre for European and international social security relations) assumes the role of liaison office between the social security institutions in France and abroad for the enforcement of European Community regulations and international agreements on social security.

It is competent to grant an extension of the continued affiliation of posted employees to the social security system of their country of origin.

It can also alert the French control services on the case of foreign workers posted to France without a E101 certificate (or A1 certificate).

In return, it may be consulted by the French services on the reality of affiliation of a posted worker in France.

Centre des Liaisons Européennes et Internationales de Sécurité Sociale

11 rue de la Tour des Dames

75436 Paris cedex 09

Tel: 01 45 26 33 41 - Fax: 01 49 95 06 50

Italy

For Italy, in addition to the Ministry of Labour and Social Policy (Italian Acronym: MLPS), there are the National Welfare Fund (Italian Acronym: INPS) and the National Welfare Fund for Civil Servants

(Italian Acronym: INPDAP).

Romania

In Romania, the authority responsible for the exchange of information concerning the enrollment of posted employees to the social security agencies in their country of origin is the National Public Pensions Fund (CNPP).

On May 1, 2010, the new rules on the law applicable to workers moving within the European Union, contained in Title II of EC Regulation No. 883/2004 (Articles 11-16) and Title II of the Implementing Regulation No. 987/2009 (Art.14-16) entered into force .

EC Regulation No. 883/2004 of the European Parliament and the Council establishes the legal framework for the coordination of social security systems. The provisions contained in Article 12 have extended the maximum duration of posting from 12 to 24 months. Therefore, the E101 form has been replaced by the A1 Form, which is valid for 24 months.

The CNPP ensures the uniform application of the law on pensions and social insurance and issues the A1 Form, for the certification of payment of social security contributions in Romania. Furthermore, it guarantees a link between social security Funds in Romania and foreign Social Security Funds as regards the implementation of EU regulations and of international agreements on social security and has the power to approve the extension of membership in the social security system of their country of origin for posted employees.

D. Exploiting the tools developed jointly by the enforcement authorities of Member States

Some projects, allowed control services from different Member States to work together to develop useful tools to control the posting.

Two of them are particularly worth noting:

- The "Euro-detachment" website²¹ (<http://www.eurodetachement-travail.eu>), which provides access to a range of practical and operational information to control the posting, destined to the control agencies (census of all the texts, fact sheets.. .)
- The work completed under the ICENUW project²², which allows control officers to have a better understanding of the documents existing in other Member States, and thus facilitate their work upstream of the referral to the official authorities, such as through the network of liaison offices.

This tool is completed by a directory that identifies the relevant departments in different jurisdictions²³.

II.5.3. Developing cooperation among control services

A. Strengthening cooperation among labour and social security control services at the national level

Given the existence of double regulations on the posting (continued affiliation to social security institutions of the country of origin and enforcement of labour laws of host countries as provided for in the hard core rules), cooperation between the competent control services in both areas is essential.

B. Developing cooperation, in particular cross-border cooperation through the organization of concerted checks

In addition to sharing experiences and expertise, it is necessary to enhance the operational coordination.

- ▶ The collaboration among the various control services aims at harmonizing national road

²¹ Participating countries: France, Poland, Portugal, Spain, Luxembourg, Belgium.

²² Participating countries: Italy, Spain, France, Holland, Sweden, Poland, Bulgaria, Austria, Romania, Portugal.

²³ <http://www.socialsecurity.fgov.be/fr/nieuws-publicaties/conferenties/icenuw/index.htm>.

control practices through the exchange of experiences, collaboration and joint initiatives to be pursued. Thus, the Euro Controle Route Network, the European Group of roadside services established in 1999 by the Ministers of transport of several European countries, organizes training courses abroad for control agents, the exchange of information, common and harmonized understanding of transport legislation.

► Cross-border cooperation must also be developed through the organization of concerted controls like the French examples of cross-border operations in neighbouring regions combining control agents of land transport in their respective countries. These operations are planned and established as part of regional control plans established by the territorial services of the Department of Transportation.

► With regard to labour inspection, this cooperation, more directly operational in its nature, is part of bilateral agreements on administrative cooperation.

These agreements provide a framework of close collaboration to the inspection services that will facilitate the organization of concerted checks. It also helps to improve mutual knowledge of inspection services on specific issues (e.g. cross-border construction sites, such as that of LGV Rhin-Rhône).

C . Proposing a shared control methodology

It is necessary to try to organize the exchange of information and enforcement of the rules of posting in the road transport sector at the transnational level.

To do this, ways must be found to adapt existing cooperation tools to the specific case of road transport companies.

Two types of controls are possible:

- Enforcement of the hard core rules to regularly posted employees ;
- Control of abuse of the posting rules that "mechanically" translates into the breach of undeclared work in the country where the activity takes place (excluding "transit" situations).

What priority for control?

1. In the first case (regularly posted employees) , the posted workers are temporarily present in the national territory.
2. In the second case (abuse of the posting rules), the transport activity is exercised in a permanent way on the national territory and employees assigned to this activity are in direct competition with the employees of the member state concerned.

In particular, two situations are identified:

- the employees work permanently on the territory of the Member State on behalf of a national company of the member state;
- the activity is carried out permanently by employees who work only temporarily on the national territory, but succeed each other.

These situations may constitute crimes (crimes of covert work, bargaining or unlawful supply of labour).

In addition, the social damage to the Member State (payroll taxes evaded), in the latter case is potentially more important.

The border line between the two situation is very weak. However, it is the second case, i.e. breaches of the rules of posting, which is a priority to guide and organize the control actions in order to fight more effectively against fraud on the posting and undeclared work.

Indeed, those undertakings that distort competition rules threaten the survival of those other undertakings that comply with regulations and also put at risk the jobs of their own employees when they replace them with other drivers subject to other social security rules.

This raises the question of how the coordination between Member States can be organized in the fight against organized systems of transnational social security fraud.

Main reflections on the development of coordinated control actions on a transnational basis

Entry points:

- ▶ roadside checks (by definition a very random situation for the detection of a fraud on the posting, but interesting because it can detect fraudulent situations well in advance)
- ▶ a concerted action on the road or at a site
- ▶ a notice/report.

Intervention strategy

We must seek to establish, first of all, the duration of the activity in the national territory of the Member State where the labour cost is higher by non-resident drivers checked.

Difficulties

- ▶ The employment relationship can be hardly established during a single roadside check (how to "track" the activities of a driver?)
- ▶ the various control services have different skills.

Summing up modes of cooperation: the proposals of the Transpo project

Since the administration in charge of the control in the host country is not responsible for the country of origin of the worker, the control needs to go through the national liaison offices. The information transmitted in this way allows the authorities of the sending country to carry out the necessary controls, if deemed necessary, at the premises of the employer. Through the automation of exchanges, communication delays between the liaison offices are short, facilitating the conduct of investigations.

Main proposed steps are summed up in the following points.

- a) Setting up a warning system based on information collected during the road inspection or in connection with the reports received (use of the analytical / control frame attached herewith that would help to detect situations of fraud on the posting).
- b) If such evidence is insufficient to find a circumvention of the posting (which will be the case in most situations), it will be necessary to supplement the initial information gathered by a survey at the point of connection in France of the driver controlled (for example, examine bills of all vehicles or V1b data of all these vehicles and compare them with the accounting, in particular with the billing of company).
- c) Note that the improvement of control equipment (tachograph) with the possibility to reconstruct the routes through the geo-positioning, would be a way to increase the effectiveness of controls. The proposed reform of Regulation No 3821/85 goes in this direction.
- d) Transmission of information collected (specifically, the transmission of the analytical frame and the standard form of referral) to the competent national liaison office that will transmit it to the liaison office of the Member State concerned.

- e) These elements can be integrated where appropriate by the information exchanged by the controllers of road transport network within the ECR network.
- f) The liaison office of the Member State requests the competent authorities for the control in the sending country to obtain the additional checks required at the foreign undertaking that employs the allegedly posted employees. These checks relate to the field of undeclared work and frauds in the posting related to the liaison office originally involved (that remains in connection with the agents who conducted the initial findings).
- g) It is necessary to list the controls to be carried out in the referral form.
- h) Centralization of information by the national liaison office that transmits the results of the survey to the inspection services for further action.

Annexe 1 - Contacts/Contact Bureaux de Liason France/Contacts Liason offices France				
Bureau de liaison déconcentré /Liason office decentralised	Localisation/Place	Adresse/adresse	Compétence/competence	Référents utilisateurs IMI/Contact person IMI
Bureau de liaison national	DGT	39-43, Quai André Citroën - 75902 PARIS Cedex 15	nationale	Chantal BRILLET titulaire permanent - Nicolas COTRUFO suppléant - Julie BEAUSSIER suppléant
France - Allemagne	DIRECCTE Alsace	UT du Bas-Rhin - 6, rue Gustave Adolphe Hirn - 67085 STRASBOURG Cedex	nationale	Vincent HALLER titulaire permanent - Philippe KIEFFER suppléant
France - Belgique	DIRECCTE Nord-Pas-de- Calais	DIRECCTE Nord Pas-de- Calais - 70, rue Saint Sauveur - BP 456 Les Arcades de Flandre - 59021 LILLE Cedex	nationale	Salvatrice MOLLET titulaire permanent - Jenny BLAUWART suppléante
France - Luxembourg	DIRECCTE Lorraine	DIRECCTE Lorraine - 10 rue Mazagran - BP 10676 - 54063 NANCY CEDEX	nationale	Marc SONNET titulaire permanent - Fabienne BERTHON suppléante
France - Espagne	1 - DIRECCTE Aquitaine - UT 064	UT des Pyrénées Atlantiques - Cité administrative - Boulevard Tourasse - 64000 PAU	frontalière pour la région Aquitaine / Midi-Pyrénées (côté français) et Pays basque, Aragon et Navarre (côté espagnol)	Aïda ESTEVES titulaire permanent - Dominique COLLARD suppléant
	2 - DIRECCTE Languedoc- Roussillon - UT 066	UT des Pyrénées Orientales - 76, bld Aristide Briand - 66026 PERPIGNAN Cedex	frontalière pour la région Languedoc / Roussillon (côté français) et Catalogne (côté espagnol)	Vanessa MATIUZZI titulaire permanent - Michel PEREZ suppléant
France - Italie	1 - DIRECCTE Provence- Alpes-Côte d'Azur - UT 06	UT des Alpes Maritimes - Immeuble Communica - 455, Promenade des Anglais - CS 43311 - 06299 NICE Cedex 3	frontalière pour la région PACA (côté français) et Ligurie (côté italien)	Anne GRIACHE titulaire - TOMAS Carole suppléante
	2 - DIRECCTE Rhône- Alpes - UT 73	UT de la Savoie - Carré Curial - 73018 CHAMBERY Cedex	frontalière pour la région Rhône-Alpes (côté français) et Piemont - Val d'Aoste (côté italien)	Jean-Louis BORREL titulaire permanent - Hubert GUIRIMAND suppléant

Annex 2 to Chapter II.5. A proposal of “Control Frame”

Control Frame

- Date and Time of inspection:
- Place of inspection:

Vehicle Identification

To complete this section, ask the certificate of registration of vehicle

- Registration number:
- Type / Brand:
- Markings on the vehicle (name and / or logo of the carrier or the principal):

Driver Identification

To complete this section, examine the driver's license and possibly his employment contract

Please note, labour inspection cannot require the surrender of driver's license during the inspection.

