COMPARATIVE STUDY ON ROAD TRANSPORT LABOUR LAW REGIMES IN THE EU-28

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Preface

In the early part of 2014, the Board of Trustees of the Francisco Corell Foundation was engaged in intensive discussions about the problems generated by factors that were clearly altering normal competition between road transport companies in the major EU Member States. Among these, one of the key components of the final cost to enterprises stood out: the labour factor.

The above-mentioned consideration was not confined to the economistic scope of the labour factor, given that compliance with UE legislation with lesser or greater strictness by the players of the Member States can also mean yet another element of distortion of competition between companies.

If we couple this with other aspects derived from national legislations, unemployment cover, trade union rights, training, protection for working women, etc., and the specific taxation derived from them, we would gain a broader picture of the competition framework derived from the labour factor in the EU of the 28 Member States. For this reason, the Francisco Corell Foundation decided to conduct the Comparative Study that you have in your hands.

The fact that the EU is made up of 28 States complicated the work of the Alonso & Asociados' team, to whom we commissioned the task of researching and conveying, in the clearest and most comprehensible manner, the status of the legal framework of industrial relations in the countries that make up the EU-28. Three main difficulties were encountered and complicated the study:

- The lack of up-to-date statistics in some States. The reader will notice that some of the data is relatively old. This is because priority was given to reliable and sound statistics over more 'up-to-date' statistics that cast serious doubts on their accuracy.
- The absence of legislation in certain areas, in some countries, and above all difficulties in obtaining it.
- Having to turn to unofficial entities, mainly trade associations, may have introduced some type of 'bias' in certain data, which we have tried to eliminate.

In any event, this is the first study conducted at the level of the EU as a whole, and despite its possible shortcomings, no one should deny it that credit.

The Board of Trustees wishes to thank Alonso & Asociados for their work, as it has given us a tool and, above all, a much deeper and wider knowledge of the legal framework of industrial relations in road transport in the European Union.

This knowledge should pave the way for action at the highest level aimed at reducing the large differences between Member States, which play an influential role in business relocation and are a threat to necessary harmonisation in the European Union - a harmonisation that should be present in such an economically and socially important subject as the rules of the game in industrial relations in the road transport sector.

Lastly, we would like to mention the companies, Mercedes-Benz, Continental Automotive and the International Road Transport Union (IRU), as this work would not have been possible without their support and effective cooperation.

Madrid, 11 December 2014.

Miguel Ángel Ochoa de Chinchetru
Chairman of the Board of Trustees
Francisco Corell Foundation

1. METHODOLOGY AND LIMITS OF THE STUDY

1.1 METHODOLOGY

To conduct this study, we have applied the following methodology:

i. Compiling documents EU-28
- Previously identifying the departments, authorities and experts in the area of road transport in the institutions of the EU and in each of the 28 EU countries;
- Drawing up and sending an Excel questionnaire (see example in Annex III) with the main questions to be addressed (59 questionnaires were sent in English to the public and private sector authorities listed in Annex IV. Twenty-eight replies were received);
- Selecting and compiling the bibliography.

ii. Interviewing (in person and by telephone) authorities and experts (see Annex IV)

iii. Exchanging information by e-mail with a relevant number of those authorities and experts;

iv. Analysing the replies to the questionnaires;

v. Building a bibliography and document database by subjects/countries, both at EU level and for each of the 28 Member States, on road transport: policy, economic, social and legal aspects;

vi. Studying and analysing the legislation and documents in the original versions (Spanish, English, French, Italian, Portuguese) and, in some cases, the translated versions;

vii. Drafting the final draft.

To harmonise the contents of the study with the codes normally used in the sources of information available and, at the same time, contribute towards an easier and clearer reading, we decided to use the EU country codes listed in Annex II. Likewise, being a comparative study, we thought it appropriate, with a few exceptions, to start the analysis with Spain and then maintain an identical alphabetical order by countries in the numerous comparative references that appear in the sections of the study.

To avoid monotony and repetition of the same sections country by country, we decided to focus on what we consider to be the main subject blocks: individual and collective rights of workers, birth, changes to and termination of the employment contract. From there, we have gone on to compare countries and highlighted peculiarities that contrast with the legal framework of industrial relations in Spain.

Having joined the EU on 1 July 2013 as the 28th Member State, the information on Croatia, both in general and specifically concerning the road transport sector, is not as abundant as the information on the other EU countries. In some cases, this has made it difficult to hold data for that country.

References to the EU+10, EU+12, EU-15, EU-27 and EU-28[1] are frequent in the study, but they should not be mistaken with the chronological references to successive adhesions when the history of the EU is presented. They therefore do not respond to a chronological criterion, but to blocks of countries which, for methodological reasons, are worth mentioning throughout the work.

The study includes seven Annexes. Annex VI provides a number of tables grouped by headings,

[1] See the countries that make up each block in the list of ACRONYMS (Annex I).

from which additional information may be obtained.

Lastly, all references to equivalences between national currencies and the euro that appear in the study are considered calculated using the exchange rate in force in June 2014.

1.2 LIMITS OF THE STUDY

To set about such an extensive and exhaustive task, we chose a simple and pragmatic approach. It would be an insult to our own intelligence if we did not recognise from the start the limits that we came up against, some inherent in the project, and others that emerged during the process of conducting the study.

In first place, the difficulty in defining what is the legal framework of industrial relations.
To talk about the legal framework of industrial relations, we must first define the subjects or fields of law that comprise it. Added to the classical distinction between the sources of law that govern employee and employer relations (the law, the collective agreement and the individual employment contract), we have the diversity of the thematic field (labour law in the strict sense, fundamental rights, social security law, tax law, health and safety standards or, as in the case of road transport, the legal framework of road safety).

In second place, the complexity of regulations due to the different legal nature of the regulations, the diversity of powers from which they emanate, the different territorial areas in which they are applied and the fragmentation of powers that enact them and ensure their application.
In the area of labour law, as well as the difference between a law and a collective agreement, there are different sources of law (i) international: AETR, International Labour Organisation, ILO[2] ; (ii) EU: Community law; (iii) State: internal State law, autonomous region law and, lastly, a fragmentation of powers and players (EU, national administrations, special bodies and agencies) throughout the cycle that goes from the approval of legislation to its effective application.

One such example is the important legislation in the area of working time and rest periods, where the EU legislates, the States transpose the Directives and, finally, their specialised bodies and agencies ensure their fulfilment (infringements, fines). If we 'top' this fragmentation of responsibilities with the too familiar differences in administrative culture between the 28 countries of the EU, we have a complicated task on our plate.

If we couple the great variety of regulations of different origins (international conventions, EU regulations and directives, constitution, laws[3]) and the above-mentioned fragmentation of powers, with the existence of collective agreements that are split into the two road transport subsectors (goods/passengers), and divided –depending on their binding or non-binding nature- into statutory and non-statutory, and signed in different territorial areas (national, regional, provincial or enterprise collective agreements) the difficulty grows. If, at the end, we multiply the result by 28 countries, the difficulty of conducting this detailed study becomes evident from the magnitude of the task.

This circumstance has forced us to give priority to the **basic essential elements** that make up the legal framework of industrial relations in the transport sector of the 28 EU countries, with a view to embarking on this task from a realistic approach. This methodological decision is

[2] For example, ILO Convention on tripartite consultations, 1976 (No.144), ILO Convention on collective bargaining, 1981 (No.154) and ILO Convention on hours of work and rest periods in road transport, 1979 (No.153).
[3] For example, the Workers' Statute in Spain.

accompanied by – as a result of the great length of time spent compiling and analysing the data in different languages- the creation of a large **archive of documents** that in the future will enable us to address the reality of each country or thematic field in detail and depth from an individualised approach.

In third place, the difficulty in finding a terminology common to 28 national realities and systematising the analysis.

The documents obtained offer scattered and incomplete information that does not respond to common criteria shared by all the EU countries. The search for valid criteria that would allow us to systematise our analysis based on those documents, particularly with regard to economic issues such as comparing the salaries of drivers, proved to be difficult and the conclusions should therefore be interpreted with certain caution.

In fourth place, the imbalance in the goods v. passenger transport information.

Even though the study covers the carriage of both goods and passengers by road, most of the available sources refer to the former. Although the regulations and collective agreements sometimes do not do not draw a distinction between the two (for example, the regulations on driving time and rest periods), we should highlight the clear imbalance in the gathering of statistics, policy papers, research, etc. in favour of the carriage of goods, which is probably due to its stronger economic weight compared with the carriage of passengers. Consequently, one of the conclusions and recommendations of this study is the **need for more in-depth studies on the carriage of passengers by road that will provide us with more solid and reliable data.**

In fifth place, inexistence of disaggregated data for the carriage of passengers.

The specific case of the carriage of passengers is paradigmatic, given that many statistics include all means of surface transport (train, bus and taxi) and tend not to draw a distinction between private or public ownership of the enterprises (for example, in urban transport) or individualise non-scheduled and scheduled transport.

In sixth place, legislation v. application.

As mentioned above, one thing is to legislate and another is to apply the law to the specific case. The classical difference in English-speaking countries between *law v. enforcement* appears to be particularly reflected in the carriage of passengers and goods by road sector. We cannot ignore this fact in a study of this nature, and major questions like the existing differences in the application of the legislation on working time and rest periods in the different Member States will be analysed in detail in section 4.2.

Questions like the **lack of a common interpretation of the level of seriousness of infringements, divergence in the sum of the fines or the quality of the national systems responsible for ensuring the application** of EU legislation (material and human resources, administrative culture, etc.) make the current framework pose substantive differences between countries.

Another question, which is not addressed in this study, is the thorough analysis of the application of other social standards in road transport arising from national legal systems and not from the EU. Administrative control and judicial guarantees to the exercise of the collective and individual rights of workers **depend on national systems** (labour inspection, judicial control, mediation, conciliation, arbitration). Although we address these questions in part in section 3.4, we could not go into too much depth for the reasons explained above. Consequently, this poses another limit in our study, given that such an analysis would require a detailed study of each national application system in an extremely complex field on which, in some cases, there is very little information available.

In seventh place, the many types of workers in the road transport sector.

To talk about workers in a sector like the one examined here involves recognising the multiplicity of individual situations of persons subject to a legal framework of industrial relations that goes beyond the enterprises that provide the carriage of goods and passengers service and covers a complex network of transport agencies, forwarders, warehouse companies, distributors and logistics operators.

On another front, in those companies there are stationary workers (office) and mobile workers (mainly drivers). For these reasons, we have centred the bulk of our comparative analysis on the latter.

Lastly, the limits that emerged along the way.

