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**TRANSPO**

**Road *TRAN*sport sector and *PO*sting of workers**

**VS/2010/0624**

# **Road Transports: the EU legal framework (Davide Venturi)**

**Final Seminar  
Brussels 23.11.2011**

## The legal framework: at EU level

Generally speaking, the Posting Workers Directive n. 96/71/EU is very widely debated at EU level. The directive is the result of a compromise reached in 1996. But,

➤ *Does that compromise still meet the requirements of the economic and social actors?*

➤ *Is it still fair?*

(see the proposal by ETUC/CES dated 31.5.2010 in [www.etuc.org/IMGpdf/final-report-ETUC-expert-group-posting-310510-FR.pdf](http://www.etuc.org/IMGpdf/final-report-ETUC-expert-group-posting-310510-FR.pdf))

➤ *Is there evidence that Directive 96/71/EC, as it is now, is generally and correctly applied?*

**But above all,**

➤ *Does the transport sector fall in the application of Directive 96/71/EC ? And to what extent?*

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

## ADMINISTRATIVE REGULATION OF ACCESS

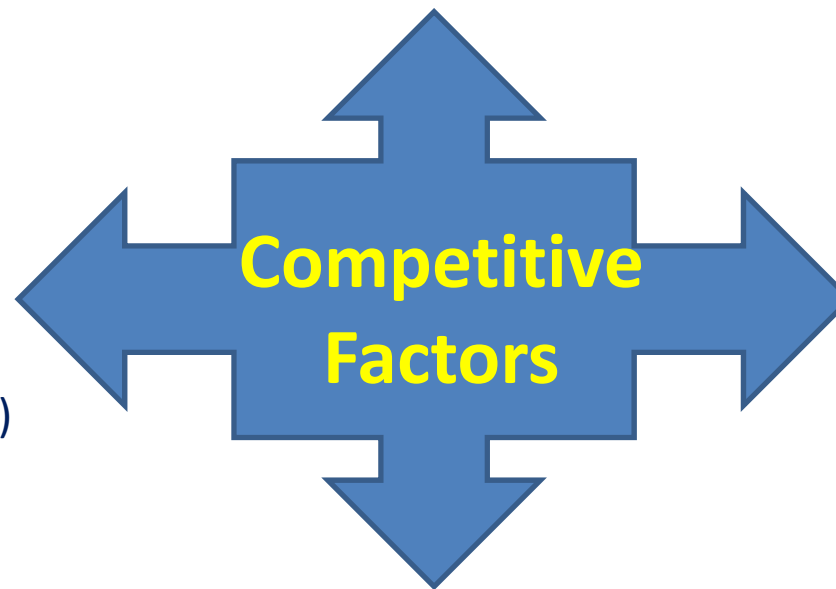
Reg. EC n. 1072/2009, art. 4 (“Community Licence”)

### TIME OF DELIVERY

Reg. EC n. 561/2006  
(driving time and rests)

Dir. N. 2002/15/EC  
(working time)

Speed limits



### VEHICLES OVERCHARGING

National/International  
docs. of transport  
(Eg: CMR letter, ecc.)

### COST OF WORK

Dir. 96/71/EC  
(posting workers)