- Surname : Name :
- Date of birth :
- What is his mission (start of service, route, schedule ...)?
- Date of hire:
- Place of hire:

Identification of the employer (company for which the driver really works)

To help you complete the two sections that follow, examine the license of transport and consignment.

If possible, make a copy of the waybill or copy all the references in it.

- Name of Business:
- Address:
- Name and surname of responsible person:
- Company registration number (e.g. in France: SIRET²⁴)

Identification of the principal

- Name of Business:
- Address:
- Company registration number):

Questions to ask

Try to establish (in particular from the recording of working hours) the time sequence of the drivers' activities (over a period of more than 7 days) and the use of the vehicle.

- Place of departure of the vehicle:
- Destination of the vehicle:
- Place of loading of goods:

²⁴ The acronym SIRET (Système d'Identification du Répertoire des Etablissements) designates in France a 14-digit number used as identification code of commercial companies (ISO 6523).

- Place of unloading of goods:
- The driver is in transit/passage in France?
- The driver realizes a cabotage operation in France?
- The driver usually works in the home country of the foreign company?
- The driver carries out a sustainable commercial activity in France?

Documents to be consulted

- Module A1 (not collectable on board).

Failure to produce the module A1 is not evidence of lack of withholding taxes.

- The work permit for non EU drivers
- Disks or digital data (C1b and V1b)
- The national / international consignment/s
- Community License
- Proof of employment relationship for non EU drivers performing international transport under cover of a Community license
- The training certificate
- The proof of the rental of vehicle, if applicable
- Contracts of carriage including sub-carriage contract (not collectable on board)

If the driver performs an operation of cabotage

- The preliminary declaration of posting (over 7 days of presence in the territory of the country)

- The International Consignment Note (CMR) to justify the international transport
- The national consignment/s (a consignment for loading and another for unloading)

(Necessary to verify compliance with the number of cabotage operations - (see in particular the date of unloading and the registration number of the motor vehicle).

Annex 1. Comparative tables on contribution regulation and contributory consequences in Italy, France and Romania

COMMUNITY WORKER EMPLOYED IN ITALY UNDER A GENUINE COMMUNITY POSTING				
	Protection granted in Italy pursuant to art. 3 Dir 96/71EC	Italian contribution regulation of employment relationship	Contributory consequences for workers coming from France, where it appears that during the period of posting the French worker is entitled to receive the minimum wage granted to French workers and therefore he is due a salary greater than the one actually received	Contributory consequences for workers coming from Romania, where it appears that during the period of posting the Rumanian worker is entitled to receive the minimum wage granted to French workers and therefore he is due a salary greater than the one actually received
Provision of services, posting or intra-group transfer, temporary work (Art. 1, para. 3, DIR. 96/71 EC)	<p>Art. 3, paragraph 1 Legislative Decree No 72/2000: Working conditions Paragraph 1.</p> <p>The working relationship between the companies referred to in Article 1, paragraph 1, and the posted workers apply during the period of posting, the same working conditions provided by laws, regulations or administrative provisions, as well as collective agreements negotiated by the most representative trade union organizations of employers and workers at the national level, applicable to workers who perform similar paid employment tasks in the place where posted workers carry out their tasks in a position of posting.</p>	<p>There is no contributory consequence if the contract proves genuine and the worker has received the Module A1 by the social security authority of his country of origin.</p>	<p>If the Italian legislation or the collective agreements applicable in Italy provide a higher remuneration than that paid to the French posted worker, the French employer shall pay to his employee, during the time of his posting in Italy, the differential pay. And all social contributions will be calculated on the basis of this new salary.</p>	<p>If the employer is obliged by the Italian authorities to pay the worker the difference of salary to reach the minimum wage level due in Italy, in that case social security contributions will be calculated and paid also on that difference of salary due.</p> <p>As concerns the system of pension and unemployment contributions, the highest level of salary due will affect the total pension or the unemployment contributions to which the workers is entitled.</p>

COMMUNITY WORKER EMPLOYED IN ITALY UNDER A GENUINE COMMUNITY POSTING				
	Protection granted in Italy pursuant to art. 3 Dir 96/71EC	Italian contribution regulation of employment relationship	Contributory consequences for workers coming from France, where it appears that during the period of posting the French worker is entitled to receive the minimum wage granted to French workers and therefore he is due a salary greater than the one actually received	Contributory consequences for workers coming from Romania, where it appears that during the period of posting the Rumanian worker is entitled to receive the minimum wage granted to French workers and therefore he is due a salary greater than the one actually received
	<p>Additional protection for contracts. Article 3, paragraph 3, of Legislative Decree no. 72/2000.</p> <p>The entrepreneurs who outsource services in accordance with Article 1, paragraph 1, to be performed in companies managed and organised by a transnational employer are jointly and severally liable with the latter to pay employees hired from the latter a minimum mandatory pay and to ensure a regulatory treatment not inferior to the one due to workers directly hired by them.</p> <p>Provided additional protection for employees under a temporary employment contract</p> <p>Provided additional protection for employees under a temporary employment contract</p> <p>For the period of transnational provision of services, the employee f must be ensured an economic treatment not inferior than that paid to employees hired by the user.</p> <p>The consignor bears the passive joint liability for the payment of wages due to the workers provided.</p>			

COMMUNITY WORKER EMPLOYED IN ITALY UNDER A <u>NON</u> GENUINE COMMUNITY POSTING				
	Protection granted in Italy in accordance with art. 3 Dir 96/71EC	Italian contribution regulation of employment relationship	Measure adopted by the French authority responsible for social security, when it receives communication from the Italian authority that the French worker posted in Italy actually works as if he were really employed by an Italian employer.	Measure adopted by the Rumanian authority responsible for social security, when it receives communication from the Italian authority that the Rumanian worker posted in Italy actually works as if he were really employed by an Italian employer.
Provision of services, posting or intra-group transfer, temporary work (Art. 1, para. 3, DIR. 96/71 EC)	<p>Art. 3, paragraph 1 legislative Decree No 72/2000: Working conditions Paragraph 1. During the period of posting, the same working conditions provided by laws, regulations or administrative provisions, collective agreements negotiated by the most representative trade union organizations of employers and workers at the national level that applicable to workers who perform similar paid employment tasks in the place where posted workers carry out their tasks in a position of posting will be applied to the working relationship between the companies referred to in Article 1, paragraph 1 and the posted workers.</p> <p>Art. 26, Legislative Decree n. 276/2003 Paid employees of the "fraudulent" employer are entitled to a pay and working conditions not inferior than that of employees of their same level of the user, for equal work performed. The user is jointly and severally liable with the service company to pay employees wages and social security contributions.</p> <p>Art. 18, Legislative Decree n. 276/2003.</p>	Request for waiver of A1 Form to the country of origin. The consequence is the onset of the obligation to pay social security contributions to the Italian National Insurance Institute, for the period of employment under a non genuine Community posting.	In case of doubt about the validity of the A1 Form , the French institution (CLEISS), informed of the situation by French control officers , must contact the Romanian institution that issued the document, which has the <u>exclusive jurisdiction</u> to verify its compliance, and to withdraw it if necessary (this exclusive jurisdiction is protected by the ECJ).	Based on the request for waiver by the Italian authorities, after its evaluation in view of the principles established by Regulamentul 987/2009, the competent authorities in Romania may order the revocation of the form A1 (E101), or its temporary maintenance and may start the procedure to reach an agreement.

COMMUNITY WORKER EMPLOYED IN ITALY UNDER A <u>NON</u> GENUINE COMMUNITY POSTING				
	Protection granted in Italy in accordance with art. 3 Dir 96/71EC	Italian contribution regulation of employment relationship	Measure adopted by the French authority responsible for social security, when it receives communication from the Italian authority that the French worker posted in Italy actually works as if he were really employed by an Italian employer.	Measure adopted by the Rumanian authority responsible for social security, when it receives communication from the Italian authority that the Rumanian worker posted in Italy actually works as if he were really employed by an Italian employer.
	Penalty of 50 euros for each day of illegal work to be paid by the "fraudulent" employer and by the user.			

COMMUNITY WORKER EMPLOYED IN FRANCE UNDER A GENUINE COMMUNITY POSTING				
	Protection granted in France pursuant to art. 3 Dir 96/71EC	French contribution regulation of employment relationship	Contributory consequences for workers coming from Italy, where it appears that during the period of posting the Italian worker is entitled to receive the minimum wage granted to French workers and therefore he is due a salary greater than the one actually received	Contributory consequences for workers coming from Romania, where it appears that during the period of posting the Rumanian worker is entitled to receive the minimum wage granted to French workers and therefore he is due a salary greater than the one actually received
Provision of services, posting or intra-group transfer, temporary work (Art. 1, para. 3, DIR. 96/71 EC)	<p>(Article 1262-4 of the Labour Code).</p> <p>Employers based outside of France, during the period of secondment of employees in France, must respect the French legislation in the following subjects:</p> <ul style="list-style-type: none"> - Individual and collective freedoms in the employment relationship; - Discrimination and equality between women and men; - Maternity protection, maternity and paternity leave, leaves for family events; - Terms of availability and guarantees due to employees by temporary employment agencies; - Exercising the right to strike; - Working hours, compensatory leave, public holidays, paid annual leave, working hours and night work for young workers; - Conditions of subjection to leave funds - Minimum wage and salary payment, including increases 	<p>According to the provisions of social security regulations 883/2004 and 987/2009, a person who, on behalf of his employer, carries on a temporary activity on the territory of a Member State, remains subject to the laws of the country of his usual work. Different conditions are required (non-exhaustive list):</p> <ul style="list-style-type: none"> - the employer must exercise substantial activities in the sending State; - a direct relationship must exist for the duration of the posting between the employer and the posted worker; - the period of posting does not exceed 24 months; - The employee must be enrolled in the security system of the country of origin for at least a month before his posting; - the employee must be posted not to replace another employee previously posted. <p>The posting must be registered</p>	<p>In the event that the salary due for work performed during the transnational posting in France is greater than that payable under the Italian collective agreements, the social security contribution to be paid to the Italian pension is calculated on the basis of the higher salary due to worker, even if not actually paid.</p>	<p>If the Rumanian employer is obliged by the French authorities to pay the worker the difference of salary to reach the minimum wage level due in France, in that case social security contributions will be calculated and paid also on that difference of salary due.</p> <p>As concerns the system of pension and unemployment contributions, the highest level of salary due will affect the total pension or the unemployment contributions to which the workers is entitled.</p>

COMMUNITY WORKER EMPLOYED IN FRANCE UNDER A GENUINE COMMUNITY POSTING				
	Protection granted in France pursuant to art. 3 Dir 96/71EC	French contribution regulation of employment relationship	Contributory consequences for workers coming from Italy, where it appears that during the period of posting the Italian worker is entitled to receive the minimum wage granted to French workers and therefore he is due a salary greater than the one actually received	Contributory consequences for workers coming from Romania, where it appears that during the period of posting the Rumanian worker is entitled to receive the minimum wage granted to French workers and therefore he is due a salary greater than the one actually received
	<ul style="list-style-type: none"> for overtime; - Rules on health and safety at work, minimum age for admission to employment, child labour; - Illegal employment. <p>The "French rules" include the laws and regulations and rules resulting from extended collective agreements and conventions applicable to workers employed by companies in the same sector of activity in France.</p>	with the Institute of reunification of the employee, which will issue a A1 Form.		