These involve the difficulties inherent in an exercise where the quantity, quality and availability of the information, and the response and interest shown by the many people consulted (questionnaire, interviews, etc.) vary greatly from one country to the next. Croatia's very recent adhesion to the EU justifies the small amount of data on that country compared with other countries.

As a last note, to add to the already challenging task of including the latest legislative changes in a particularly dynamic and evolving field of law (especially in the current crisis), we were faced with issues like the fact that many of the collective agreements consulted in the EU+10 countries had not been updated.

2. INTRODUCTION

2.1 OBJECTIVES OF THE STUDY

The main objective of this comparative study is to offer a range of basic information about the legal framework of industrial relations between workers (mainly drivers) and employers in the road transport sector in the 28 countries of the EU (EU-28). The study looks at the main individual and collective rights of workers (section 3 and 4) and the fundamental aspects of the life of the employment contract from its commencement (section 5) to its termination (section 7) through changes in the working conditions (section 6).

A second objective, which is a natural consequence of the first, is to offer a tool for decision making in the public and private spheres. The aim is to help understand the functioning of the legal framework of industrial relations in each country of the EU, with their characteristic features, singularities and differences.

Lastly, the intensive work of compiling and sorting the data on this subject has allowed us to achieve a third objective that we had not planned: having a solid bibliography database by countries/themes and a large network of contacts in the EU-28, which promises to be a good steppingstone for future monographic studies by countries or subjects or simply for the gradual revisions entailed in conducting a study of this nature.

2.2 THE ROAD TRANSPORT SECTOR IN THE EU

The European transport industry as a whole represents 6.3% of the Union's GDP and employs nearly 13 million people[4], to which road transport contributes 2% of the GDP and nearly 5 million workers[5].

As highlighted in a recent study, *"the liberalisation process in the carriage of passengers and goods by road sector has not been accompanied by a parallel process of social harmonisation in employment and working conditions"* [6].

That liberalisation process has not stood in the way of the recognition of the concept of public service, which translates, for example, in the **compatibility of public aid when meeting the needs of coordination of transport or if representing reimbursement for the discharge of certain obligations inherent in the concept of a public service**, as provided for in article 93 of the TFEU (Treaty on the Functioning of the European Union).

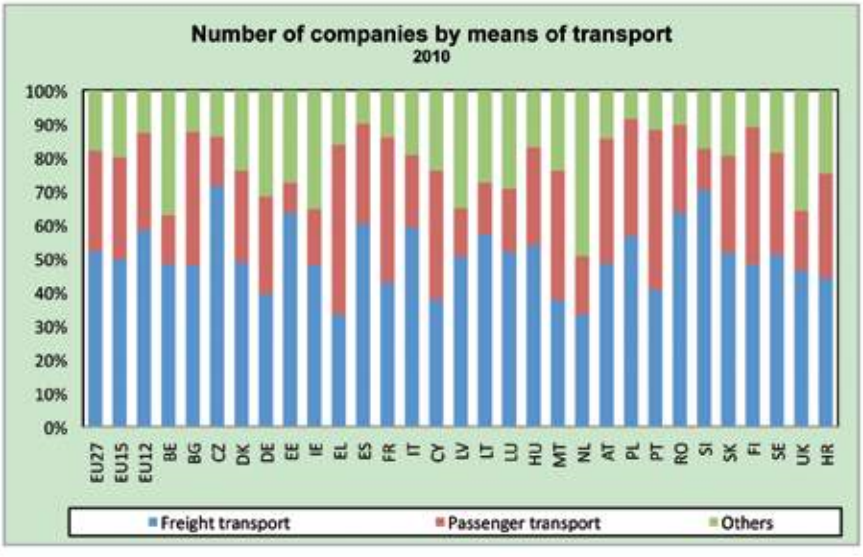
The road is the main means of transport for passengers and goods in the European Union. Road transport is the leading means of transport of goods in Europe in tons per kilometre (45.3%), followed by maritime (40.5%), rail (11%) and pipeline (3.7%) transport[7].

The current challenges faced by the road transport sector include **increasing congestion** of the roads[8], **safety**, rising **fuel prices**, **contamination** (including noise) and the need to harmonise the **working conditions** of drivers to, in particular, attract young people to the profession. This study seeks to contribute to the analysis of ways to address challenges like, for example, safe-

[4] According to the European Commission's website: http://ec.europa.eu/programmes/horizon2020/en/area/transport
[5] European Commission, *Road Transport*, a change of gear (European Union, 2012), page 2.
[6] European Parliament, *Social and working conditions of road transport hauliers* (European Union, 2013), page 13.
[7] Source: EU transport in figures. Statistical Pocketbook 2013 (Eurostat).
[8] Congestion represents a cost of 1% of the EU's GDP, i.e., more than its annual budget.

ty[9] or harmonising and adding flexibility to the working conditions of drivers, based on prior knowledge of the different legal frameworks of industrial relations in the EU-28.

Table 1 – Number of companies operating in each means of transport



Source: Prepared by the authors using Eurostat data

* Others: Includes transport by rail, oil pipelines, maritime transport, air transport, storage activities, postal activities and shipping by courier service.

Spain is among the countries (alongside Germany, Italy, United Kingdom and Poland) that lead the road transport sector in the EU, both in terms of goods and passengers.

The importance of road transport is evident from the data on the number of companies. The proportion of companies in Spain dedicated to the carriage of goods by road (126,401) represents more than 60% of the total number of companies found in the transport sector in general. If we add to that figure the number of companies in the passenger transport sector (62,064), we can conclude that more than 90% of the companies are grouped in the road transport sector. However, we should explain that the size of road transport companies is much smaller than those operating other means of transport.

The current debate on road transport in the EU

Because of its potential effects on the legal framework of industrial relations in road transport, this study cannot ignore highly relevant issues that are occupying the current debate on this subject, and will continue to do so in the coming years. We are referring here to initiatives in the sphere of the European Union like the **new Directive on posted workers, access to the profession of haulier, cabotage, the future Single-Member Private Limited Liability Company (SUP) and, in general, the case law of the Court of Justice of the European Union, which has a direct impact on economic sectors like road transport.**

The new Directive applicable to posted workers, approved on 13 May 2014 after two years of debate, enforces the existing Directive 96/71/EC and must be transposed to the legal systems of the 28 Member States by 2016. This new law develops the principle of freedom to provide services established in article 56 of the Treaty on the Functioning of the EU (TFEU) and will

[9] See section 4.6 of this study.

affect 1.2 million workers posted by their employers to work on a temporary basis in a different EU country to the one where they normally perform their work activity. According to data for 2011, Poland heads the ranking by number of posted workers (228,000) and Germany heads the ranking of received workers (311,000), mainly in the construction sector, but **also other sectors like road transport.**

The intensity of the debate about the Social Europe is such that the EU Economic and Social Committee has called for the creation of a **European Social Interpol** and, with regard to the sector that concerns us here, there are countries calling for the creation of a **European Road Transport Agency**.

The debate is also fuelled by other EU legislation, such as **Regulation 1071/2009 on access to the occupation of transport operator.** This is a prelude to what will be the debate in the coming years.

Another relevant issue for road transport is **cabotage** and the need to reach a consensus on a common interpretation of the term, as well as to clarify and harmonise the social rules applicable to road transport.

Other incipient initiatives like the **Single-Member Private Limited Liability Company** (*societas unius personae*), though seemingly less important, are currently contributing to arousing fears among trade unions about the possibility of this new legal form of company being used to get around national regulations on worker representation on the board of directors of enterprises[10].

Lastly, we should mention the **case law of the Court of Justice of the European Union**. Being a sector whose raison d'être is mobility (trucks, buses), the determination of the applicable law is tremendously important for workers and employers. Decisions like the Koelzsch[11] judgement , establishing that the applicable law is the law of the country where the worker normally performs 'most' of his work activity, have far-reaching implications for the sector.

Duality of models EU-15 v. EU+10

Far from seeking to settle such a complex debate, it is nevertheless relevant for the purposes of this study, to confirm the existence of a duality of social models that can be found not only in the distinct features of the different legal frameworks of industrial relations that we will be analysing here but, as is logical, in the standpoints of the countries in the debates on road transport.

This duality between, on one side, the older EU Member States, led by Germany and France (EU-15) and, on the other, the central and eastern European countries (EU+10) will raise its head in some of the comparative analyses, tables, etc. included in this study, and is particularly reflected in the **salary differences between drivers** in both groups of countries[12].

The study we are presenting here clearly reflects this asymmetry, which is the result of a political European construction model that should naturally evolve towards further harmonisation

[10] Currently, the legislations of some States contemplate worker participation in the board of directors of companies, which represents the maximum level of such participation (also known as co-management). National legislations subject the exercise of this right to, among other factors, the number of workers above a given workforce threshold. Thus, in Sweden, the threshold is 25 workers; Denmark, 35; Check Republic, Slovenia and Slovakia, 50; The Netherlands, 100; Finland, 150; Hungary, 200; Austria, 300 and Germany, 500). Section 4.5 of the study refers to the collective rights of workers to information, consultation and participation.

[11] Case C-29/10 of 15 March 2011 (judgement in the case Heiko Koelzsch v. Luxembourg).

[12] See section 4.1 (Salary).

and integration of economic and social policies. Anticipating the details of that evolution is beyond the reach of the authors and the limits of this study, and we should therefore limit ourselves to establishing that fact and cope with the practical difficulties that all of the above entails when it comes to conducting such a complex and extensive comparative analysis (28 countries).

2.3 OVERVIEW OF THE LEGAL FRAMEWORK OF INDUSTRIAL RELATIONS IN ROAD TRANSPORT IN THE EU

As mentioned above, among the limits of this study lies the difficulty of delimiting the legal framework of industrial relations. As a result of the socioeconomic evolution, the aforementioned difficulty is coupled with new legislative developments to respond to new circumstances in areas which, despite being outside the labour sphere and not finding their reason for being in the legal relations between employers and workers, could end up substantially affecting the legal framework of industrial relations in road transport, which is the subject of this study (access to the profession, road safety, occupational health and safety, company law, taxation, the environment, freedom to provide services, etc.).

Lastly, equally recent phenomena resulting from the socio-economic evolution, such as the emergence of economically dependent self-employed workers, contribute to diminishing the classical difference between employees and self-employed workers, which also does not help us in our clear and precise methodological approach to the subjects.

The above considerations explain why we drew up a 'mixed' table of contents, with typically social or labour issues and other issues like, for example, employees v. self-employed workers (section 4.4), health and safety (section 4.6), and why we have dedicated a large section to working time and rest periods (section 4.2).