## COST OF WORK

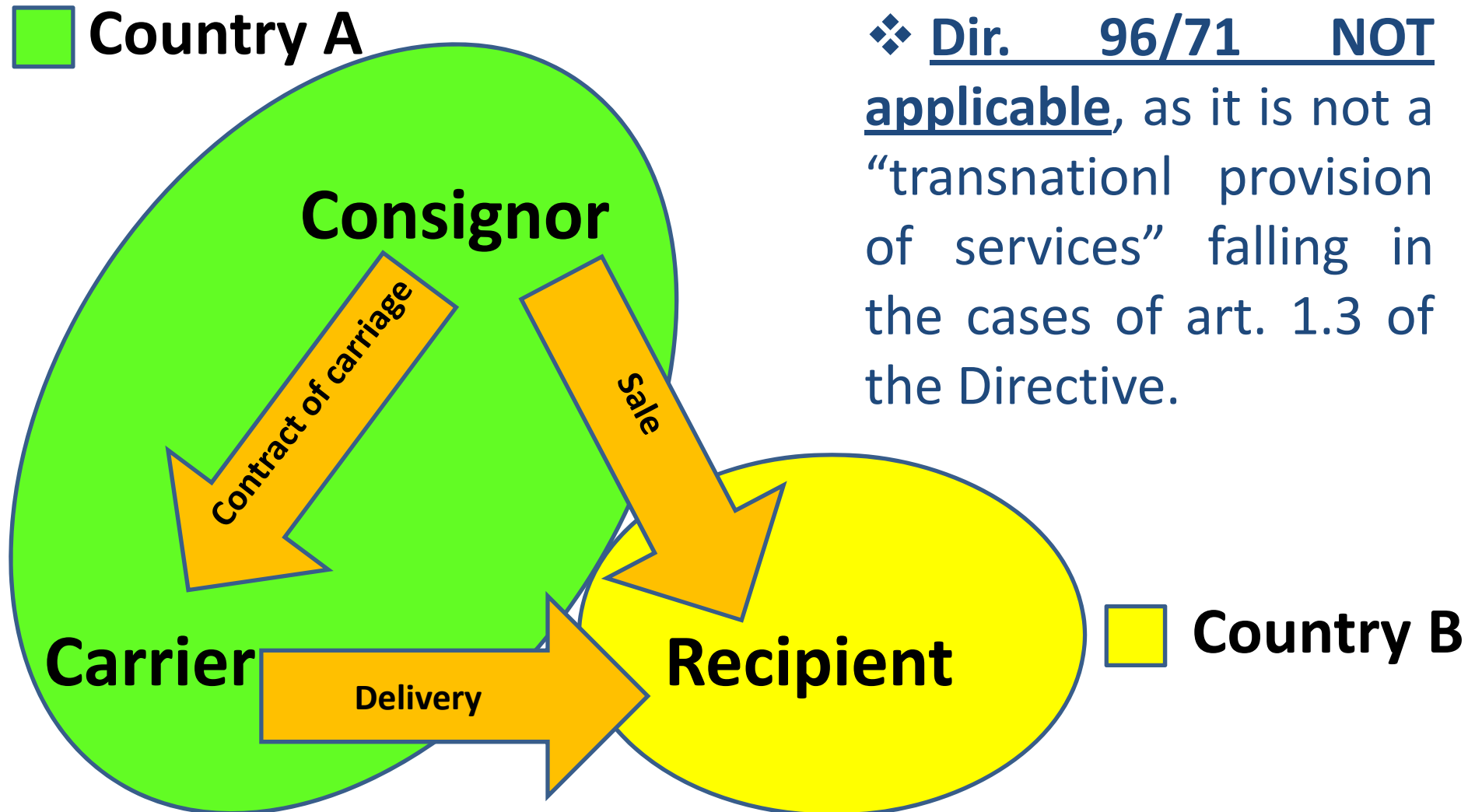
### Cabotage

**Directive 96/71/EC applies to cabotage operations** (see *Regulation 1072/2009*, recital no. 17, for goods transportation, and *Regulation 1073/2009*, recital no. 13, for passenger transportation).