COMMUNITY WORKER EMPLOYED IN FRANCE UNDER A <u>NON</u> GENUINE COMMUNITY POSTING				
	Protection granted in France in accordance with art. 3 Dir 96/71EC	French contribution regulation of employment relationship	Measure adopted by the Italian authority responsible for social security, when it receives communication from the French authority that the Italian worker posted in France actually works as if he were really employed by a French employer.	Measure adopted by the Rumanian authority responsible for social security, when it receives communication from the French authority that the Rumanian worker posted in France actually works as if he were really employed by a French employer.
Provision of services, posting or intra-group transfer , temporary work (Art. 1, para. 3, DIR. 96/71 EC)	<p>Possibilities for the French control services to see:</p> <ul style="list-style-type: none"> - An infraction for failure to comply with the provisions of the Labour Code concerning the posting of workers; - An infraction for the concealment of activities and / or concealment of employees; - An infraction for failure to comply with the provisions on temporary work; - An infraction for the loan of illegal labour and / or bargaining. <p>The posted worker deprived of his rights can sue the French labor court of the place of posting, but also the relevant jurisdiction of the host country.</p>	In case of doubt on the inspection bodies about a 1 A Form, the review of the situation of the employee must be done by the institution that issued the document, and which alone has the power to withdraw it, under certain conditions	Revocation of form A1	Based on the request for waiver by the French authorities, after its evaluation in view of the principles established by Regulamentul 987/2009, the competent authorities in Romania may order the revocation of the form A1 (E101), or its temporary maintenance and can start a procedure to reach an agreement.

COMMUNITY WORKER EMPLOYED IN ROMANIA UNDER A GENUINE COMMUNITY POSTING				
	Protection granted in Rumania pursuant to art. 3 Dir 96/71EC	Rumanian contribution regulation of employment relationship	Contributory consequences for workers coming from Italy, where it appears that during the period of posting the Italian worker is entitled to receive the minimum wage granted to Rumanian workers and therefore he is due a salary greater than the one actually received	Contributory consequences for workers coming from France, where it appears that during the period of posting the French worker is entitled to receive the minimum wage granted to Rumanian workers and therefore he is due a salary greater than the one actually received
Provision of services, posting or intra-group transfer, temporary work (Art. 1, para. 3, DIR. 96/71 EC)	<p>Law No. 344/2006 concerning the posting of workers in the framework of transnational provision of services.</p> <p><u>Working conditions</u></p> <p>1. -posting - delegation of the provision of services: the same minimum requirements that apply to workers from Romania, only with respect to "basic" elements;</p> <p>2. transfer within the same group: if the activity takes the form of proxy provided for in the Labour Code, the same conditions foreseen in point 1 shall apply; if the employee works temporarily for a Rumanian employer, as posted worker under the Labour Code provisions (authority, subordination, remuneration from the Rumanian employer) the full implementation of the working conditions and administrative requirements established by Law no.53/2003 - Labour Code and Law No. 319/2006 on safety and health at work can be applied;</p> <p>3. use of a temporary worker provided by a temporary agency: the same minimum</p>	<p>The Rumanian tax regime of social contributions shall not be applied, on the basis of the form A1 (E101), which certifies the application of the system of social protection of the state of origin.</p>	<p>In the event that the salary due for work performed during the transnational posting in Rumania is greater than that payable under the Italian collective agreements, the social security contribution to be paid to the Rumanian Insurance Authority is calculated on the basis of the higher salary due to worker, even if not actually paid.</p>	<p>If the Rumanian regulations or the collective agreements applicable in Romania provide a higher remuneration than that paid to the French posted worker, the French employer shall pay to his employee, for the time of his posting, the differential pay And all social contributions will be calculated on the basis of this new salary.</p>

COMMUNITY WORKER EMPLOYED IN ROMANIA UNDER A GENUINE COMMUNITY POSTING				
	Protection granted in Rumania pursuant to art. 3 Dir 96/71EC	Rumanian contribution regulation of employment relationship	Contributory consequences for workers coming from Italy, where it appears that during the period of posting the Italian worker is entitled to receive the minimum wage granted to Rumanian workers and therefore he is due a salary greater than the one actually received	Contributory consequences for workers coming from France, where it appears that during the period of posting the French worker is entitled to receive the minimum wage granted to Rumanian workers and therefore he is due a salary greater than the one actually received
	<p>requirements that apply to workers from Romania, only as regards the "basic" elements;</p> <p>Legislative Decree 104/2007 for the regulation of specific procedures for the posting of workers in the framework of transnational provision of services on the territory of Romania.</p> <p><u>Administrative obligations of prior notification and control</u> The employer must send a note to the Rumanian authorities, must guarantee the representation on the territory of Romania and make available to Labour inspectors all necessary records and documents for their controls.</p>			

COMMUNITY WORKER EMPLOYED IN ROMANIA UNDER A <u>NON</u> GENUINE COMMUNITY POSTING				
	Protection granted in Rumania pursuant to art. 3 Dir 96/71EC	Rumanian contribution regulation of employment relationship	Contributory consequences for workers coming from Italy, where it appears that during the period of posting the Italian worker is entitled to receive the minimum wage granted to Rumanian workers and therefore he is due a salary greater than the one actually received	Contributory consequences for workers coming from France, where it appears that during the period of posting the French worker is entitled to receive the minimum wage granted to Rumanian workers and therefore he is due a salary greater than the one actually received
Provision of services, posting or intra-group transfer, temporary work (Art. 1, para. 3, DIR. 96/71 EC)	<p>The situation goes beyond the scope of special regulation provided by Law 344/2006. The rules laid down by Law No 53/2003 of the Labour Code and Law No. 319/2006 on safety and health at work shall become fully applicable.</p> <p>In case of overlap of a work situation in the absence of a written individual employment contract, a penalty from Lei 10,000 to Lei 20,000 may be applied for each posted worker, according to Law no.53/2003 - Labour Code.</p> <p>To clarify the fiscal situation, the situation shall be reported to the competent authority of Romania.</p>	<p>Request for waiver of the form A1 (E101), presented to the country of origin. The consequence of accepting the request and the revocation of the form A1 is the obligation of the employer and the employee to pay social security contributions to the authorities of Romania, for the period of work performed under a non genuine Community posting.</p> <p>The control of the tax authorities will determine the interests, penalties, and in case of tax evasion, these can be reported to the authorities for their relevant criminal investigation.</p>	Revocation of A1 Form	<p>If in doubt about the validity of the A1 form, the French institution (CLEISS), informed of the situation by French control officers, shall address the Romanian institution that issued the document, the only one to have <u>exclusive jurisdiction</u> to verify its compliance, and to withdraw it if necessary (such exclusive jurisdiction is protected by the ECJ</p>

Annex 2. A proposal of questionnaire for mobile workers

The communication barrier due to language differences is a factor that can really hinder and sometimes make it impossible to carry out the monitoring activities.

The *Multilingual Lexicon* developed by *Auto Contrôle Route* is a useful tool for inspectors involved in the control of international transport activities. This computer software shows the texts of the most important questions / requests / information relevant to car drivers or other people involved in road transport translated into 13 languages. *Euro Contrôle Route* is a body that brings together the European inspection bodies of transport services, which work together to improve road safety, durability, fair competition and working conditions in road transport, through activities related to compliance with the current regulations.

Multilingual Lexicon is available at *Euro Control Route*, at <http://www.euro-contrôle-route.eu/site/en/info/recommendations/>.

Based on this example we have considered useful to develop a similar tool, suitable to the specific of the posting of workers in transnational services.

	Română	Italiano	Français	English
1	Bună dimineața/ziua/seara, suntem inspectori de muncă și desfășurăm o acțiune de control în domeniul relațiilor de muncă și al securității și sănătății în muncă.	Buongiorno/buonasera, siamo ispettori del lavoro e svolgiamo un'attività di controllo nell'ambito dei rapporti di lavoro e della sicurezza e salute nel lavoro.	Bonjour , nous sommes des inspecteurs du travail et nous effectuons des activités de contrôle que dans le cadre des relations de travail et de la santé et la sécurité au travail.	Good morning / afternoon, we are labour inspectors and we perform control activities in the framework of labour relations and health and safety at work.
2	Vă rugăm să ne răspundeți la câteva întrebări, în legătură cu activitatea pe care o desfășurați.	Le chiediamo di rispondere ad alcune domande legate all'attività che sta svolgendo.	S'il vous plaît veuillez répondre à des questions liées à votre activité.	Please answer some questions related to the activity you are carrying out.
3	Dreptul inspectorilor de muncă de a vă solicita prezentarea unor acte și documente, de a face	Il diritto degli ispettori del lavoro di richiederle di presentare atti e documenti, di fare	Le droit des inspecteurs du travail de vous demander de soumettre des documents et des dossiers,	The right of labor inspectors to require you to submit documents and records, making records /