For all of the above reasons, we have been forced to find an, albeit, delicate balance between, on one side, the abundance and diversity of data and, on the other, our wish to offer basic but relevant comparative information on the legal framework of industrial relations in road transport in the 28 countries of the EU.

To properly understand the areas discussed below, we should mention the **principle of collective autonomy.**

Collective autonomy and the legal framework of industrial relations in road transport

The principle of collective autonomy lies at the heart of the legal frameworks of industrial relations of the 28 EU Member States, and the carriage of goods and passengers by road is no exception. Collective autonomy has three fundamental dimensions: **self-regulation, self-defence and fundamental rights.**

Self-regulation

Based on the principle of collective autonomy, the so-called subjects or social partners (employers and trade unions) are established in an autonomous system derived from sources of law which generates rules with regulatory force that govern their industrial relations. Self-regulation is embodied in collective bargaining[13] and **collective agreements**[14] as a paradigm of this process. Thus, in Spain, there is the AGTMC (General Agreement on the Carriage of Goods by Road), and a large number of territorial collective agreements.

These conventional rules of the legal framework of industrial relations in the carriage of goods and passengers by road coexist with others of different origin: they come into existence in the

international, European and national spheres.

Table 2 – Laws governing the legal framework of industrial relations in road transport in Spain

ORIGIN OF THE LAW	LEGISLATORS	MAIN LAWS
INTERNATIONAL	United Nations OIT[15]	AETR[16], Interbus
EUROPEAN UNION	Commission, Parliament and Council of the EU	A. **Primary law**: TFEU , Charter of Fundamental Rights of the EU B. **Secondary law**: Regulations and Directives [17]: i) Labour legislation (Regulation 561/2006 on working time and rest periods/tachograph, amended by Directive 2002/15/EC and applicable Directive 2006/22/EC) ii) 'Road Transport Package' (Regulations 1071, 1072 and 1073/2009) iii) Rights of workers (Directive 2002/14/EC- informing and consulting, Directive 98/59/EC- collective dismissal, Directive 2001/23/EC- transfers of undertakings, Directive 94/45/EC – European works councils, Directive 92/85/EC- maternity leave, Directive 2003/88/EC- organisation of working time). iv) Other laws (Regulation 593/2008 (Rome I) – contractual obligations, Directive 96/71/EC- posted workers, amended in 2014, Regulation 883/2004- coordination of social security systems).
NATIONAL	The lower house of Parliament, Ministry of Social Affairs, Ministry of Development Autonomous regions	Constitution, Workers' Statute, laws and decrees General Agreement on the Carriage of Goods by Road Collective agreements (goods/passengers) Individual employment contract

Source: Prepared by the authors

Self-defence

The principle of collective autonomy is also embodied in the system of industrial disputes derived from existing conflicting interests between employers and workers. The trade unions and trade union action act as a self-defence mechanism that invigorates the industrial relations system[18].

[13] Apart from the collective agreement, collective bargaining has other manifestations in the framework of the so-called social dialogue, such as government consultation of the social partners before drafting laws, or self-regulation in some areas like, for example, health and safety. We talk about tripartite social dialogue when governments, trade unions and employers take part in the discussions or bipartite when only the trade unions and employers are involved. The ILO (International Labour Organisation) establishes this principle at international level as it is the only international organisation with a tripartite composition.

[14] In Spain, the WS (Workers' Statute) establishes that collective agreements constitute a legal standard of a temporary nature, whose regulation is conferred on the negotiating parties.

[15] The ILO, International Labour Organisation, introduce Conventions applicable to road transport that become internal laws after they are ratified by national parliaments, i.e.:

- Convention on Tripartite Consultations of 1976 (No. 144)
- Convention on Collective Bargaining of 1981 (No. 154)
- Convention on Hours of Work and Rest Periods in Road Transport of 1979 (No. 153)

[16] AETR: European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of Goods.

[17] EU Regulations are internal law in the Member States and are directly applicable: they do not require national transposition laws and anyone may demand compliance thereof in the national courts. Directives are not internal law, but merely establish the aims and leave it up to the states to choose the manner in which they are implemented. They do not have direct effect, except in some cases.

[18] Section 3.1 provides a comparative study EU-28 of the collective right of association and trade union freedom.

Fundamental rights

As well as self-regulation (collective agreements) and self-defence (trade union freedom and action), the principle of collective autonomy is recognised in the EU Member States at constitutional level through the fundamental rights of workers, thus acquiring formal legal relevance at the highest level. This study makes a comparative analysis of these collective (section 3) and individual (section 4) fundamental rights. Trade union freedom (see section 3.1), the right to strike (section 3.2), the right to information, consultation and participation (section 3.5), the right to receive pay (section 4.1), the right to the regulation of working time and rest periods (section 4.2), the right to non-discrimination (section 4.3), the right to social security (sections 4.4 and 4.5) and the right to health and safety (section 4.6) are some of the rights established in the constitutions of the countries after World War II, and which are enjoyed –with **slight differences**- by workers across the EU, among these, workers engaged in the carriage of goods and passengers by road.

Those slight differences are precisely the focus of this study, which offers comparative information on the EU-28.

A single EU legal framework of industrial relations or 28 national frameworks?

The principle of collective autonomy which, as we have seen, governs and inspires the legal framework of industrial relations in road transport in the 28 countries of the EU, is difficult to transpose to the EU's legal system.

As some author affirmed ***"there is nothing more different in Europe, apart from the languages, than the structuring of trade unions, the representation criteria and the effectiveness of workers in collective bargaining"*** [19].

The social dimension of the EU is timidly covered in the Single Act of 1986 and progressively developed in the Treaties of Maastricht, Amsterdam and Nice, which, for the first time, envisage a 'European social agenda'. But it is not until the Treaty of Lisbon of 2007 that we see two major advances:

- In the first place, the so-called **horizontal 'social' clause in article 9 of the TFEU** (Treaty on the Functioning of the European Union), which links any EU policy or action – in our case, transport policy- "*to the promotion of a high level of employment, to social protection, to the fight against social exclusion, to education, training and protection of human health*". Title IX (Employment) and Title X (Social policy) are dedicated to social issues;
- And, secondly, **Title IV (Solidarity) of the Charter of Fundamental Rights of the European Union** which, among others and with **legal force**[20], covers many of the rights contemplated in this study that are held by workers in the road transport sector, such as the right to information, consultation, bargaining and collective action, access to placement services, protection against unjustified dismissal, fair and just working conditions, prohibition of child labour, reconciliation of family and professional life, social security and health care.

The social progress is undeniable, despite the fact that, in the end, the Charter –which has legal force- was not incorporated into the main body of the new Treaties, and was not signed by the United Kingdom and Poland, which exercised their right to opt-out or be excluded from its implementation.

[19] Antonio Lettieri and Umberto Romagnoli, La contrattazione collettiva in Europa (Rome, 1998), page 14.
[20] Article 6 of the EU Treaty (EUT) gives the Charter "the same legal force as the Treaties".

Whilst not at all denying the constitutional or semi-constitutional nature of certain fundamental rights of workers at EU level, it is nevertheless true that there are limits, and even contradictions, that tinge this analysis.

In the first place, the **principle of subsidiarity**, when establishing that the EU shall act only if and in so far as the objectives of the proposed action cannot be achieved by the Member States (article 5.3 of the EU Treaty).

In second place, **article 153.5 of the Treaty on the Functioning of the European Union (TFEU)** which, when developing Title X (Social Policy), **expressly excludes from EU competence** policies relating to ***"pay, the right of association, the right to strike and the right to impose lock-outs".***

The exclusion of rights, such as the right to strike, in the sphere of the EU raises the very important question of leaving in the hands of the States the regulation of **a right that can affect other EU principles and policies –and even clash with them- such as the free movement of individuals and goods and transport policy itself** (we find the best example in the Spanish trucks blockaded in French territory as a result of collective disputes in that country).

We are therefore faced with a situation characterised by **'dual competence' of the EU and the Member States**, where the EU recognises many of the rights analysed in this study in its Charter of Fundamental Rights, but leaves the regulation of others, such as the right to receive pay, the right to trade union freedom and the right to strike, in the hands of the States.

Lastly, we should not overlook the fact that even those rights recognised at EU level **leave the implementing regulations and the supervision of their implementation in the hands of the 28 Member States**, which multiplies the task of compiling and analysing the data, as we mentioned in the section referring to the limits of this study.

As many authors opine, the social dimension in the EU has not yet achieved the recognition enjoyed by other dimensions like the single market or monetary union. Some examples are the regulations on working time and rest periods for workers in the road transport sector[21], where the unquestionable improvement in the social conditions that they provide should not make us forget that the main legal basis refers to other objectives, such as achieving the internal market or road safety. Likewise, the recent approval of the Directive on posted workers, which, as well as protecting the rights of workers, finds its legal basis in the principle of freedom to provide services.

Consequently, the subsidiary nature of the social dimension of the European project leaves its regulation in the hands of the States and, as a result, forces the authors of this study to be constantly leaping from the EU perspective (i.e. working time and rest periods) to the necessary attention to 28 different legal systems.

[21] See section 4.2.

3. COLLECTIVE RIGHTS OF WORKERS

3.1 ASSOCIATION AND TRADE UNION FREEDOM[22]

The right of association is recognised at international level since the mid-20th century. We find several manifestations of this right conferred on all individuals in both its positive meaning (the right to associate) and negative meaning (the right not to belong to an association), and that is how it is established in article 20 of the Universal Declaration on Human Rights.

Also at international level, we must take into account the texts of the International Covenant on Civil and Political Rights, drawn up by the United Nations, and of the European Convention on Human Rights, drawn up in the sphere of the Council of Europe. In its article 22, the first text confirms the right of all individuals to freedom of association within the meaning of setting up and being part of trade unions to protect their interests. In the second text, the right of association is covered in article 11, together with the right to assemble.

Going with the international flow, Spain guarantees the right of association in article 22 of the Constitution. And, today, association is the main form of organisation, and the permanent association of workers takes shape in the concept of trade union.

There are a number of controversial points associated with the right of association that we should address here to help the reader understand the analysis by country. On the one hand, article 22 of the Constitution only expressly recognises the positive freedom to associate, therefore its interpretation from the negative point of view has been the subject of a controversy finally settled and recognised by the Constitutional Court[23]. Also, unlike other countries like France, Spain has chosen not to confer the concept of trade union on employers' associations. The doctrine, case law and article 1.2 of Organic Law 1/2002 exclude the activity of for-profit enterprises from the real of associations (article 1665 of the Civil Code and article 116 of the Code of Commerce). These trade associations find protection in the sphere of entrepreneurial freedom, article 38 of the Spanish Constitution.