**This might apply** both to

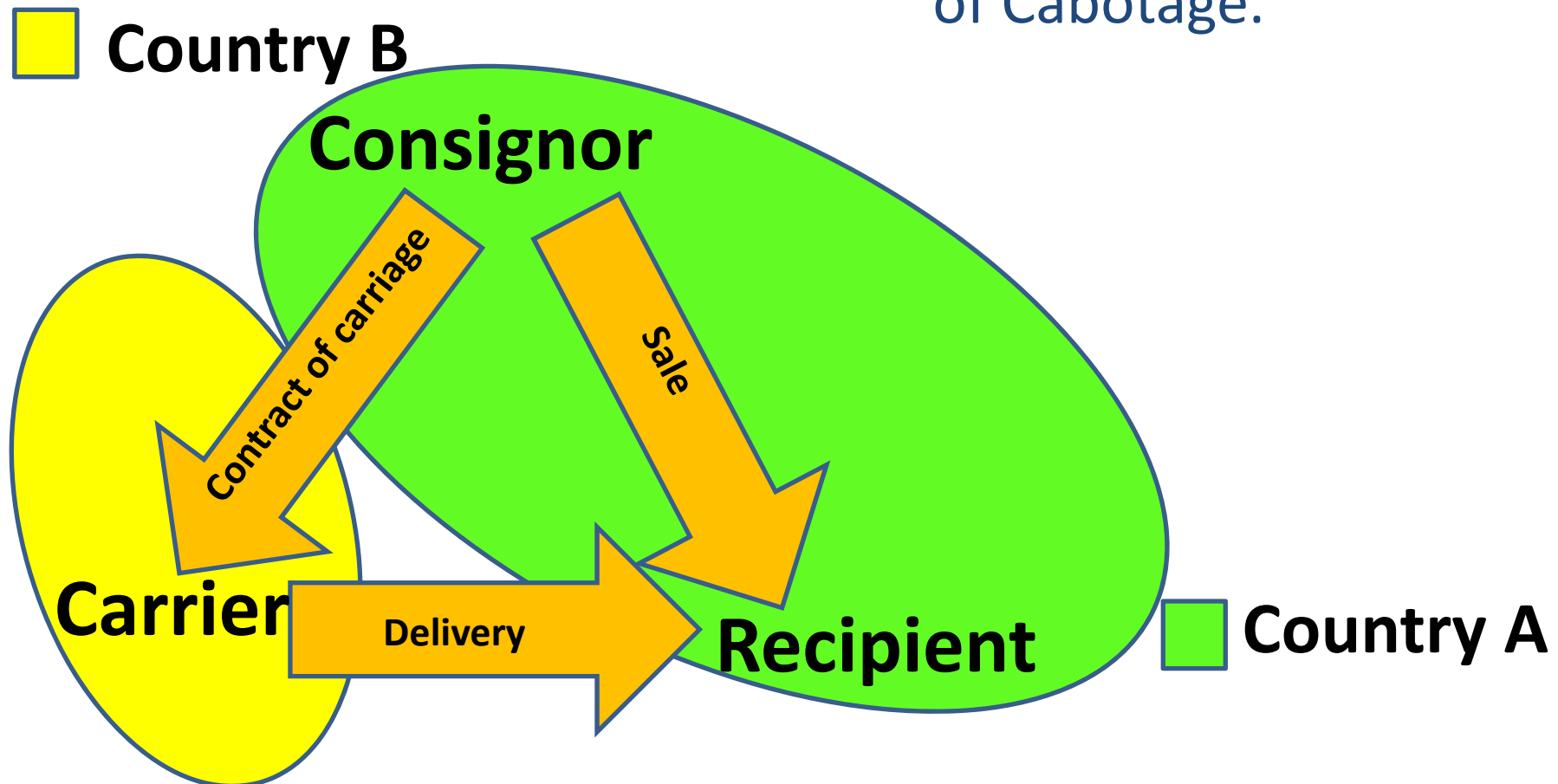
- (i) **cabotage that complies** with the time and quantity limits laid down by Community rules, and also to
- (ii) cabotage that is in breach of such limits (this is widely defined as **illicit cabotage**, an offence punished by national legislation).