Română	Italiano	Français	English
înregistrări/fotografii/copii, de a vă intervieva și obligația dumneavoastră de a răspunde, sunt stabilite de normele legale ale statului pe teritoriul căruia vă aflați.	registrazioni/fotocopie/copie, di intervistarla e il suo obbligo di rispondere sono sanciti dalla normativa legale dello stato sul cui territorio si trova.	de produire des dossier/ photocopies / copies, des vous interroger, et votre obligation de répondre sont sanctionnés dans les règlements de l'Etat sur le territoire duquel vous vous trouvez.	photocopies / copies, to interview you and your obligation to answer are sanctioned in the regulations of the state on whose territory you are.
4 Dacă nu le-ați prezentat celorlalte organe de control vă rugăm să ne prezentați:	Se non li ha già presentati agli altri organi di controllo, la preghiamo di presentare:	Si vous n'avez pas déjà soumis les documents suivants à d'autres organismes de contrôle, s'il vous plaît veuillez soumettre:	If you do not have already submitted the following documents to other control bodies, please submit:
5 Documentul de transport <i>CMR</i> (pentru transportul actual și dacă le dețineți, pentru transporturile anterioare)	Documento di trasporto <i>CMR</i> (per il trasporto attuale e, se sono in suo possesso, per trasporti antecedenti)	<i>CMR</i> (document de transport pour cette expédition, et ceux concernant les envois précédents si vous les avez)	<i>CMR</i> (transport document for this shipping, and those concerning previous shipments if you have them in your possession)
6 Copia conformă a licenței de transport	Copia conforme della licenza di trasporto	Une copie certifiée conforme de la licence de transport	Certified copy of the transport license
7 Certificatul de înmatriculare a autovehiculului	Certificato di immatricolazione del veicolo	Certificat d'immatriculation du véhicule	Certificate of vehicle registration
8 Dovada ultimei inspecții tehnice a autovehiculului;	Prova dell'ultima revisione tecnica del veicolo	Preuve de la dernière révision technique du véhicule	Proof of the last technical review of the vehicle
9 Diagrama tahograf	Diagramma tacografico	Tachygraphe Chart	Tachograph Chart
10 Actul de identitate	Documento di identità	Pièce d'identité	Identity document
11 Permisul de conducere	Patente di guida	Permis de conduire	Driving license
12 Atestatul profesional	Attestato professionale	Certifications professionnelles	Professional certificate
13 Documente de înregistrare vamală	Documenti di registrazione doganale	Documents d'enregistrement douanier	Customs registration documents
14 Ultimul bon/chitanță pentru alimentarea cu carburant	L'ultima ricevuta/fattura del carburante	Dernier récut / facture d'approvisionnement en combustible	The last receipt / invoice of fuel supply
15 Dovada achitării taxelor de drum	Prova del pagamento delle tasse stradali	Preuve de paiement des péages routiers	Proof of payment of road tolls
16 Aveți și alte documente referitoare la transportul acesta?	Possiede altri documenti relativi a questo trasporto?	Avez-vous des autres documents relatifs à ce transport?	Do you have any other documents related to this transport?
17 Din ce loc și când ați încărcat marfa/îmbarcat călătorii și unde și când urmează să fie descărcată/debarcați călătorii?	Dove e quando ha caricato la merce/prelevato i passeggeri e dove e quando sarà scaricata la merce/lasciati a terra i passeggeri?	Où et quand avez-vous chargé les marchandises / passagers et quand et où les marchandises seront déchargées / les passagers débarqueront?	Where and when did you load these goods / passengers and when and where the goods will be discharged / the passengers will disembark?
18 Unde și când ați efectuat ultima perioadă de odihnă	Dove e quando ha effettuato l'ultimo periodo di riposo	Où et quand avez-vous eu votre dernier jour /	Where and when did you have your last period of

	Română	Italiano	Français	English
	zilnică/săptămânală?	giornaliero/settimanale?	semaine de repos?	daily / weekly rest?
19	Cine este angajatorul dumneavoastră?	Chi è il suo datore di lavoro?	Qui est votre employeur?	Who is your employer?
20	Pentru ce operator de transport desfășurați activitate?	Per quale trasportatore svolge la sua attività?	Pour quel expéditionnaire opérez-vous?	For which carrier do you operate?
21	Știți cine este proprietarul autovehiculului pe care îl conduceți?	Sa chi è il proprietario della vettura che sta guidando?	Savez-vous qui est le propriétaire du véhicule que vous conduisez?	Do you know who is the owner of the vehicle you are driving?
22	Ce relație profesională / de afaceri / antreprenorială există între angajatorul dumneavoastră, proprietarul autovehiculului și operatorul de transport?	Che rapporto professionale/economico/impronditoriale esiste fra il suo datore di lavoro, il proprietario dell'autovettura e il trasportatore?	Quelle est la relation professionnelle / économique / commercial existant entre votre employeur, le propriétaire du véhicule et le transporteur?	What is the professional / economic / business relationship existing between your employer, the owner of the vehicle and the carrier?
23	Ați semnat un contract de muncă?	Ha firmato un contratto di lavoro?	Avez-vous signé un contrat de travail?	Have you signed an employment contract?
24	Care este aceasta?	Di che tipo?	Quel genre?	What kind?
25	Dețineți la dumneavoastră o copie a actului de angajare sau un alt document care să ateste acest fapt?	Ha con sé una copia del documento di assunzione o di un altro documento che attesti il rapporto di lavoro?	Avez-vous avec vous une copie de votre contrat de travail ou tout autre document attestant de votre relation de travail?	Do you carry with you a copy of your employment contract or any other document showing your work relationship?
26	La ce dată ați semnat actul de angajare și care a fost prima zi de muncă?	In quale data ha firmato il documento di assunzione e quale è stato il primo giorno di lavoro?	À quelle date avez-vous signé votre contrat de travail et quelle a été votre première journée de travail?	On what date did you sign your employment contract and what was your first day of work?
27	Care este funcția pe care o ocupați și care sunt atribuțiile dumneavoastră?	Qual è la posizione che copre e quali sono i suoi incarichi?	Quelle est la position que vous avez et quels sont vos devoirs?	Which position you have and what are your duties?
28	Comunicați cu o altă persoană decât angajatorul cu privire la transport?	Comunica con una persona diversa dal suo datore di lavoro in relazione al trasporto?	Devez vous communiquer avec une personne autre que votre employeur en relation avec ce transport?	Do you communicate with a person other than the employer in relation to the transport?
29	Primiți indicații/dispoziții /reguli de la acea persoană?	Riceve indicazioni/disposizioni/ordini da questa persona?	Recevez-vous des conseils / ordres/ indications de cette personne?	Do you receive guidance /orders/indications by this person?
30	Dacă primiți, cum se realizează comunicarea (verbal, scrisori, e-mail, telefon, etc)?	Se le riceve, come si svolge la comunicazione (verbale, per lettera, email, telefono ecc.)?	Si oui, comment se déroule la communication (verbale, par lettre, par mail, téléphone, etc.)?	If so, how does the communication take place (verbal, by letter, email, phone, etc.)?
31	Sunteți dotat cu mijloace de comunicare puse la dispoziție de acea persoană, alta decât angajatorul?	è dotato di mezzi di comunicazione messi a disposizione da quella persona, diversa dal datore di lavoro?	Etes-vous équipé de moyens de communication fournis par cette personne, autre que votre employeur?	Are you equipped with means of communication provided by that person, other than the employer?
32	La finalul cursei, în ce locație trebuie să predați autovehiculul?	Alla fine della corsa, dove deve consegnare l'autovettura?	A la fin du service, où devez-vous livrer le véhicule?	At the end of the service, where do you have to deliver the vehicle?
33	Dacă din vina dumneavoastră vehiculul este avariat sau se produc întârzieri în livrarea mărfii sau se produc alte	Se per colpa sua la vettura viene danneggiata o si verificano ritardi nella consegna della merce o altri	Si par votre faute le véhicule est endommagé ou s'il ya des retards dans la livraison des marchandises	If by your fault the vehicle is damaged or there are delays in the delivery of goods or other unexpected

Română	Italiano	Français	English
evenimente neașteptate, pe cine trebuie să anunțați și cine poate să ia măsuri disciplinare împotriva dumneavoastră?	eventi inattesi, chi deve avvertire e chi può prendere provvedimenti sanzionatori?	ou d'autres événements inattendus, qui devez-vous informer et qui peut prendre des mesures disciplinaires?	events, who do you have to inform and who can take disciplinary measures?
34 Ce remunerație primiți și pentru ce perioadă?	Che retribuzione percepisce e per quale periodo?	Quel salaire obtenez vous et pour quelle période?	What salary do you get and for what period?
35 Primiți și alte sume de bani în perioadele în care sunteți plecat în cursă?	Riceve anche altre somme di denaro nei periodi in cui è impegnato nelle corse?	Recevez-vous d'autres sommes d'argent pour la période dans laquelle vous effectuez les transports?	Do you also receives other monies in the periods in which you perform the transports?
36 Cine vă plătește salariul?	Chi le paga il salario?	Qui paie votre salaire?	Who pays your wages?
37 Pe perioada curselor vă plătiți singur hrana și cazarea?	Durante le corse, paga da sé il cibo e l'alloggio?	Pendant le transport, payez-vous personnellement pour votre nourriture et logement?	During transports, do you personally pay for your food and accommodation?
38 Dacă da, vi se rambursează aceste sume?	In caso affermativo, tali somme sono rimborsate?	Si ceci est le cas, ces frais sont remboursés?	If so, these expenses shall be reimbursed?
39 Dețineți instrumente electronice de plată pentru acoperirea costurilor în cursă (hrană, cazare, combustibil, unelte)? Dacă da, cine vi le-a pus la dispoziție și suportă aceste costuri?	Possiede strumenti elettronici di pagamento per coprire le spese della corsa (cibo, alloggio, carburante, attrezzi)? In caso affermativo, chi li ha messi a sua disposizione e chi sostiene tali spese?	Etes-vous équipé de moyens de paiement électroniques pour couvrir le coût du voyage (nourriture, logement, carburant, outillage)? Si oui, qui vous les a donné et qui paye pour ces coûts?	Are you equipped with electronic payment means to cover the cost of travel (food, shelter, fuel, tools)? If so, who has given them to you and who bears those costs?
40 Care este timpul de muncă lunar/săptămânal menționat în actul de angajare?	Qual è il tipo di lavoro mensile/indicato nel documento di assunzione?	Quel est le type de travail mensuel / indiqué dans votre document de recrutement?	What is the type of monthly work / indicated in your recruitment document?
41 Săptămâna/luna aceasta și cea anterioară ați depășit acest program de lucru?	Questo mese/questa settimana e nella precedente ha superato tale programma di lavoro?	Avez-vous dépassez ce programme de travail de ce mois / cette semaine et la semaine précédente?	Did you exceed this work programme this month / this week and the previous week?
42 Orele suplimentare efectuate se calculează separat și se plătesc cu un spor la salariu?	Gli straordinari sono calcolati a parte e pagati attraverso un aumento dello stipendio percepito alla fine del mese?	Est-ce vos heures supplémentaires sont calculées séparément et payées avec une augmentation de salaire à la fin du mois?	Is your overtime calculated separately and paid with an increase in salary received at the end of the month?
43 Cu ce procent/sumă?	Qual è la percentuale/la somma dell'aumento?	Quel est le pourcentage / montant de cette augmentation?	What is the percentage / amount of this increase?
44 Care este durata concediului anual de odihnă plătit, la care aveți dreptul conform contractului de muncă?	Qual è la durata del periodo di ferie annuali retribuite a cui ha diritto in base al contratto di lavoro?	Quelle est la durée de la période de congé annuel payé à laquelle vous avez droit en vertu de votre contrat de travail?	What is the duration of the period of paid annual leave you are entitled under your employment contract?
45 Anul acesta ați efectuat concediu de odihnă plătit?	Quest'anno ha effettuato un periodo di ferie retribuite?	Cette année, avez-vous profité d'une période de congé payé?	This year did you enjoy a period of paid leave?
46 Ați fost instruit cu privire la riscurile și normele de securitate și sănătate în muncă?	Ha ricevuto istruzioni in merito ai rischi e alle norme di sicurezza e salute sul lavoro?	Avez-vous reçu des instructions sur les risques et les règles de sécurité et de santé?	Have you received instructions about risks and safety and health regulations?
47 Când s-a făcut ultima dată	Quando ha effettuato per	Quand avez-vous faite cette	When did you last do this