Trade union membership in **Spain**, which is approximately 20% of all workers, is not far removed from the European average, although the results of the elections to the works councils show that these associations have much wider support. There are two major trade union confederations in Spain, called the Federation of Services to Citizens (CCOO) and the Federation of Mobility and Consumer Services (SMC-UGT) –both with a very similar number of members-, as well as other large associations at regional level.

All the confederations are structured by sectors, with independent federations for different sectors like metallurgy, public services, communications and transport and financial services. There have also been significant mergers of federations.

Trade union membership in Spain was on the increase until three or four years ago, when it began to fall as a result of rising unemployment. Official figures on the quality of working life show that the proportion of trade unionists hardly changed in the period 2007 to 2010. It went from 15.8% in 2007, to 17.4% in 2008, and from 17.2% in 2009 to 16.4% in 2010. Although the

[22] See the study by the European Foundation for the improvement of living and working conditions - Eurofound, *Impact of the working time directive on collective bargaining in the road transport sector* (European Industrial Relations Observatory on-line, 2007) with regard to the main transport trade unions.

[23] Negative freedom means the right of individuals not to belong to any association (Constitutional Court Judgement 5/1981, of 13 February).

current tendency is shifting towards equalisation, the 2010 survey shows that more men are in a trade union than women, 17.8% v. 14.8%.

The trade unions for the transport sector are the Federation of Communication and Transport Workers (FCT), within CCOO, the Federation of Transport, Communications and the Sea (TCM), within UGT, and the Free Trade Union of Transport.

Although there are no employer trade unions in the transport sector, there are major trade associations like the National Federation of Transport Agencies (ANATRANS), the National Trade Federation of Bus Transport (FENEBUS), the Spanish Confederation of Freight Transport (CETM), the Spanish Trade Association of Split-cargo (AECAF), the Association of International Road Transport (ASTIC) and the Spanish Trade Federation of Passenger Transport (Asintra).

We will begin the country by country analysis with **Austria**, where the number of trade unions has fallen as a result of a structural change in both employment and the economy. There is just one trade union confederation, the Federation of Austrian Trade Unions (ÖGB), to which 28% of all workers belong.

The transport sector. The Transport Trade Union merged with the Rail Workers Union and the Catering and Personal Services Union, giving rise to the VIDA trade union (a member of ÖGB). Others worth mentioning are the State Employees Trade Union (GDG) for scheduled passenger transport workers employed by publicly-owned local and regional bus operators, and the Trade Union of Employees, Printing Workers and Journalists (GPA-DJP). Also, there are trade associations like the Federal Road Haulage Organisation (FGG), the Federal Hauliers Organisation (FSP) and the Federal Bus and Coach Operators Organisation (FAU).

In **Belgium**, unlike most European countries, trade union membership is on the increase. Trade unions are mainly organised in three confederations with a strong political tradition: the Confederation of Christian Trade Unions (CSC/ACV), the General Federation of Belgian Labour (FGTB/ABVV) and the General Federation of Liberal Trade Unions of Belgium (CGSLB/ACLVB). With regard to employers' associations, most of the companies in the country are members of the Federation of Employers of Belgium (FEB/VBO).

The transport sector. The biggest trade union is the Belgian Transport Trade Union (BTB/UBT). For transport and communications, there is ACV-TRANSCOM, a member of CSC/ACV. On the employers' side, there is the Trade Association of Road Hauliers (SAV) in the Flemish Community and the Brussels-Capital region, which mainly represents the smaller companies in the sector and most of its members are Flemish workers. Furthermore, there is the Federation of Professional Road Transport (UPTR), which also mainly represents smaller companies, and the Royal Belgian Federation of Transport and Logistics Services Providers (Fédération Royale des Transporteurs et des Prestataires de Services Logistiques/Koninklijke Federatie van Belgische Transporteurs, FEBETRA), which mainly represents the large companies and is a member of FEB/VBO.

Labour law in **Bulgaria** does not envisage the creation of works councils, and the main workers' representation channel in the workplace is therefore the trade union, i.e. only trade union organisations have collective bargaining powers. Nearly 20% of the workers in Bulgaria are members of a trade union. The two main confederations are KNSB and *Podkrepa*. They are both part of the European Trade Union Confederation (ETUC) and the International Trade Union Confederation (ITUC). The associative structures on the employers' side still lack clear rules, and membership of two or three different associations is allowed. Consequently, it is difficult to determine

the membership coverage, but it is estimated to be in the region of 15% of the companies in the country. The major employers' associations are the Industrial Association of Bulgaria (BIA), the Bulgarian Chamber of Commerce and Industry (BCCI), the Bulgarian Industrial Capital Association (BICA) and the Confederation of Employers and Industrialists of Bulgaria (CEIBG).

The transport sector. The Confederation of Road Transport Trade Unions, the Trade Union of Automobile Transport Workers in Bulgaria (both members of the Confederation of Independent Trade Unions, CITUB) and the Federation of Transport Workers. The trade associations include the Bulgarian Chamber of National Transport, a member of BIA, and the Automobile Transport Corporation.

The Czech Republic is seeing a negative trend in trade union membership, which has affected most of the trade unions in the country. The biggest trade union confederation is ČMKOS, with 407,000 members in 2011, followed by the Association of Independent Trade Unions (ASO CR), with 150,000 members in 2011. They are both members of the Council of Social and Economic Agreement of the Czech Republic (RHSD CR). In terms of trade associations, the situation is more stable, with no new trade associations or mergers. The major trade associations in the Czech Republic are the Confederation of Industries of the Czech Republic (SP CR) and the Confederation of Employers and Entrepreneurs Associations of the Czech Republic (KZPS ČR).

The transport sector. The Transport Trade Union (OSD) is one of the biggest trade unions with around 14,600 members, and a member of ČMKOS. Others include the Trade Union of Transport, Road and Car Repair Services Workers of Bohemia and Moravia (OS DOSIA) and the Federation of Electric Tram and Bus Workers Trade Unions (OSPEA), which only operates at enterprise level. With regard to the associations of employers in the sector, we should highlight the Transport Union of the Czech Republic (SD ČR), the Association of Transport Companies of the Czech Republic (SDP ČR) and the Association of Construction Entrepreneurs of the Czech Republic (SPS ČR).

The **Danish** labour market has traditionally enjoyed a high rate of trade union membership. This is one of the characteristics of the Danish labour-market model. However, the number of trade union members has seen a constant decline. The biggest confederation is the Danish Confederation of Trade Unions (LO). The density of employers' associations in Denmark is relatively high, and nearly 58% of the workers are employed in enterprises belonging to a trade association. The biggest employers' confederation is the Confederation of Employers in Denmark (DA), which covers 52% of private-sector employment.

The transport sector. Although not exclusively for transport, there are two major workers' trade unions: the United Federation of Danish Workers (3F) and the National Union of Commercial and Clerical Employees in Denmark (HK). In terms of trade associations, the most noteworthy are the Danish Confederation of Commercial Transport and Service Industry (HTS), the Association of Transport and Logistics Professionals (ATL), the Association of Public Transport Professionals (AKT), the Association of Employers for Taxi Owners (ATD) and the Association of Employers for Tourism Bus Owners (TA).

Trade union density in **Germany** has fallen to one-fifth of all workers as a result of less employment in industry. Most trade unions are in the major trade union confederation, the Confederation of German Trade Unions (DGB), however, within this confederation, individual trade unions have considerable independence and influential power. Another two important confederations are the German Civil Service Association (DBB) and the Federation of Christian Trade Unions of Germany (CGB). With regard to employers' associations, the German Confederation of Emplo-

yers' Associations (BDA) is worth highlighting.

The transport sector. The workers' trade unions affiliated to DGB are the United Services Union (ver.di) and the Transport, Service and Networks Union (GdED). The third biggest trade union is the Trade Union of Public and Private Services (GÖD), a member of the confederation CGB. The employers' associations worth highlighting are the Federation of Road Haulage and Logistics (BGL), the Federation of German Employers in Bus Transport (BDO), which represents the private associations of regional buses and buses, the Association of Municipal Employers (AVK), which represents public transport companies and, lastly, the Association of Employers for Mobility and Transport Service Providers (Move Agv), which covers the German rail companies (Deutsche Bahn) and also owns road transport companies.

With regard to **Estonia**, trade union density is in the region of 10%. Most trade union members are split into two large confederations, the Confederation of Trade Unions of Estonia (EAKL) and the Confederation of Estonian Employees' Trade Unions (TALO). Other than in very specific spheres, there are no works councils in the country. The only employers' association recognised as a social partner at national level is the Confederation of Estonian Employers (ETTK), and another important association representing employers is the Estonian Chamber of Commerce and Industry (Eesti Kaubandus-Tööstuskoda). The activities of these associations play a secondary role, as collective bargaining takes place on the initiative of employers.

The transport sector. The Estonian Trade Union of Transport and Road Workers (ETTA) and; on the employers' side, the Association of Estonian International Transport Operators (ERAA), which brings together companies that engage in the carriage of goods by road at international level, and the Union of Estonian Automobile Companies (Autoettevõtete Liit), within which its members are split into three sections: carriage of goods, bus transport and taxi services.

Approximately one-third of the workers in **Ireland** are members of a trade union, and there is just one trade union confederation, the Irish Congress of Trade Unions (ICTU). However, individual trade unions, particularly the largest, have considerable power and influence. Although the ICTU plays an important role in relations with the government, it is an association of independent and autonomous trade unions, more than a dominant confederation that steers the trade unions that belong to it.

The transport sector. There are two trade unions worth highlighting: the Services, Industrial, Professional and Technical Union (SIPTU) and the National Bus and Rail Union (NBRU). On the employers' side, the Irish Road Haulage Association (IRHA) represents the interests of most road haulage companies.

In **Greece**, the exercise of the right of association is weaker in the private sector. There are just two main confederations: the General Confederation of Greek Workers (GSEE), which brings together private-sector workers and those working in state-run sectors (such as banking, transport and public services like water and electricity); and the Confederation of Civil Servants (ADEDY), whose members are civil servants (such as teachers and ministry and local authority workers).

The transport sector. On one side, the Federation of Greek Transport Trade Unions (OSME) for workers and, on the other, the General Confederation of Greek Drivers and the Pan-Hellenic Federation of Commercial Transport Trade Unions.