## Transnational transport. Case a)

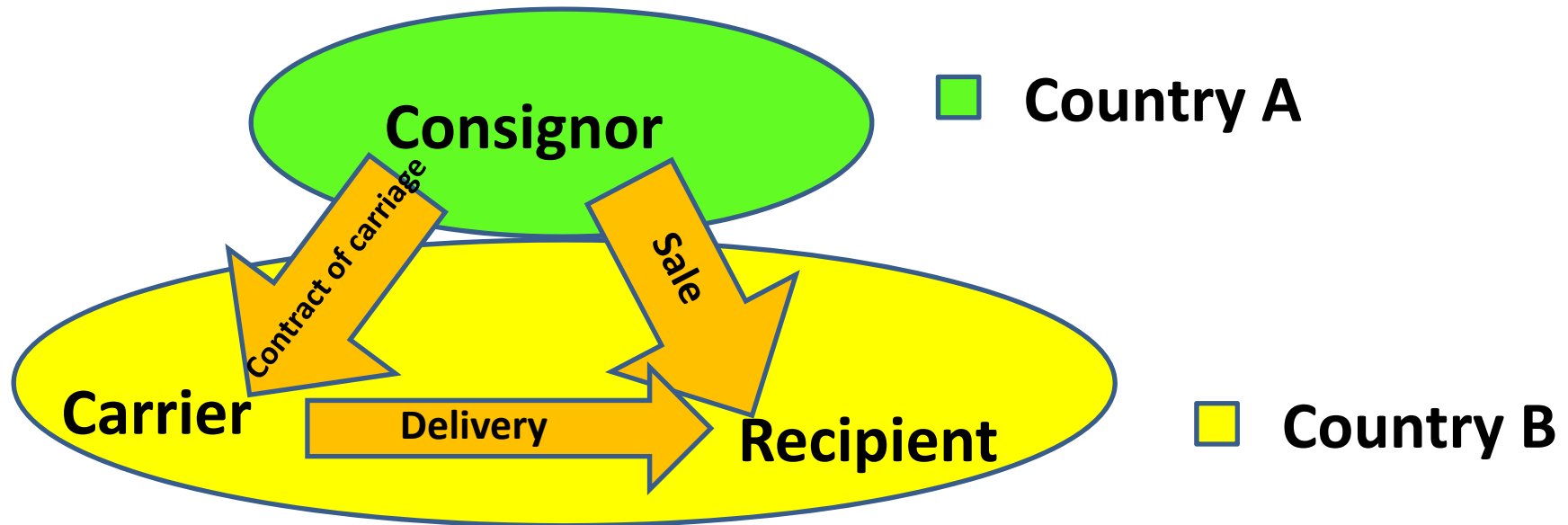


## Transnational transport. Case b)

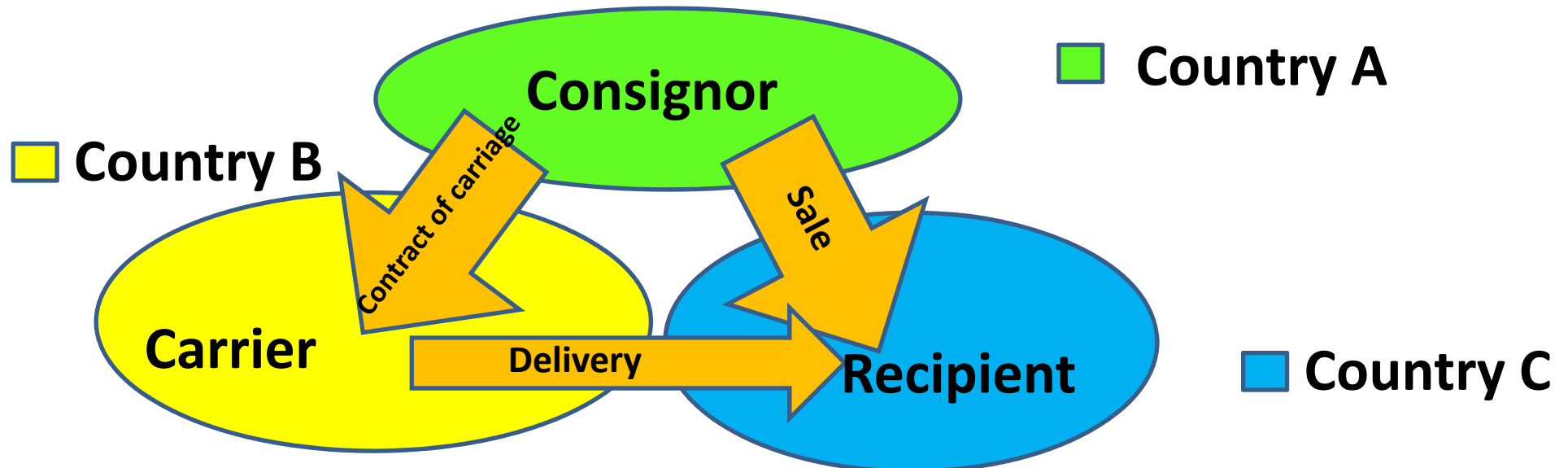
❖ Dir. 96/71 IS applicable: it is the case of Cabotage.



## Transnational transport. Case c)



## Transnational transport. Case d)



Does a transnational transport, especially if regularly repeated, fall in the provisions of Directive 96/71?

Even though some might even argue that the Directive 96/71 applies to all contracts 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 argument does not appear sufficiently founded, nor could it be considered practically sustainable. In fact, this case would seem to be better framed in the international regime of the international transport, rather than in that of the Community posting, 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.

**The answer to that point does not look sufficiently clear, and possibly not so desirable in terms of effectiveness.**

In fact, even in terms of “national interests” protection, 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?



... **But**, 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 are possible:

1. The Carrier choses to keep the national law of the labour contract, but choses 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) 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);
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”, n. 10-82626, dated 12.10.2010).

## OPEN ISSUES

- effectiveness of controls (who, where, what should/might be controlled?;
- effectiveness of punishment of illicit (abusive) practices;
- administrative transnational cooperation (between Labour Inspectorates);
- interinstitutional cooperation within national controlling Authorities.
- national specific issues (eg. application of joint and several liability regulation)

*Thank You for Your kind attention!*