	Română	Italiano	Français	English
	acest instructaj și cât a durat?	l'ultima volta questo addestramento e per quanto tempo è durato?	formation et combien de temps at-elle duré?	training and how long did it last?
48	Aveți la dumneavoastră un act care să ateste data și rezultatul acestui instructaj?	Ha con sé un documento che attesti la data e il risultato dell'addestramento?	Avez-vous avec vous un document indiquant la date et le résultat de la formation?	DO you have with you a document showing the date and the result of training?
49	Ați fost examinat medical, iar dacă da când s-a întâmplat?	Ha effettuato visite mediche, e se sì, quando?	Avez-vous passé des examens médicaux, et si oui, quand?	Did you pass medical examinations, and if so, when?
50	Aveți la dumneavoastră un act care să ateste data și rezultatul examinării medicale?	Ha con sé un documento che attesti la data e il risultato della visita?	Avez-vous avec vous un document indiquant la date et l'issue de ces examens?	Do you have with you a document showing the date and outcome of the visit?
51	Care este echipamentul de lucru/protecție sau intervenție în caz de urgență cu care sunteți dotat, puteți să ni-l prezentați?	Qual è l'equipaggiamento di lavoro/protezione o di intervento in caso d'emergenza che ha in dotazione, e può mostrarcelo?	Quel est l'équipement de travail / protection ou trousse d'urgence qui vous a été fourni, et pouvez-vous le nous montrer?	What is the working equipment / protection or emergency kit that has been provided to you, and can you show it to us?
52	Vă rugăm să ne prezentați trusa de prim ajutor și trusa de intervenție tehnică cu care este dotat autovehiculul.	La preghiamo di mostrarci la cassetta di pronto soccorso e la cassetta per l'intervento tecnico di cui è dotata l'autovettura.	S'il vous plaît, montrez nous la trousse de premiers soins et de la boîte à outils dont ce véhicule est équipé.	Please show us the first aid kit and the toolbox which this vehicle is equipped with.
53	Dacă încărcătura este „periculoasă” ați primit instrucțiuni specifice de intervenție?	In caso di carico "pericoloso", ha ricevuto indicazioni specifiche di intervento?	En cas de marchandises «dangereuses», avez-vous reçu des indications spécifiques pour l'intervention?	In case of "hazardous" goods, have you received specific indications for intervention?
54	Ce instrucțiuni specifice ați primit pentru încărcarea/descărcarea mărfurilor?	Quali istruzioni specifiche ha ricevuto per il carico/scarico della merce?	Quelles instructions spécifiques avez-vous reçu pour le chargement / déchargement des marchandises?	Which specific instructions have you received for the loading / unloading of goods?
55	Există sau nu și un alt coleg pe vehicul?	C'è un altro collega con lei a bordo della vettura?	Y-a-t il un autre collègue avec vous dans le véhicule?	In there another colleague with you in the vehicle?
56	Care este numele acestuia (dacă nu însoțește în acel moment transportul)?	Qual è il suo nome (se non accompagna in quel momento il trasporto)?	Quel est son nom (s'il n'est pas présent au moment de l'inspection)?	What is his name (if he is not present at the moment of inspection)?
57	Vă mulțumim pentru colaborare și vă dorim "drum bun"!	La ringraziamo per la collaborazione le auguriamo buon viaggio!	Nous vous remercions de votre coopération, et vous souhaitons un bon voyage	Thank you for your cooperation, and have a nice journey

Annex 3. GLOSSARY

	TERM	DEFINITION				SOURCE
		ITALIAN	FRENCH	ROMANIAN	ENGLISH	
1.	<p>Attestato di conducente (IT)</p> <p>Attestation de conducteur (FR)</p> <p>Atestatul de conducător auto (RO)</p> <p>Driver attestation (EN)</p>	<p>1. L'attestato di conducente è rilasciato da uno Stato membro a norma del presente regolamento a tutti i trasportatori che:</p> <p>a) siano titolari di una licenza comunitaria; e</p> <p>b) assumano legalmente in detto Stato membro un conducente che non sia cittadino di uno Stato membro né soggiornante di lungo periodo ai sensi della direttiva 2003/109/CE del Consiglio, del 25 novembre 2003, relativa allo status dei cittadini di paesi terzi che siano soggiornanti di lungo periodo [13], o facciano legittimamente ricorso a un conducente che non sia cittadino di uno Stato membro né soggiornante di lungo periodo ai sensi di tale direttiva, messo a loro disposizione nel rispetto delle condizioni di lavoro e di formazione</p>	<p>Attestation de conducteur</p> <p>1. L'attestation de conducteur est délivrée par un État membre, conformément au présent règlement, à tout transporteur qui:</p> <p>a) est titulaire d'une licence communautaire; et</p> <p>b) dans cet État membre, emploie légalement un conducteur qui n'est ni un ressortissant d'un État membre ni un résident de longue durée au sens de la directive 2003/109/CE du Conseil du 25 novembre 2003 relative au statut des ressortissants de pays tiers résidents de longue durée [13], ou utilise légalement les services d'un conducteur qui n'est ni un ressortissant d'un État membre ni un résident de longue durée au sens de cette directive, et qui est mis à la disposition de ce transporteur dans le respect des conditions d'emploi et de formation professionnelle des conducteurs fixées dans cet État membre:</p> <p>i) par des dispositions législatives, réglementaires ou</p>	<p>Atestatul de conducător auto</p> <p>(1) Atestatul de conducător auto este eliberat de către un stat membru, în conformitate cu prezentul regulament, oricărui operator de transport rutier de mărfuri care:</p> <p>(a) deține o licență comunitară; și</p> <p>(b) angajează legal în acel stat membru un conducător auto care nu este nici resortisant al unui stat membru, nici rezident pe termen lung în înțelesul Directivei 2003/109/CE a Consiliului din 25 noiembrie 2003 privind statutul resortisanților țărilor terțe care sunt rezidenți pe termen lung [13] sau utilizează în mod legal un conducător auto care nu este nici resortisant al unui stat membru, nici rezident pe termen lung în înțelesul directivei respective, care este pus la dispoziția respectivului operator de transport rutier de mărfuri în conformitate cu condițiile de angajare și de pregătire profesională stabilite în acel stat membru:</p> <p>(i) prin acte cu putere de lege sau acte administrative; și, dacă este cazul,</p> <p>(ii) prin contracte colective, în conformitate cu normele aplicabile în respectivul stat membru.</p> <p>(2) Atestatul de conducător auto se eliberează de către autoritățile</p>	<p>Driver attestation</p> <p>1. A driver attestation shall be issued by a Member State, in accordance with this Regulation, to any haulier who:</p> <p>(a) is the holder of a Community licence; and</p> <p>(b) in that Member State, either lawfully employs a driver who is neither a national of a Member State nor a long-term resident within the meaning of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents [13], or lawfully uses a driver who is neither a national of a Member State nor a long-term resident within the meaning of that Directive and who is put at the disposal of that haulier in accordance with the conditions of employment and of vocational training laid down in that Member</p>	<p>Reg. (EC) no. 1072/2009, art. 5, no. 1 and 2</p>

TERM	DEFINITION				SOURCE
	ITALIAN	FRENCH	ROMANIAN	ENGLISH	
	<p>professionale dei conducenti stabilite nello stesso Stato membro:</p> <p>i) da disposizioni legislative, regolamentari o amministrative; e, se del caso,</p> <p>ii) da contratti collettivi, secondo le norme applicabili in detto Stato membro.</p> <p>2. L'attestato di conducente è rilasciato dalle autorità competenti dello Stato membro di stabilimento del trasportatore, su richiesta del titolare della licenza comunitaria, per ciascun conducente che non sia cittadino di uno Stato membro né soggiornante di lungo periodo ai sensi della direttiva 2003/109/CE legalmente assunto o per ciascun conducente che non sia cittadino di uno Stato membro né soggiornante di lungo periodo ai sensi della stessa direttiva e messo legittimamente a disposizione del trasportatore. L'attestato</p>	<p>administratives et, le cas échéant;</p> <p>ii) par des conventions collectives, selon les règles applicables dans cet État membre.</p> <p>2. L'attestation de conducteur est délivrée par les autorités compétentes de l'État membre d'établissement du transporteur à la demande du titulaire de la licence communautaire, pour chaque conducteur qui n'est ni un ressortissant d'un État membre ni un résident de longue durée au sens de la directive 2003/109/CE que ce transporteur emploie légalement, ou pour chaque conducteur qui n'est ni un ressortissant d'un État membre ni un résident de longue durée au sens de ladite directive et qui est mis à la disposition du transporteur. Chaque attestation de conducteur certifie que le conducteur dont le nom figure sur l'attestation est employé dans les conditions définies au paragraphe 1.</p>	<p>competente ale statului membru de stabilire a operatorului de transport rutier de mărfuri, la cererea titularului licenței comunitare, pentru fiecare conducător auto, care nu este nici resortisant al unui stat membru, nici rezident pe termen lung în înțelesul Directivei 2003/109/CE, pe care acesta îl angajează în mod legal sau pentru fiecare conducător auto care nu este nici resortisant al unui stat membru, nici rezident pe termen lung în înțelesul Directivei 2003/109/CE, care este pus la dispoziția respectivului operator de transport rutier de mărfuri. Fiecare atestat de conducător auto certifică faptul că angajarea conducătorului auto al cărui nume apare pe atestat este angajat în conformitate cu condițiile prevăzute la alineatul (1).</p>	<p>State:</p> <p>(i) by laws, regulations or administrative provisions; and, as appropriate;</p> <p>(ii) by collective agreements, in accordance with the rules applicable in that Member State.</p> <p>2. The driver attestation shall be issued by the competent authorities of the Member State of establishment of the haulier, at the request of the holder of the Community licence, for each driver who is neither a national of a Member State nor a long-term resident within the meaning of Directive 2003/109/EC whom that haulier lawfully employs, or for each driver who is neither a national of a Member State nor a long-term resident within the meaning of that Directive and who is put at the disposal of the haulier. Each driver attestation shall certify that the driver named therein is employed in accordance with the conditions laid down in paragraph 1.</p>	