France is among the European Union countries with the lowest rates of trade union density, with only 8% of the workers affiliated to a trade union[24]. They are split into several confedera-

tions, mainly the General Confederation of Labour (CGT), the French Democratic Confederation of Labour (CFDT) and the General Confederation of Labour – Labour Force (CGT-FO). All the major confederations are organised along a parallel structure of industrial and geographic lines based on local trade union associations. The confederations are the most powerful. Contrary to what it might seem from the aforementioned, French trade unions have strong backing in the elections to the employee representatives and enormous rallying power.

The transport sector. There is the independent trade union, National Federation of Road Transport Drivers (FNCR). On the employers' side, there are quite a number of relevant organisations: the Union of Transport Federations (UFT), the National Federation of Road Transport (FNTR), the National Trade Union Federation of Automobile Freight Transport Operators (Unostra) and the Federation of French Transport and Logistics Companies (TLF).

Trade union density in **Croatia** is much higher than the European Union average, with more than one-third of the workers affiliated to a trade union. Trade union organisation is split into four major trade union confederations and several independent trade unions. In 2012, the Croatian government adopted important legislative measures giving trade unions the right to participate in the national tripartite bodies. The social dialogue is mainly established through the tripartite advisory body, the Economic and Social Council, whilst bipartite and sectoral dialogue outside the public sector is quite scarce. With the aim of developing tripartite dialogue at local level, the economic and social councils are also founded at regional level. With regard to employer representation, the Association of Croatian Employers is the only association that meets the criteria for representation in the Economic and Social Council.

The transport sector. There are three workers' trade unions: the Trade Union of Transport and Communications of Croatia, the Independent Trade Union for the Road and Trade Union of Croatian Drivers. The employers' associations are the Transport Association (HUP) and the Croatian Association for Transport by Truck (TRANSPORTKOMERC).

Italy is the European Union country with highest number of trade unionists. It is worth highlighting that half of them are pensioners. However, trade union density among workers is one-third. The three major confederations are the Italian General Confederation of Labour (CGIL), the Italian Trade Union Confederation of Workers (CISL) and the Italian Labour Union (UIL). Trade unions do not need any kind of recognition (although there is a will to regulate the situation) and can organise themselves without any pre-established legal model, with no impediments to signing collective agreements.

The transport sector. There are many workers' and employers' associations. In the first group, we have the Federation of Transport Workers in Italy – General Confederation of Italian Workers (Filt-CGIL), the Italian Transport Federation – Italian Trade Union Confederation (Fit-CISL), the Italian Union of Transport Workers (UILT), the National Federation of Rail Workers (Ugl AF) and the Independent Federation of Haulage and Logistics Trade Unions (FAST). In the second group, we have the General Confederation of Transport and Logistics (Confetra), the Confederation of Haulage and Logistics (Conftrasporto), the National Association of Automobile Transport Companies (ANITA), the National Association of Services and Tourism Cooperatives, the Italian Federation of Freight Professionals (FIAP-Italia), the National Union of Transport Companies (Fita CNA), the Production and Employment Section of the General Association of Italian Cooperatives (AGCI) and, lastly, the National Union of Road Transport Operators of Casartigiani (SNA-Casartigiani).

[24] Eurofound data for 2005 (5% of trade union density in the private sector).

Cyprus has a relative high rate of trade union membership, between 55% and 58%. There are two major trade union confederations: the Pancyprian Federation of Labour (PEO) and the Confederation of Cyprian Workers (SEK), which are organised by industry. On another front, only the Federation of Small Pancyprian Professional Merchants (POBEK) is worth highlighting.

The transport sector. It would be interesting to know the confederations, but there is no specific data for the transport sector.

In **Latvia**, where trade union density is in the region of 13%, and higher in the public than the private sector, trade unions represent affiliated workers. There is only one confederation called the Free Trade Union Confederation of Latvia (LBAS), to which most of the major trade unions belong. Both workers and employers are recognised the right to associate freely in organisations and to join them to defend their social, economic and professional rights and interests. The law provides that Latvian trade unions can be founded on professional, branch, territorial or other principles. In practice, the most common patters are the branch, enterprise and professional trade unions.

The transport sector. For workers, there is the Latvian Public Services Trade Union (LAKRS); and, for employers, the Association of Road Transport (LAUTO) and the Latvian Association of Passenger Transport Operators (LAPP).

Trade union membership in **Lithuania** is low, nearly 10% of all workers, and the trade unions are organised in the Confederation of Lithuanian Trade Unions (LPSK) and the Lithuanian Labour Federation (LDF). Despite their ideological differences, there has been some cooperation between them, particularly during the protests against the government's austerity policies, which in 2009 led to the three confederations, the government and employers to sign a national agreement. The important characteristic of the trade union movement in this country is the fact that there is a strong tradition of setting up a trade union in every company, which in turn determines the structure of collective bargaining. On another front, although the employers' associations play a very active role in the social sphere (for example, as members of the Tripartite Council), they are not in favour of signing collective agreements. The main problem is that Lithuanian legislation does not establish any employers' representation power in collective bargaining and, as a result, closing collective agreements becomes difficult.

The transport sector. On the workers' side, there is the Lithuanian Federation of Road and Transport Workers Trade Unions (KADPSF) and the Federation of Transport Employees (TDF). On their part, employers have the Association of National Road Drivers in Lithuania (LINAVA), the Road Trade Union (*Solidarumas*) and the Lithuanian Federation of Transport (LTF).

Trade union density in **Luxembourg** is relatively high, in the region of 40%. There are two major trade union confederations: the Luxembourg Confederation of Independent Trade Unions (OGB-L) and the Luxembourg Confederation of Christian Trade Unions (LCGB), with subsidiaries in the bulk of the economy. Although both confederations have very different outlooks, they cooperate together at both national and European levels. In 2004, Luxembourg reformed the legislation on collective bargaining and trade union representation, so now trade unions are required to sign the collective agreements, which also opens the door for them to participate in the tripartite system of social dialogue. The new legislation draws a distinction between three types of trade unions: those with status of national representative, those that are representative of a major sector of the economy and those that are backed by at least 50% of the workers covered by a specific collective agreement.

The transport sector. Only employers have specific associations for the transport sector: the Luxembourg Federation of Bus and Coach Owners (for passenger transport), and the Association of Transport Contractors (for haulage).

Trade unions in **Hungary** do not play a major role in the labour scene and, furthermore, they only represent their members. The exercise of the right to join a trade union is not considerable.

The transport sector. There are many organisations associated with the transport sector. On the workers' side, there is the Trade Union of Public Road Transport (KKSC), which represents bus company workers; the Union of Bus and Passenger Transport Employees (ADU); the European Trade Union of Hauliers (TESZ); the Federation of the Council of Transport Workers (KMSZ); and the National Union of Professional Drivers at International Level (NeHGOSZ). On the employers' side, we find the Hungarian Road Transport Association (MKFE), the Federation of Private International Transport Operators (NiT Hungary), the National Federation of Transport Entrepreneurs (FUVOSZ) and, lastly, the Federation of Road Transport Companies (KKVSZ).

In **Malta**, the exercise of the right of association by workers is considerable, as nearly half of the workers belong to a trade union. The main trade union organisations are the General Workers Union (GWU) and the Malta Workers Union (UHM). There are political differences between the two and relations are often tense, but recent attempts have been made to build collaborative relations between them.

The transport sector. We have only found employers' associations specifically related to the transport sector, Unscheduled Bus Services (UBS) and the Association of Public Transport (APT).

One-fifth of the workers in the **Netherlands** are members of a trade union, and the numbers are rising as a result of the country's economic upturn in the past few years. There are two major confederations, the Dutch Trade Union Federation (FNV) and the National Federation of Dutch Christian Trade Unions (CNV) –which used to be divided by ideological/confessional lines but now enjoy good relations-. A third group, the Federation of Managerial Staff and Professionals Trade Unions (MHP) represents senior or managerial personnel.

The transport sector. On the workers' side, within the FNV, the *Bondgenoten* trade union brings together transport workers and other industrial, food and services workers. On the employers' side, there is the Employers' Association of Public Transport, Bus Transport, and Transport and Logistics in the Netherlands (TLN), and the Vertical Transport Confederation (VVT) for road haulage.

Trade union density in **Poland** is relatively low, approximately 12% of the workers. The three major confederations are the Independent and Self-governing Trade Union (NSZZ *Solidarnosc*), the All-Poland Alliance of Trade Unions (OPZZ) and, with far fewer members, the Trade Union Forum (FZZ). Many workers are affiliated to small trade unions not belonging to any of the aforementioned confederations. There are workers' and employer' associations

The transport sector. The employers' collective has the All-Poland Employers Union of Vehicle Road Transport (OZPTS) and the All-Poland Employers Union of Road Transport (OZPTD). According to the confederation they belong to, the workers' organisations are: the Trade Union of Pekaes Drivers, the Trade Union of Drivers in Poland, the Trade Union of Municipal Transport Employees in the Republic of Poland, the Independent Trade Union of Municipal Transport for Bus Drivers (within FZZ), the Trade Union Federation of Automobile Transport in Communication Employees, the Trade Union Integration of Public Transport Employees of the Republic of

Poland, the Trade Union Federation of Automobile Transport in the Republic of Poland (within OPZZ) and, finally, the NSZZ has a section dedicated to national transport.

With regard to **Portugal**, the information supplied by the trade unions and the government differs. There are two major confederations, the General Confederation of Portuguese Workers (CGTP-IN) and UGT, and a very fragmented trade union structure with nearly 350 individual self-governing trade unions.

The transport sector. The workers' organisations in the sector are: the Trade Union Federation of Road and Urban Transport Workers (FESTRU) and the Union of Transport Workers (SITRA). Between them, they organise all road and urban transport workers. Apart from these, there is the National Union of Chauffeurs (SNM), which organises drivers. The employers' associations are the National Association of Public Rail Haulage (ANTRAM) and the National Association of Passenger Road Transport Operators (ANTROP).

Trade union density in **Romania** appears to be relatively high. The government does not have reliable data to confirm this but, according to Eurofound data, the figure stands at between one-third and half of all workers. The trade union structure is fragmented, with five separate confederations: CNSLR-Frăţia, BNS, CSDR, CNS Cartel Alfa and Meridian. These confederations are representative at national level. They are entitled to be members of the National Tripartite Council for Social Dialogue (CNTDS), which brings together trade unions, employers and the government (as well as the national banks). With regard to the trade unions that make up the confederations, they are also representative at national level as they have the right to be members of the Economic and Social Council, which includes representatives of civil society, trade unions and employers.

The transport sector. On one side, the National Trade Union Federation of Drivers (FNSSR), and, on the other, the National Union of Road Hauliers in Romania (UNTRR).

Slovenia also has relatively high trade union density (between 25% and 30%). The competition between the trade unions impedes them from supplying accurate figures on trade union membership in Slovenia. Although there are seven independent trade union confederations, the Association of Free Trade Unions of Slovenia (ZSSS) is undoubtedly the biggest.

The transport sector. On the workers' side, there is the Trade Union of Transport and Telecommunications Workers (SDPZ), the Trade Union of Bus Drivers of Slovenia (SVAPS) and the Road Transport Trade Union. Employers in the transport sector have the Transport and Communications Section of the Association of Slovenian Employers (ZDS); the Transport and Communications Association, which is a member of the Chamber of Commerce and Industry of Slovenia; the Transport Section, which is a member of the Regional Chamber of Slovenia; and, lastly, the Association of Employers for Regional Activities in Slovenia (ZDODS).

Slovakia has a trade union density of nearly 17%, one of the highest in central and eastern European countries. There is just one dominant trade union confederation, called the Confederation of Trade Unions of the Slovak Republic (KOZ SR), although individual trade unions enjoy a great deal of autonomy and influence.

The transport sector. The transport sector's trade unions are the Trade Union of Transport, Road and Car Repair Services and the Independent Public Road Transport Trade Union. On the employers' side, there is the Association of Employers in Transport, Mail and Telecommunications (ZADOPOT SR) and the City Public Transport Association.

Trade union density is high in **Finland**, where nearly three-quarters of the workers belong to a trade union. The three confederations are the Central Organisation of Finnish Trade Unions (SAK), which predominantly organises manual workers; the Finnish Confederation of Employees (STTK), which organises most non-manual workers; and, the Trade Union Confederation for Academic Professionals in Finland (AKAVA), whose members are graduate employees. The three confederations work closely together under an agreement signed in 1978, and they are made up of many affiliated independent trade unions, although in recent years there have been several trade union mergers. There is some competition between STTK and AKAVA for graduate employees.

The transport sector. The Union of Transport Workers (AKT) and the Confederation of Road Transport Employers (ALT), which brings together nearly 1,000 companies employing 30,000 workers between them.

In **Sweden**, trade union membership is high, close to 71%, although the rate has fallen since 1995. There are three major trade union confederations: the Swedish Trade Union Confederation (LO), the Swedish Confederation of Professional Employees (TCO) and the Swedish Confederation of Professional Associations (Saco). The latter is structured according to the occupations and both the former according to industry.

The transport sector. For workers, within the LO, there is the Swedish Transport Workers Union (*Transportarbetareförbundet*) and, within SACO, the Transport Professionals Union (*Saco-Förbundet Trafik y Järnväg*). For employers there is the Swedish International Freight Association, the Federation of Swedish Buses and Coaches, and Swedish Association of Road Transport Workers (BA).

Lastly, in the **United Kingdom** just over one-quarter of the workers are members of a trade union. Trade union density is much higher in the public (56%) than the private sector (14%). There is just one trade union confederation in the United Kingdom, the Trade Union Congress (TUC), and the individual trade unions are fully independent. Approximately 60% of the trade unionists in the TUC belong to one of three major trade unions, which have grown through mergers.

The transport sector. In the area of transport, employers have the Freight Transport Association (FTA), the Road Transport Association (RTA) and the Road Haulage Association (RHA); and, for workers, there is the United Road Transport Union (URTU), the Communication Workers' Union (CWU) and the Union of Shop, Distribution and Allied Workers (USDAW).

3.2 COLLECTIVE BARGAINING

Collective bargaining is a concept with blurred boundaries which, broadly speaking, we could define as a decision-making process in the hands of interest groups whose relationship is, somewhat, dependent and opposed in terms of interests.

In the sphere of labour law, collective bargaining is framed within the social dialogue, with the distinctive feature of providing a framework for the agreement of reciprocal concessions between both major players in all industrial relations, the employer and the workers through their representatives. We are therefore looking at *"the most important channel through which collective relations unfold"*[25] which, unlike the others (consultation, co-management, concertation, etc.) follows the model of joint or shared agreement of a transactional nature. 'Collective

autonomy' is a key requirement in collective bargaining, as already explained in the previous section 'Overview of the legal framework of industrial relations in road transport in the EU', in respect of which we merely limit ourselves to explaining here that it is embodied in the collective agreement.

By collective agreement we refer to both a **source of law** in the Spanish labour-law system and the **activity of worker and employer representation**. This second meaning stems from the fact that, today, the objective of collective bargaining is the negotiation and adoption of a collective agreement.

Given that collective bargaining can take place at different levels, a distinction should be drawn between **territorial, sectoral and enterprise agreements**. By national agreements we refer to agreements negotiated by more than one activity sector and, therefore, sectoral agreements are those originating from a sectoral branch. On the other hand, enterprise collective agreements are those negotiated at enterprise level, where different situations may arise, i.e., the existence of an enterprise collective agreement for just one work centre in that enterprise, or a collective agreement applicable to the different businesses of a business group, whether or not they are dedicated to different activities.

To avoid confusion, it is important to highlight that sectoral agreements can take place at different geographical levels, so we may find sectoral collective agreements and national collective agreements (as well as by regions or provinces). However, in the description by countries, the term national will equate to intersectoral based on the classification explained in the previous paragraph.

The fact that collective agreements are of a **legally binding nature** means the obligation to fulfil their terms, and this obligation is prevalent throughout the European Union, even if there are exceptions. This aspect should not be mistaken with the **provision of opt-outs** envisaged in some EU Member States. The binding nature of collective agreements is only with regard to the workers and the enterprise or enterprises bound by the collective agreement by virtue of its scope of application. An altogether different question is that an enterprise may have the legal option to opt-out of an agreement, in which case there are no fulfilment obligations.

Having said that, and to focus on the subject, we will now analyse labour relations in the 28 member countries of the European Union, starting with Spain.

The classification of collective agreements in **Spain** is a somewhat more complicated task than in many other EU countries due to decentralisation of collective bargaining and the large number of agreements. The collective bargaining structure is characterised by a strong prevalence of enterprise agreements (approximately 75% of the total), followed by sectoral agreements. However, sectoral agreements at provincial level cover more workers affected by collective agreements (more than 50%)[26]. The tendency is towards decentralisation and enterprise agreements improving their representativeness, given that the 2012 labour reform gives more priority to this type of agreements. Collective agreements are legally binding - they have the rank of a law.

With regard to the extension of collective agreements, they shall be applied to the workers affected by the agreements, whether or not they are members of a trade union. However,

[25] A. Martin Valverde, F. Rodriguez-Sañudo Gutierrez, J. García Murcia, *Derecho del Trabajo 22nd edition, page 354 (2013)*.

[26] See Eironline (European industrial relations observatory on-line) – Spain: industrial relations profile.

not all the subsectors are covered by an agreement. Up until now, a pay increase agreed in a sectoral agreement had to be applied in all enterprises in the sector. Nowadays, a pay increase agreed at enterprise level prevails over a pay increase agreed at sectoral level. The table below summarises the evolution in Spain of collective agreements in surface (road, rail) and pipeline transport and the number of workers affected.

Table 3 – Collective agreements in surface and pipeline transport in Spain and number of workers affected.

	Total agreements		Enterprise agreements		Other agreements	
	Agreements	Workers	Agreements	Workers	Agreements	Workers
2002	224	248925	126	72110	98	176815
2003	225	282495	125	72264	100	210231
2004	236	290718	135	72027	101	218691
2005	231	307509	130	75196	101	232313
2006	229	387963	130	73612	99	314341
2007	224	389591	123	58469	101	331122
2008	228	376267	127	61366	101	414901
2009	220	379025	126	63185	94	315837
2010	199	329114	118	50634	81	278480
2011	185	263283	112	52639	73	210644

Source: Ministry of Employment and Social Security [27].

In **Austria**, collective bargaining takes place at two levels, the sectoral and the enterprise. The vast majority of agreements are negotiated by more than one employer in the same sector, and they are legally binding. A collective agreement may be applied, in full or in part, to labour relations of the same nature which, in principle, would not be covered by the agreement. This is possible through an application by a worker or an employer to the Federal Arbitration Board (*Bundeseinigungsamt*). In practice, it is not common to see this extension phenomenon because there are few areas not covered by a collective agreement. Since de decade of 1990 there is a decentralisation process, i.e. the delegation of certain aspects to enterprises. Some collective agreements include a so-called 'delegation clause', which leaves the regulation of explicitly defined aspects in the hands of the parties at enterprise level (management and works council). The content of collective agreements focuses to a large extent on quantitative aspects, such as pay and working hours, more than on other rights of a more qualitative nature. In the area of the carriage of goods, there is a collective agreement for road haulage that covers approximately 50% of the drivers. The other half of the drivers is employed in the transport sector on a self-employed basis.

Although **Belgium** is a federal country divided into several regions and provinces, the labour legislation and social dialogue in the area of the implementation and configuration of the employment conditions in the country continue to be centralised competences. The major trade union and employers' organisations cover the entire country. National and sectoral agreements predominate, although there are a few enterprise agreements.

The Interprofessional Agreement is a characteristic mechanism of the Belgium system and the result of the biennial negotiation of an intersectoral collective agreement between the major organisations that represent the workers and employers at national level. That agreement constitutes the framework for pay and working conditions for the discussions held by the sectoral

[27] Ministry of Development, *Evolución de los indicadores económicos y sociales del transporte terrestre* (Ministry of Development, 2013), page 331.

joint committees established by the Federal Public Service for Employment, Work and Social Concertation (*SPF Emploi, Travail et Sociale Concertación/FOD Werkgelegenheid, Arbeid en Sociaal Overleg*). The sectoral joint committees are made up of the three major trade unions and the representatives of employers who work in the sector in question.

Collective agreements are binding on employers and their workers who, even if not members of the signatory organisations, are nevertheless covered by the sectoral joint committees in which the agreement was signed. Opt-outs from collective agreements are only possible for employers who are not members of a signatory organisation, and they may only do so through an individual employment contract. However, if the obligatory nature of a collective agreement has been extended through a Royal Decree, the previously mentioned exception cannot take place.

In **Bulgaria** there are collective agreements at the three general levels: national, sectoral and enterprise. As a result of a decentralisation tendency, enterprise agreements are the most frequent, although the number of sectoral agreements is also relevant. Collective agreements are legally binding. Small Bulgarian enterprises, which make up the bulk, have no trade union structures or employers are not members of an employers' association, resulting in a lack of collective agreement coverage. However, a common practice worth bearing in mind is the Enterprise's Internal Rules of Procedure, which can be drawn up by all the employees with the aim of laying down the obligations and increasing the rights of the workers with regard to, for example, pay allowances, holidays or the work schedule for the year.