	TERM	DEFINITION				SOURCE
		ITALIAN	FRENCH	ROMANIAN	ENGLISH	
		di conducente è nominativo e certifica che il conducente è assunto alle condizioni di cui al paragrafo 1.				
2.	Conducente (IT) Conducteur (FR) Conducător auto (RO) Driver (EN)	Chiunque sia addetto alla guida del veicolo, anche per un breve periodo, o che si trovi a bordo di un veicolo nell'ambito delle sue mansioni per essere disponibile, all'occorrenza, alla guida.	Toute personne qui conduit le véhicule, même pendant une courte période, ou qui se trouve à bord d'un véhicule dans le cadre de son service pour pouvoir conduire en cas de besoin.	Inseamnă orice persoană care conduce vehiculul chiar și pentru o perioadă scurtă de timp sau care este transportată într-un vehicul ca parte a sarcinilor care îi revin în scopul de a fi disponibilă pentru a-l conduce, dacă este necesar.	Means 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.	Reg. (EC) No. 1072/2009, art. 2, n. 5). See also: Reg. (CE) no. 561/2006, art. 4, lett. c).
3.	Distacco (IT) Détachement de travailleurs (FR) Dețășarea lucrătorilor (RO) Posting of workers (EN)	Ai sensi della Direttiva 96/71 il distacco si sostanzia laddove un'imprsa adotti una nelle seguenti misure transnazionali : (a) distaccino un lavoratore, per conto proprio e sotto la loro direzione, nel territorio di uno Stato membro, nell'ambito di un contratto concluso tra l'impresa che lo invia e il destinatario della prestazione di servizi che opera in tale Stato membro, purché durante il periodo di distacco esista un rapporto di lavoro tra il lavoratore e l'impresa che lo invia; (b)	La directive s'applique aux entreprises établies dans un Etat membre qui, dans le cadre d'une prestation de service transnationale, détachent des travailleurs, sur le territoire d'une Etat membre : -dans le cadre d'un contrat conclu entre l'entreprise d'envoi et le destinataire de la prestation de services opérant dans cet Etat membre, pour autant qu'il existe une relation de travail entre l'entreprise d'envoi et le travailleur pendant la période de détachement - dans un établissement ou dans une entreprise appartenant au groupe pour autant qu'il existe une relation de travail entre l'entreprise d'envoi et le travailleur pendant la période	Dețășarea transnațională poate îmbrăca următoarele forme: - desfășurarea de către un salariat a unor activități pentru o perioadă de timp limitată pe teritoriul României, în numele întreprinderii străine și sub coordonarea acesteia, în cadrul unui contract încheiat între întreprinderea care face dețășarea și beneficiarul prestării de servicii care își desfășoară activitatea în România, dacă există un raport de muncă, pe perioada dețășării, între salariat și întreprinderea care face dețășarea; - desfășurarea de către un salariat a unor activități pentru o perioadă de timp limitată pe teritoriul României, la o unitate situată pe teritoriul României sau la o întreprindere care aparține unui grup de întreprinderi, situată pe teritoriul României, dacă există un raport de muncă, pe perioada	The Directive 96/71 shall apply to the extent that the undertakings take one of the following transnational measures: (a) post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the	Directive 96/71/EC, art. 1, par. 3 and Decision A2 of 12/06/2009 by the Administrative Commission for the Coordination of social security

	TERM	DEFINITION				SOURCE
		ITALIAN	FRENCH	ROMANIAN	ENGLISH	
		distacchino un lavoratore nel territorio di uno Stato membro, in uno stabilimento o in un'impresa appartenente al gruppo, purché durante il periodo di distacco esista un rapporto di lavoro tra il lavoratore e l'impresa che lo invia; (c) distacchino, in quanto imprese di lavoro temporaneo o in quanto imprese che effettuano la cessione temporanea di lavoratori, un lavoratore presso un'impresa utilizzatrice avente la sede o un centro di attività nel territorio di uno Stato membro, purché durante il periodo di distacco esista un rapporto di lavoro fra il lavoratore e l'impresa di lavoro temporaneo o l'impresa che lo cede temporaneamente.	du détachement en tant qu'entreprise de travail intérimaire ou en tant qu'entreprise qui met un travailleur à diisposition, un travailleur à une entreprise utilisatrice établie ou exerant son activité sur le territoire d'une Etat membre, pour autant qu'il existe une relation de travail entre l'entreprise de travail intérimaire ou l'entreprise qui met un travailleur à disposition et le travailleur pendant la période de détachement.	detaşării, între salariat şi întreprinderea care face detaşarea; - desfăşurarea de către un salariat temporar a unor activităţi pentru o perioadă de timp limitată pe teritoriul României, pus la dispoziţie de către un agent de muncă temporară sau agenţie de plasare (aşa cum este reglementată această activitate în ţara de origine), la o întreprindere utilizatoare stabilită sau care îşi desfăşoară activitatea pe teritoriul României, dacă există un raport de muncă, pe perioada detaşării, între salariat şi întreprinderea de muncă temporară sau agenţia de plasare.	period of posting; or (b) post workers to an establishment or to an undertaking owned by the group in the territory of a Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or (c) being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.	
4.	Infrazione grave della normativa comunitaria in materia di trasporti su strada (IT) Infraction grave à la législation	Un'infrazione che può portare alla perdita dell'onorabilità ai sensi dell'art. 6, parr. 1 e 2, Reg. (CE) n. 1071/2009 e/o al ritiro temporaneo o permanente di una licenza comunitaria.	Une infraction pouvant conduire à la perte d'honorabilité conformément à l'article 6, paragraphes 1 et 2, du règlement (CE) no 1071/2009, et/ou au retrait temporaire ou permanent d'une licence communautaire.	Inseamnă orice încălcări care pot avea ca rezultat pierderea bunei reputaţii în conformitate cu articolul 6 alineatele (1) şi (2) din Regulamentul (CE) nr. 1071/2009 şi/sau retragerea temporară sau definitivă a licenţei comunitare	Means an infringement which may lead to the loss of good repute in accordance with Article 6(1) and (2) of Regulation (EC) No 1071/2009 and/or to the temporary or permanent withdrawal of a Community licence.	Reg. (EC) no. 1072/2009, art. 2, no 7

	TERM	DEFINITION				SOURCE
		ITALIAN	FRENCH	ROMANIAN	ENGLISH	
	<p>communautaire dans le domaine des transports routiers (FR)</p> <p>Încălcări grave ale legislației comunitare din domeniul transporturi rutiere (RO)</p> <p>Serious infringement of Community road transport legislation (EN)</p>					
5.	<p>Lavoratore distaccato (IT)</p> <p>Travailleur détaché (FR)</p> <p>Lucrător detașat (RO)</p> <p>Posted worker</p>	<p>Il lavoratore inviato, temporaneamente, a prestare la propria opera da un datore di lavoro (o da un'organizzazione imprenditoriale) stabilito nel territorio di uno Stato comunitario, presso un diverso datore di lavoro (o una diversa organizzazione imprenditoriale) stabilito in un altro Stato comunitario, nell'ambito di un contratto commerciale tra i suddetti datori di lavoro (o le suddette organizzazioni imprenditoriali).</p>	<p>Tout travailleur qui, pendant une période limitée, exécute son travail sur le territoire d'une Etat membre autre que l'Etat sur le territoire duquel il travaille habituellement.</p> <p>La notion de travailleur est celle qui est d'application dans le droit de l'Etat membre sur le territoire duquel le travailleur est détaché.</p>	<p>În sensul Directivei 96/71/CE, prin <i>lucrător detașat</i> se înțelege un lucrător care, pe o perioadă limitată, își desfășoară munca pe teritoriul unui stat membru diferit de cel în care lucrează în mod normal.</p> <p>Noțiunea de lucrător este cea care se aplică în legislația statului membru pe teritoriul căruia este detașat lucrătorul. Legea nr. 344/2006 se aplică salariaților, așa cum este definită această noțiune de art. 10 din Legea nr. 53/2003 - <i>Codul muncii</i> (R): persoana fizică care încheie un contract individual de muncă cu un angajator (contractul individual de muncă este contractul în temeiul căruia o persoană fizică, denumită <i>salarizat</i>, se obligă să presteze munca pentru și sub autoritatea unui</p>	<p>A worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works.</p> <p>For the purposes of the Directive 96/71, the definition of a worker is that which applies in the law of the Member State to whose territory the worker is posted.</p>	<p>Directive 96/71/EC, art. 2</p>

	TERM	DEFINITION				SOURCE
		ITALIAN	FRENCH	ROMANIAN	ENGLISH	
				angajator, persoană fizică sau juridică, în schimbul unei remunerații denumite <i>salariu</i>)		
6.	Lavoratore mobile (IT) Travailleur mobile (FR) Lucrător mobil (RO) Mobile worker (EN)	Un lavoratore facente parte del personale che effettua spostamenti, compresi i tirocinanti e gli apprendisti, che è al servizio di un'impresa che effettua autotrasporto di passeggeri o di merci per conto proprio o di terzi.	Tout travailleur faisant partie du personnel qui se déplace, y compris les stagiaires et les apprentis, et qui est au service d'une entreprise qui effectue, pour le compte d'autrui ou pour son propre compte, des transports de voyageurs ou de marchandises par route.	Reprezintă orice lucrător care face parte din personalul aflat în cursă, inclusiv stagiarii și ucenicii, aflați în serviciul întreprinderii care desfășoară servicii de transport rutier de pasageri sau mărfuri contra unei remunerații sau pe cont propriu.	Shall mean any worker forming part of the travelling staff, including trainees and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road for hire or reward or on its own account.	Directive 2002/15/EC, art. 3, lett.. d)
7.	CMR	Documento di accompagnamento delle merci trasportate in ambito internazionale. La lettera di vettura CMR è compilata al momento del carico delle merci, ed è sottoscritta dal mittente e dal vettore. È formata da tre esemplari: uno per il mittente, uno per il destinatario (ed accompagna la merce fino alla consegna) ed uno per il vettore. Il documento deve contenere tutte le informazioni necessarie ad identificare mittente, vettore, destinatario e caratteristiche della merce (tipologia, peso,	Document attestant le contrat de transport international signé par l'expéditeur et le transporteur. La lettre de voiture doit contenir des informations permettant d'identifier l'expéditeur, le transporteur et le destinataire des marchandises, le lieu de chargement et de livraison des marchandises, des précisions sur les marchandises transportées (nature des marchandises, nombre de colis, et leur poids, valeur déclarée des marchandises etc..), l'indication des frais afférents au transport, les instructions requises pour les formalités en douane, délai convenu de livraison etc...	Convenție referitoare la contractul de transport internațional de mărfuri pe șosele (CMR). Proba contractului de transport se face prin scrisoare de trăsură. Scrisoarea de trăsură este întocmită în 3 exemplare originale, semnate de expeditor și de transportator. Scrisoarea de trăsură trebuie să conțină date privind locul și data întocmirii sale, expeditorul, transportatorul, locul și data primirii mărfii și locul prevăzut pentru eliberarea acesteia, destinatarul, marfa și cantitatea acesteia, precum și cheltuielile aferente transportului.	Standardized document for cross-border transport of cargo by road. The document is filled in at the moment of the charge of goods and it is signed by the consignor and the carrier. It comprises of three copies: one for the the consignor, one for the recipient, and one for the carrier. The document is joint to the transported good until is delivery. The document must include all information needed to identify the consignor, the carrier and the recipient, the placae of charge and of delivery, the carcheristics of goods (typology, weights, value,	Convention realtive au contrat de transport international de marchandisep ar route (Genève, 19/05/1956, modified ij Genève 5/07/1978)

	TERM	DEFINITION				SOURCE
		ITALIAN	FRENCH	ROMANIAN	ENGLISH	
		valore, n. pezzi,...).			...)	
8.	Licenza comunitaria (IT) Licence communautaire (FR) Licența comunitară (RO) Community licence (EN)	<p>Provvedimento amministrativo rilasciato da uno Stato membro in conformità del Reg. (CE) n. 1072/2009, a qualsiasi trasportatore di merci su strada per conto terzi che: sia stabilito in tale Stato membro in conformità della legislazione comunitaria e della legislazione nazionale di tale Stato membro; e sia abilitato nello Stato membro di stabilimento, in conformità della legislazione comunitaria e della legislazione nazionale di tale Stato membro in materia di accesso alla professione di trasportatore di merci su strada, ad effettuare trasporti internazionali di merci su strada.</p>	<p>La licence communautaire est délivrée par un État membre, conformément au présent règlement, à tout transporteur de marchandises par route pour compte d'autrui qui est: a) établi dans ledit État membre conformément à la législation communautaire et à la législation nationale de cet État membre; et b) habilité dans l'État membre d'établissement, conformément à la législation communautaire et à la législation nationale de cet État membre en matière d'accès à la profession de transporteur par route, à effectuer des transports internationaux de marchandises par route.</p>	<p>Licența comunitară se eliberează de un stat membru, în conformitate cu prezentul regulament, oricărui operator de transport rutier de mărfuri care efectuează transport rutier de mărfuri contra cost în numele unui terț și care: (a) este stabilit în respectivul stat membru în conformitate cu legislația comunitară și cu legislația națională a aceluia stat membru; și (b) este autorizat, în statul membru de stabilire, în conformitate cu legislația comunitară și cu legislația națională a statului membru respectiv cu privire la accesul la ocupația de operator de transport rutier de mărfuri, să efectueze transporturi internaționale rutiere de mărfuri.</p>	<p>The Community licence shall be issued by a Member State, in accordance with this Regulation, to any haulier carrying goods by road for hire or reward who: (a) is established in that Member State in accordance with Community legislation and the national legislation of that Member State; and (b) is entitled in the Member State of establishment, in accordance with Community legislation and the national legislation of that Member State concerning admission to the occupation of road haulage operator, to carry out the international carriage of goods by road.</p>	<p>Reg. (EC) no. 1072/2009, art. 4, par. 1</p>
9.	Locazione senza conducente (IT) Utilisation de véhicules loués sans chauffeur dans le transport de marchandises par route (FR)	<p>Ogni Stato comunitario consente l'utilizzazione nel suo territorio, di veicoli presi a noleggio da imprese stabilite nel territorio di un altro Stato membro. L'utilizzo dei veicoli presi in locazione è ammesso "ai fini del</p>	<p>Chaque État membre admet l'utilisation sur son territoire, aux fins du trafic entre États membres, des véhicules pris en location par les entreprises établies sur le territoire d'un autre État membre pour autant que:</p> <p>a) le véhicule soit immatriculé</p>	<p>Fiecare stat membru permite folosirea pe teritoriul său, în scopul traficului între statele membre, a vehiculelor închiriate de întreprinderi stabilite pe teritoriul unui alt stat membru, cu condiția ca:</p> <p>(a) vehiculul să fie înmatriculat sau pus în circulație în conformitate cu legislația din statul</p>	<p>Each Member State shall allow the use within its territory, for the purposes of traffic between Member States, of vehicles hired by undertakings established on the territory of another Member State provided</p>	<p>Directive 2006/1/EC, art. 2</p>

TERM	DEFINITION				SOURCE
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<p>Utilizarea vehiculelor fără conducător auto pentru transportul rutier de mărfuri (RO)</p> <p>Use of vehicles hired without drivers for the carriage of goods by road (EN)</p>	<p>traffico tra Stati membri”, ossia esclusivamente per il trasporto internazionale.</p> <p>Ne discende un divieto di utilizzazione dei veicoli presi in locazione per il trasporto nazionale e, dunque, anche per il cabotaggio, atteso che quest’ultimo si svolge nel territorio nazionale di ogni singolo Stato.</p> <p>La locazione può avvenire alle seguenti condizioni:</p> <p>a) il veicolo deve essere immatricolato o messo in circolazione conformemente alla legislazione dello Stato membro in cui è stabilita l’impresa che concede il veicolo in locazione;</p> <p>b) il contratto deve prevedere unicamente la messa a disposizione del veicolo senza conducente e non può essere abbinato ad un contratto di servizio concluso con la stessa impresa e riguardante il personale di guida o di accompagnamento;</p> <p>c) il veicolo noleggiato deve essere esclusivamente a</p>	<p>ou mis en circulation en conformité avec la législation dans ce dernier État membre;</p> <p>b) le contrat ne concerne que la mise à disposition d'un véhicule sans conducteur et ne soit pas accompagné d'un contrat d'emploi conclu avec la même entreprise portant sur le personnel de conduite ou d'accompagnement;</p> <p>c) le véhicule loué soit à la disposition exclusive de l'entreprise qui l'utilise pendant la durée du contrat de location;</p> <p>d) le véhicule loué soit conduit par le personnel propre de l'entreprise qui l'utilise.</p> <p>Le respect des conditions visées au paragraphe 1, points a) à d), doit être prouvé par les documents suivants, qui doivent se trouver à bord du véhicule:</p> <p>a) le contrat de location, ou un extrait certifié de ce contrat contenant notamment le nom du loueur, le nom du locataire, la date et la durée du contrat, ainsi que l'identification du véhicule;</p> <p>b) dans le cas où le conducteur n'est pas lui-même celui qui prend en location, le contrat d'emploi du conducteur ou un extrait certifié de ce contrat contenant notamment le nom</p>	<p>membru cel din urmă;</p> <p>(b) contractul să se refere numai la închirierea unui vehicul fără conducător auto și să nu fie însoțit de un contract de servicii încheiat cu aceeași întreprindere care să cuprindă conducători auto sau personal de însoțire;</p> <p>(c) vehiculul închiriat să fie în mod exclusiv la dispoziția întreprinderii care îl utilizează pe perioada contractului de închiriere;</p> <p>(d) vehiculul închiriat să fie condus de personalul întreprinderii care îl utilizează.</p> <p>(2) Dovada respectării condițiilor prevăzute la alineatul (1) literele (a)-(d) se face prin următoarele documente, care trebuie să existe la bordul vehiculului:</p> <p>(a) contractul de închiriere sau un extras certificat pentru conformitate din respectivul contract, care să menționeze, în special, numele locatorului, numele locatarului, data și durata contractului și datele de identificare a vehiculului;</p> <p>(b) în cazul în care conducătorul auto nu este persoana care ia cu chirie vehiculul, contractul de muncă al conducătorului auto sau un extras certificat din respectivul contract, care să menționeze în special numele angajatorului, numele angajatului, precum și data și durata contractului de muncă sau un fluturaș de plată a unui salariu recent. În cazul în care este</p>	<p>that:</p> <p>(a) the vehicle is registered or put into circulation in compliance with the laws in the latter Member State;</p> <p>(b) the contract relates solely to the hiring of a vehicle without a driver and is not accompanied by a service contract concluded with the same undertaking covering driving or accompanying personnel;</p> <p>(c) the hired vehicle is at the sole disposal of the undertaking using it during the period of the hire contract;</p> <p>(d) the hired vehicle is driven by personnel of the undertaking using it.</p> <p>Proof of compliance with the conditions referred to in paragraph 1, points (a) to (d) shall be provided by the following documents, which must be on board the vehicle:</p> <p>(a) the contract of hire, or a certified extract from that contract giving in particular the name of the lessor, the name of the lessee, the date and duration of the contract</p>	

	TERM	DEFINITION				SOURCE
		ITALIAN	FRENCH	ROMANIAN	ENGLISH	
		<p>disposizione dell'impresa che lo utilizza, per la durata del contratto di noleggio;</p> <p>d) il veicolo noleggiato deve essere guidato dal personale proprio dell'impresa che lo utilizza.</p> <p>Il rispetto delle suddette condizioni dev'essere comprovato dai seguenti documenti, che devono trovarsi a bordo del veicolo:</p> <p>a) contratto di noleggio o estratto autentificato del contratto contenente in particolare il nome del noleggiante, il nome del noleggiatore, la data e la durata del contratto e l'identificazione del veicolo;</p> <p>b) qualora non sia il conducente a noleggiare il veicolo, contratto di lavoro del conducente o estratto autentificato del contratto, contenente in particolare il nome del datore di lavoro, il nome del dipendente, la data e la durata del contratto di lavoro, o un foglio paga recente.</p> <p>I documenti di cui alle</p>	<p>de l'employeur, le nom de l'employé, la date et la durée du contrat d'emploi, ou une fiche de salaire récente.</p> <p>Le cas échéant, les documents visés aux points a) et b) peuvent être remplacés par un document équivalent, délivré par les autorités compétentes de l'État membre.</p>	<p>necesar, documentele menționate la literale (a) și (b) pot fi înlocuite de un document echivalent, eliberat de autoritățile competente ale statului membru.</p>	<p>and the identification of the vehicle;</p> <p>(b) where the driver is not the person hiring the vehicle, the driver's employment contract or a certified extract from that contract giving in particular the name of the employer, the name of the employee and the date and duration of the employment contract or a recent pay slip.</p> <p>If need be, the documents referred to in (a) and (b) may be replaced by an equivalent document issued by the competent authorities of the Member State.</p>	