The Labour Code envisages the extension of collective agreements by ministerial decree. There are no voluntary mechanisms for extending the scope of application of collective agreements or coordination with regard to wage negotiation. The Bulgarian labour legislation makes an interesting affirmation when it establishes that collective bargaining is a trade union right and an employers' obligation. In transport, there is a general collective agreement for the sector, which is only applicable to workers who are members of the trade unions, and to employers, provided they are signatories.

The legislation in the **Czech Republic** draws a distinction between enterprise-level collective agreements and those of a higher level. In the former, the individual employer and the respective trade union organisation are authorised to negotiate; and in the latter, the trade union organisation with the widest scope and the employers' organisation/s are authorised to do so. Enterprise-level agreements predominate. The obligations derived from collective agreements are binding on the parties to the contract.

With regard to the extension of the binding effects of collective agreements of a higher level, it is worth bearing in mind that under certain conditions, they are automatically applicable to all workers in the industry or professional field, whether or not they are members of the trade union. On another front, the Tripartite Council of the Economic and Social Agreement established a committee that negotiates the extension and advises the Ministry of Labour and Social Affairs. It is noteworthy that, under the law, opt-outs from existing collective agreements are not allowed.

There is no relationship between agreements of a different level, or position of superiority or subordination. If the higher-level agreement establishes more advantages conditions for the worker than those of the enterprise-level agreement, the former shall be applied just as long as the employer is part of the employers' association that signed the agreement. In the road transport sector there are collective agreements at all negotiation levels.

The collective bargaining system in **Denmark** is characterised by negotiation at various levels and by a so-called 'centralised decentralisation', which means that strict control is exercised at central level of how the negotiation activity is conducted at lower levels. It is worth highlighting, on the one hand, the basic agreement (*Hovedaftalen*) and, on the other, the cooperation agreement (*Samarbejdsaftalen*), which have a longer validity period than collective agreements at sectoral level and constitute the framework for the negotiation of sectoral agreements. Sectoral agreements are also used as an integral framework implemented at enterprise level. Consequently, there are collective agreements at the three classical levels: enterprise, sectoral and national. Collective agreements are legally binding on the signatories. There is no formal procedure for extending collective agreements through legislation. There are no other voluntary mechanisms for extending/applying the terms of collective agreements. It is not possible to waive a Danish sectoral agreement. There are no provisions for non-participation in the agreement by a Danish sector. There are collective agreements for the transport sector at national and regional levels.

The absence of a Labour Code in **Germany** and, consequently, of a legal text establishing all the minimum labour standards, explains the importance acquired by regulations like the Law on Collective Agreements, which has governed the drafting of collective agreements since 1969. Although most collective agreements (*Tarifverträge*) are at sectoral level, there are also regional, enterprise and, even, establishment agreements.

The establishment (*Betrieb*) and the works agreement (*Betriebsvereinbarung*) are concepts which, in practice, are particularly relevant in the German system. The former refers to the organisation unit that pursues specific work objectives; the latter makes reference to written agreements that set out those objectives and are signed by the employer and the body representing the establishment's workers. The negotiating parties are normally the trade union and the employers' association. Collective agreements are legally binding on the members of the respective trade union and the members of the employers' association when they enter into force, provided that they observe the minimum legal standards. The compulsory fulfilment of collective agreements may be extended, under certain conditions, to all the employers in the professional field in the region in question.

Most collective agreements in **Estonia** are signed at enterprise level. The minimum pay is negotiated at national level. Sectoral agreements have only been reached in some specific sectors like transport. Collective agreements signed in an enterprise are legally binding and the signatory parties are required to observe it.

When the scope of application of a multi-enterprise agreement is extended, the conditions on pay, work and rest periods stipulated in the agreement become applicable to third parties. The scope of the extension is established in the collective agreement and they are published by the Ministry of Social Affairs. No other voluntary mechanisms are used to extend a collective agreement to parties who have not signed the agreement. Traditionally, collective agreements are only applied to the signatory parties, and despite efforts to extend their effects, very few agreements have accomplished this, one of them in transport. In this respect, there are collective agreements in the transport sector for the carriage of both goods and passengers at national and enterprise levels.

In **Ireland**, collective bargaining takes place at sectoral level and, informally, at enterprise and national levels. Collective bargaining is based on the British voluntarist model and has not been the subject of legal regulation, although there is a positive tendency towards establishing legally binding elements in the labour sphere.

Although not common in practice, there is the possibility of registering collective agreements with the Labour Court and, only once registered, the agreement becomes legally binding for the industry in question, including on those who are not members of the signatory employers' associations. There are no other voluntary mechanisms for extending/applying the terms of collective agreements. The negotiation procedure is informal and not regulated by law. As a result, collective agreements don't necessarily have to be trade union-employer agreements, but can be signed by an employer and an association of the internal personnel. When an agreement is signed in a workplace, it is generally applied to all the workers in the organisation, whether or not they are members of the trade union. However, the legality of this informal agreement has not been proven in the courts.

In **Greece**, collective agreements cover 100% of employees, given that the General Collective Agreement of the Nation has the status of a law. However, in terms of pay, the General Collective Agreement of the Nation only establishes the minimum monthly and daily wage. The minimum wage is established by law since 2012. Collective agreements have direct and obligatory force, and therefore have the same effects as the labour law on individual employment contracts. Any term in an individual employment contract that contravenes the provisions of a collective labour agreement shall be void, unless it establishes more protection for the worker than the terms of the collective labour agreement.

With regard to the possible extension of collective agreements to all enterprises in the sector, this may be done by the Ministry of Labour through a decision issued by the Superior Labour Council. The Minister acts on his/her own initiative or at the request of a competent trade union, even when the trade union is not the most representative and has participated in concluding the collective labour agreement or has taken part in the collective bargaining, or at the request of the employers. In accordance with recent legislation, the extension of collective agreements is suspended during the fiscal adjustment and, in any case, for a period of three years. A collective agreement may be declared generally obligatory, on the condition that it is applied to 51% of the workers in the sector. Trade unions and employers' organisations not bound by a collective agreement may join a collective agreement through a joint declaration.

In general, the Greek collective bargaining system is centralised, both at intersectoral and sectoral levels. However, from the information supplied by the Mediation and Arbitration Service (OMED), which shows a significant increase in enterprise collective agreements, there seems to be move in recent years towards decentralised bargaining at a lower level – enterprise level.

In **France**, collective bargaining takes place at all levels, and there is a remarkable presence of collective agreements in the French labour scene (a coverage of nearly 100%), as a result of the practice of extending collective agreements to the entire activity sector and/or to geographic regions. The government is responsible for determining the extension of a collective agreement at the request of any of the negotiating parties. Some of the existing problems are that many collective agreements are not up-to-date, the vast majority only regulates pay, and there is a high degree of overlap.

Collective agreements are legally binding, provided that they meet the legal requirements. National and sectoral agreements are legally binding on all employers who are members of the employers' association that signed the agreement and if the company belongs to the geographical area and the professional field of the agreement. If the agreement is extended, the requirement that the employer should belong to the employers' association that signed the agreement does not apply. Even if a collective agreement is not legally binding (because the employer does not belong to the employers' association that signed the agreement), an employer

could apply it voluntarily. On the other hand, there are specific 'opt-out' clauses for employers. There is a tendency towards decentralisation of collective bargaining.

To be fully valid, collective agreements must have the backing (or at least the non-opposition) of a majority of the representative trade unions or the trade unions representing a majority of the workers. France has a national collective agreement for transport.

Despite improvements in the social dialogue, **Croatia** is characterised by strong disputes, where the trust between workers and employers and the dispute settlement mechanisms are still poor. At national level, the tripartite dialogue is a burning issue due to disagreements about the proposed changes to the Labour Law. The dispute arose because the government plans to limit the extended application of collective agreements, i.e. the rule establishing that a collective agreement whose term has expired shall continue to be in force until the next agreement is signed. The trade unions firmly opposed the plan and the proposal was finally withdrawn from parliamentary procedure.

Italy has collective agreements at the three levels: national, sectoral and enterprise. Pay is predominantly negotiated at sectoral level, and increasingly at enterprise and territorial levels. Decentralised negotiation is confined to issues and practices not covered by sectoral agreements. One peculiar option in the Italian system is the 'open clauses' that can be introduced through enterprise agreements. There is no formal mechanism for extending collective agreements, as they are only generally binding on the enterprises and workers belonging to the associations that sign the agreement. However, in practice, employers apply the established minimum wage rates to avoid disputes (not the other clauses in the agreement). In this country there are collective agreements for the carriage of both goods and passengers at all negotiation levels.

In **Cyprus**, collective bargaining does not exist at national level and, consequently, collective bargaining is fully decentralised. A large number of agreements are signed at enterprise level, and these are as important as sectoral agreements, which are fewer in number but cover more workers. Signed collective agreements are considered 'gentlemen's agreements', which means that the regulatory part of the agreements does not have direct or obligatory effects on the workers. The agreements are applied to both affiliated and non-affiliated workers, although in practice, due to the lack of control mechanisms, non-affiliated workers are only covered occasionally. There is no legal or conventional mechanism that provides for the extension of collective agreements, but trade unions are striving to make this happen. Although there is no operational coordination between the different negotiation levels, in a few economic activity sectors, such as the hotel, metallurgy and construction industries, collective bargaining also constitutes the framework for the determination of pay in the other economic activity sectors, whether at sub-sectoral or enterprise level.

The most important level of collective bargaining in **Latvia** is the enterprise level. Bargaining at sector-level is represented in the so-called 'general agreements'. Collective agreements are considered internal documents of each enterprise, which explains why there is no national register of agreements and, as a result, the total number of collective agreements is unknown. A collective agreement is legally binding on the parties, and its provisions are applied to all the workers of the employer in question or all the workers of an enterprise belong to the employer in question, unless otherwise established in the collective agreement. Exceptions to the provisions of a collective agreement established in an employment contract are allowed when the latter are more advantages for the worker.

It is possible to extend an agreement if the members of an employers' organisation or an as-

sociation of employers' organisations employ more than 50% of the workers in a sector. In this case, the general agreement signed by the employer's organisation or the association of employers' organisations and a workers' trade union or an association of workers' trade unions, shall be binding on all of the employers in the sector in question, and shall be applied to all of the workers employed by those employers. The social dialogue in Latvia is not very productive and efforts continue to be made to develop the sectoral and regional social dialogue. Collective bargaining mainly takes place at two levels, the enterprise and the professional field.