	TERM	DEFINITION				SOURCE
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		<p>lettere a) e b) possono eventualmente essere sostituiti da un documento equivalente rilasciato dalle autorità competenti dello Stato membro.</p> <p>Il soggetto che fornisce il veicolo in locazione non deve necessariamente essere un'impresa di trasporto.</p>				
10.	<p>Professione di trasportatore di merci su strada (IT)</p> <p>Profession de transporteur de marchandises par route (FR)</p> <p>Ocupația de operator de transport rutier de marfă (RO)</p> <p>The occupation of road haulage operator (EN)</p>	<p>L'attività di un'impresa che esegue, mediante un autoveicolo oppure un insieme di veicoli, il trasporto di merci per conto di terzi.</p>	<p>L'activité de toute entreprise effectuant, au moyen soit de véhicules à moteur, soit d'ensembles de véhicules, le transport de marchandises pour le compte d'autrui.</p>	<p>Inseamnă activitatea oricărei întreprinderi care efectuează transportul de marfă contra cost în numele unui terț, cu ajutorul fie al unor autovehicule, fie al unei combinații de vehicule,.</p>	<p>Means the activity of any undertaking transporting goods for hire or reward by means either of motor vehicles or combinations of vehicles.</p>	<p>Reg. (EC) no. 1071/2009, art. 2</p>
11.	<p>Rimorchio (IT)</p> <p>Remorque (FR)</p> <p>Remorcă (RO)</p> <p>Trailer (EN)</p>	<p>Qualsiasi mezzo di trasporto destinato ad essere agganciato ad un veicolo a motore o ad un trattore.</p>	<p>Tout véhicule destiné à être attelé à un véhicule automobile ou à un véhicule tracteur.</p>	<p>Orice vehicul proiectat pentru a fi cuplat la un autovehicul sau la un tractor.</p>	<p>Any vehicle designed to be coupled to a motor vehicle or tractor.</p>	<p>Reg. (EC) No. 561/2006, art. 4, lett. b)</p>

	TERM	DEFINITION				SOURCE
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12.	Semirimorchio (IT) Semiremorque (FR) Semiremorcă (RO) Semitrailer (EN)	<p>Un rimorchio privo di assale anteriore, collegato in maniera che una parte considerevole del peso di detto rimorchio e del suo carico sia sostenuta dal trattore o dal veicolo a motore.</p>	<p>Une remorque sans essieu avant accouplée de telle manière qu'une partie importante de son poids et du poids de son chargement est supportée par le véhicule tracteur ou le véhicule automobile.</p>	<p>O remorcă fără osia din față, cuplată astfel încât o parte substanțială din greutatea sa și din cea a încărcăturii sale să fie suportată de tractor sau de autovehicul.</p>	<p>A trailer without a front axle coupled in such a way that a substantial part of its weight and of the weight of its load is borne by the tractor or motor vehicle.</p>	<p>Reg. (EC) no. 561/2006, art. 4, lett. b)</p>
13.	Stato membro ospitante (IT) État membre d'accueil (FR) Stat membru gazdă (RO) Host Member State (EN)	<p>Lo Stato membro nel quale un trasportatore svolge la sua attività diverso dallo Stato membro di stabilimento del trasportatore.</p>	<p>Un État membre dans lequel un transporteur exerce ses activités, autre que l'État membre dans lequel il est établi.</p>	<p>Inseamnă un stat membru în care operează un operator de transport rutier de mărfuri, altul decât statul membru de stabilire al acestuia.</p>	<p>Means a Member State in which a haulier operates other than the haulier's Member State of establishment.</p>	<p>Reg. (EC) No. 1072/2009, art. 2, no. 3</p>
14.	Trasportatore non residente (IT) Transporteur non résident (FR) Operator de transport rutier de mărfuri nerezident (RO) Non-resident haulier	<p>Un'impresa di trasporto di merci su strada che svolge la sua attività in uno Stato membro ospitante.</p>	<p>Une entreprise de transport de marchandises par route qui exerce ses activités dans un État membre d'accueil.</p>	<p>Inseamnă o întreprindere de transport rutier care operează într-un stat membru gazdă.</p>	<p>Means a road haulage undertaking which operates in a host Member State.</p>	<p>Reg. (EC) No 1072/2009, art. 2, no. 4)</p>

	TERM	DEFINITION				SOURCE
		ITALIAN	FRENCH	ROMANIAN	ENGLISH	
15.	<p>Trasporti di cabotaggio (nel trasporto di merci su strada) (IT)</p> <p>Transports de cabotage (FR)</p> <p>Operațiuni de cabotaj (RO)</p> <p>Cabotage operations (EN)</p>	<p>Trasporti nazionali di merci effettuati per conto terzi, a titolo temporaneo, in uno Stato membro ospitante, in conformità dei presupposti e limiti contenuti nell'art. 8 e ss., Reg. (CE) n. 1072/2009.</p>	<p>Des transports nationaux pour compte d'autrui assurés à titre temporaire dans un État membre d'accueil, dans le respect du présent règlement.</p>	<p>Inseamnă transport național contra cost în numele unui terț efectuat temporar într-un stat membru gazdă, în conformitate cu prezentul regulament.</p>	<p>Means national carriage for hire or reward carried out on a temporary basis in a host Member State, in conformity with Reg. (EC) no. 1072/2009ith</p>	<p>Reg. (EC) No. 1072/2009, art. 2, no. 6</p>
16.	<p>Trasporti internazionali (IT)</p> <p>Transports internationaux (FR)</p> <p>Transport internațional (RO)</p> <p>International carriage (EN)</p>	<p>a) Gli spostamenti dei veicoli a carico i cui punti di partenza e d'arrivo siano situati in due Stati membri diversi, con o senza transito in uno o più Stati membri o paesi terzi;</p> <p>b) gli spostamenti dei veicoli a carico da uno Stato membro verso un paese terzo e viceversa, con o senza transito in uno o più Stati membri o paesi terzi;</p> <p>c) gli spostamenti dei veicoli a carico tra paesi terzi, con transito nel territorio di uno o più Stati membri; o</p> <p>d) gli spostamenti a vuoto relativi ai trasporti di cui alle lettere a), b) e c).</p>	<p>a) Les déplacements en charge d'un véhicule, dont le point de départ et le point d'arrivée se trouvent dans deux États membres différents, avec ou sans transit par un ou plusieurs États membres ou pays tiers;</p> <p>b) les déplacements en charge d'un véhicule au départ d'un État membre et à destination d'un pays tiers et vice versa, avec ou sans transit par un ou plusieurs États membres ou pays tiers;</p> <p>c) les déplacements en charge d'un véhicule entre pays tiers, traversant en transit le territoire d'un ou plusieurs États membres; ou</p> <p>d) les déplacements à vide en relation avec les transports visés aux points a), b) et c)</p>	<p>(a) O deplasare cu încărcătură efectuată de un vehicul al cărei punct de plecare și punct de destinație se află în două state membre diferite, cu sau fără tranzitarea unuia sau mai multor state membre sau țări terțe;</p> <p>(b) o deplasare cu încărcătură efectuată de un vehicul dintr-un stat membru către o țară terță sau invers, cu sau fără tranzitarea unuia sau mai multor state membre sau țări terțe;</p> <p>(c) o deplasare cu încărcătură efectuată de un vehicul între țări terțe, cu tranzitarea teritoriului unuia sau mai multor state membre;</p> <p>(d) o deplasare fără încărcătură în legătură cu transporturile menționate la literele (a), (b) și (c)</p>	<p>(a) A laden journey undertaken by a vehicle the point of departure and the point of arrival of which are in two different Member States, with or without transit through one or more Member States or third countries;</p> <p>(b) a laden journey undertaken by a vehicle from a Member State to a third country or vice versa, with or without transit through one or more Member States or third countries;</p> <p>(c) a laden journey undertaken by a vehicle between third countries, with transit through the territory of one or more Member States; or</p>	<p>Reg. (EC) No. 1072/2009, art. 2, no. 2</p>

	TERM	DEFINITION				SOURCE
		ITALIAN	FRENCH	ROMANIAN	ENGLISH	
					(d) an unladen journey in conjunction with the carriage referred to in points (a), (b) and (c)	
17.	Trasporti nazionali (IT) Transports nationaux (FR) Transport național (RO) National carriage (EN)	Spostamenti dei veicoli i cui punti di partenza e di arrivo siano situati in uno stesso Stato, senza transito in alcun altro Stato.	Les déplacements d'un véhicule, dont le point de départ et le point d'arrivée se trouvent sans transport en commun dans tout autre Etat.	Deplasarea unui vehicul între un punct de plecare și un punct de destinație, aflate pe teritoriul aceluiași stat, fără tranzitarea unui alt stat.	Movement of vehicles concerning starting and arrival points in one Member State without transit in any other Member State.	
18.	Trasporto su strada (IT) Transport par route (FR) Transport rutier (RO) Carriage by road	Qualsiasi spostamento, interamente o in parte su strade aperte ad uso pubblico, a vuoto o a carico, di un veicolo adibito al trasporto di passeggeri o di merci.	Tout déplacement effectué, en totalité ou en partie et à vide ou en charge sur le réseau routier ouvert au public, par un véhicule utilisé pour le transport de voyageurs ou de marchandises	Orice deplasare efectuată, în tot sau în parte, pe drumurile deschise utilizării publice de către un vehicul, gol sau încărcat, folosit pentru transportul călătorilor sau al mărfurilor	Means any journey made entirely or in part on roads open to the public by a vehicle, whether laden or not, used for the carriage of passengers or goods;	Reg. (EC) no. 561/2006, art. 4, lit. a)
19.	Trattore (IT) Véhicule tracteur (FR) Tractor (RO) Tractor (EN)	Qualsiasi mezzo semovente che circola su strada senza guida di rotaie, concepito in particolare per tirare, spingere o azionare rimorchi, semirimorchi, attrezzi o macchine.	Tout véhicule automoteur circulant sur la voie publique, qui ne se déplace pas en permanence sur des rails et qui est conçu spécialement pour tracter, pousser ou déplacer des remorques, des semi-remorques, des engins ou des machines.	Orice vehicul prevăzut cu un sistem mecanic de autopropulsie care circulă pe un drum public, altul decât cel care se deplasează în permanență pe șine, și care este proiectat în mod special pentru a trage, împinge sau acționa remorci, semiremorci, utilaje sau mașini.	Any self-propelled vehicle travelling on the road, other than a vehicle permanently running on rails, and specially designed to pull, push or move trailers, semi-trailers, implements or machines.	Reg. (EC) No. 561/2006, art. 4, lit. b)

	TERM	DEFINITION				SOURCE
		ITALIAN	FRENCH	ROMANIAN	ENGLISH	
20.	Veicolo (IT) Véhicule (FR) Vehicul (RO) Vehicle (EN)	Un veicolo a motore immatricolato in uno Stato membro o un complesso di veicoli accoppiati di cui almeno il veicolo a motore sia immatricolato in uno Stato membro, adibiti esclusivamente al trasporto di merci.	Un véhicule à moteur immatriculé dans un État membre ou un ensemble de véhicules couplés dont au moins le véhicule à moteur est immatriculé dans un État membre, utilisés exclusivement pour le transport de marchandises.	Inseamnă un autovehicul înmatriculat într-un stat membru sau o combinație cuplată de vehicule, din care cel puțin autovehiculul este înmatriculat într-un stat membru, fiind utilizat exclusiv pentru transportul de mărfuri.	Means a motor vehicle registered in a Member State, or a coupled combination of vehicles the motor vehicle of which at least is registered in a Member State, used exclusively for the carriage of goods.	Reg. (EC) No. 1072/2009, art. 2, no. 1). See also: Reg. (EC) No. 561/2006, art. 4, lett. b) and Dir. 2006/1/EC art. 1, lett. a)