In **Luxembourg**, the most important bargaining levels are the sectoral and the enterprise. Sectoral-level agreements are initially only applied to the enterprises belonging to the employers' associations that signed the agreement, but their effects are often extended to the entire sector by decision of the government. The employer's economic activity is decisive in determining which workers are covered by a collective agreement. In theory, even if the employer carries on several activities in different economic sectors, only one agreement shall be applied to the workers. There is no provision for opt-outs from collective agreements. In the road transport sector, collective agreements have only been negotiated at national level, and not at enterprise or regional levels.

In **Hungary** there are two levels of collective bargaining, the sectoral and the enterprise. Few workers are covered by current collective agreements. The effects of sectoral agreements can be extended by law. Some agreements are extended to the entire professional branch and, by contrast, others are only valid for enterprises affiliated to the employers' association. It is worth highlighting the so-called sectoral social dialogue committee, established in 2003 for approximately 29 sectors or sub-sectors, which is authorised to negotiate collective agreements and other agreements for the sector in question. The new Labour Code, in force since 1 July 2012, allows employers to sign an enterprise agreement with the committee instead of collective agreements with the trade unions, with the aim of adding flexibility and adjusting to the needs. Since that reform, a large number of enterprises have not renewed their collective agreements. With regard to transport, there is regulation at sub-regional level for passenger transport only. Most of the agreements in transport are at enterprise level.

In **Malta**, collective bargaining takes place at enterprise level (one employer) but, even so, collective agreements cover in the region of 60% of the workers. Collective agreements signed by registered trade unions and employers are legally binding. The effects of an agreement cannot be extended through a law or voluntarily, and neither is it possible to choose not to participate in collective agreements. In relation to the main coordination mechanisms of pay negotiation, there is no formal mechanism in the private sector for coordinating pay negotiation. However, informally, employers who are members of employers' associations consult one another on such issues.

Collective bargaining in the **Netherlands** takes place at the three general levels. The number of enterprise collective agreements is on the rise, although sectoral-level agreements continue to prevail. Nearly 80% of the workers are covered by a collective agreement.

One level worth mentioning, which is also a peculiar form of decentralisation, is the 'a la carte agreements', which allow particular conditions provided that certain limits are observed. They are legally binding on the members of the trade unions that are a party to the agreement and on the signatory employer or employers. In fact, the employer is required to offer the same conditions to all the workers, whether or not affiliated to the negotiating trade union. The mechanisms for extending collective agreements are through the Ministry of Social Affairs and Employment and voluntarily by the enterprises, although the latter is not a frequent practice.

Most collective agreements have voluntary exclusion clauses, but they are seldom used. With regard to transport, there is one collective agreement at national level for haulage only.

The legislation in **Poland** draws a distinction between collective agreements signed by one employer and agreements signed by several employers. Bargaining takes place at the three general levels. The enterprise continues to be the predominant level of collective bargaining, and the process of decentralisation and abandonment of sectoral collective agreements has become a permanent trend in the industrial relations system. At enterprise level, all trade unions and employers are allowed to negotiate. However, at supra-enterprise level, only the representative trade unions are authorised to be a party to collective agreements with several employers. Collective agreements are legally binding. A collective agreement with several employers can be extended to other employers not affiliated to the employers' associations that signed the agreement through a Ministry of Labour and Social Policy decree, by filing a joint application by an employers' association and a trade union of multiple employers. However, in practice, this legal option is not normally used because general agreements with several collective employers are very rare in Poland. Another peculiarity of the system is that enterprise collective agreements and collective agreements with multiple employers (or their parties) can be suspended by the signatory parties for a period of up to three years due to economic difficulties faced by the employer. There are agreements for road transport at all negotiation levels.

In **Portugal**, sectoral and enterprise collective agreements stand out in number. The predominant factor is the activity area. Collective agreements are legally binding. With the aim of controlling the coverage of collective agreements, current legislation tries to change what used to be the norm up until 2011 with regard to extension, i.e., the extension of the scope of a collective agreement through Ministry of Labour decrees at the request of the signatory parties, which has affected the coverage of sectoral agreements. It is not possible to introduce opt-out clauses in collective agreements. There are collective agreements applicable to road transport at both national and enterprise levels.

In **Romania**, the government unilaterally approved Law 62/2011 on Social Dialogue in 2011, which gave rise to radical changes in collective bargaining and to the abolishment of national collective agreements against the wishes of the social partners. Consequently, collective bargaining takes place at two levels: the enterprise and the sector. Furthermore, collective agreements negotiated by several enterprise units are recognised separately. According to data published by Eironline, the leaders of the major national trade unions estimate that the abolition of national collective agreements reduced the coverage rate of collective bargaining from nearly 100% to 35% at the end of 2011. With regard to the parties bound by collective agreements and the extension of agreements, the general rule for sectoral agreements is that they only affect the enterprises affiliated to the signatory employers' organisations. Any application to extend a sectoral collective agreement to all enterprises in the sector is subject to analysis and approval by the National Tripartite Council for Social Dialogue (*Consiliul Naţional Tripartit de Diálogo Social, CNTDS*). Enterprise collective agreements are only obligatory for enterprises with a minimum of 21 workers.

Collective bargaining in **Slovenia** takes place at national and sectoral levels, with the latter predominating in the private sector. In this country, sectoral negotiation means that collective agreements cover all employers in the sector, even if the workers are not members of the trade unions. The coverage rate of collective agreements is high, in the region of 90%. Collective agreements are legally binding. They can be extended pursuant to the Law on Collective Agreements, which lays down the conditions for doing so. The same law also establishes the

validity of opt-outs in collective agreements. At national level, there is a collective agreement for passenger road transport.

With regard to **Slovakia**, a distinction is drawn between enterprise and higher-level agreements. There is a tendency to decentralise collective bargaining to local enterprise level and diminish the role of collective agreements with several employers. However, collective agreements with several employers continue to play a major role in the determination of pay. The provisions agreed in collective agreements are legally binding on the parties to the agreements and they are applied to all workers equally, whether or not they are members of the trade unions. According to the rules established in the Law on Collective Bargaining, the effects of higher-level collective agreements can be extended to other employers operating in the same branch of industry, even if they are not members of the employers' organisation that signed the agreement, without requiring the consent of the employer affected by the extension. There are no voluntary mechanisms. The agreements must establish more advantageous rights and obligations than those established in the labour legislation. There are no provisions for opt-outs in collective agreements.

In **Finland** collective bargaining is found at the three levels: national, sectoral and enterprise. In October 2011, the social partners agreed a tripartite framework for a new centralised national agreement on pay and working conditions. The signatory parties are the trade union confederations AKAVA, SAK and STTK and, on the employer's side, the Confederation of Industries of Finland (EK) and the organisations of State employers, the municipalities and the Lutheran church. Within a tripartite negotiation system, local and enterprise-level negotiation has increased, and can be considered to complement sectoral and national agreements. It is worth highlighting the rise in individual pay increases, a growing practice in Finland that adds flexibility to the system by enabling to adjust to local needs. Also, this option makes it possible to set wages based on individual and enterprise-level performance. During a period not covered by an agreement, the State may intervene in industrial disputes of public interest through the mediation mechanism established in the Law on Industrial Disputes (1962). There is a specific collective agreement for transport at national and enterprise levels.

In **Sweden**, collective bargaining takes place at the three levels, with an inclination towards decentralisation to local or enterprise levels. Indeed, some collective agreements do not include specific references to pay but merely establish certain guarantees, thus leaving the local partners to take care of the details in their negotiations. Collective agreements cannot be extended to third parties through a law, but they can be by voluntary decision. They are legally binding from the moment they are signed, which, as mentioned in the previous section, is always on a voluntary basis.

Lastly, in the **United Kingdom** there are no national agreements. There is strong decentralisation, and pay and working hours are predominantly determined at enterprise or work centre level. In the private sector there is very low collective agreement coverage, in the region of 12 % in 2012. This country differs from the others for its disorganised levels of collective bargaining and lack of legal backing and promotion of collective agreements. Collective agreements are voluntary instruments. However, the terms or references established in individual employment contracts are legally enforceable. Neither the legal nor voluntary extension of agreements is possible but, in practice, the trade unions of different enterprises and sectors share information between them and certain existing agreements become informal 'benchmarks' for negotiators in other areas. The provision of opt-outs in collective agreements does not apply in the UK system of industrial relations.

3.3. COLLECTIVE ACTION (STRIKES)

In **Spain**[28] , together with lockouts, strike action is the major form of collective disputes. In the strict sense, a strike is the collective and agreed suspension of the provision of services for the purpose of defending and promoting the interests of workers in the labour and social environment. Depending on the objectives pursued in the exercise of the right to strike, we will refer to labour strikes when the objective is to improve working conditions, and to political strikes when the objective is to demand more advantages for the working class from the public authorities. The term labour strike may also include contractual strikes or economic or professional strikes. In the former, the objective is to add pressure in collective bargaining and, in the latter, to protect labour interests in a broad sense.

The right to strike is established in article 28.2 of the Spanish Constitution (CE), which recognises "*workers the right to strike to defend their interests*". From the rank it holds in the Spanish fundamental charter, the right to strike is a fundamental right derived from the social and democratic state governed by the rule of law. Despite the fact that its implementation rules have not been established in a specific law since the Constitution, Royal Decree-Law 17/1977 on industrial relations (DLRT) continues to be applicable, with the amendments introduced by the Constitutional Court in its judgement TC 11/1981. The Constitution confers the ownership of the right to strike on the workers[29]. Likewise, Spanish legislation, in article 11.2 of the Immigration Law, recognises this right to foreigners in the same conditions as Spaniards.

Article 3 of the DLRT establishes that, **in Spain, a strike may be called by workers or their representatives**. In other words, our system accepts two types of calls to strike, whilst others only accept calls to strike by trade unions. It is important to note that even if a strike is called by the employee representatives, it is the workers themselves who hold the ownership of the right. Therefore, workers can freely decide to join a strike and to pull out of strike. Also, even if the employee representatives are not in favour of a strike, the workers will still be entitled to exercise their right to strike.

In terms of the content and scope of strikes in the Spanish system, the Constitution does not specify either aspect. However, the right to strike does have several inseparable features. For example, the right to call a strike includes the right to choose its scope, category and objectives, provided that they are lawful. On another front, from the perspective of workers, strikes allow workers to temporarily stop providing their services without constituting a breach of their employment contracts or giving rise to penalties or reprisals. Likewise, a strike may not be used to justify the termination of a labour relationship nor may an employer replace strikers whilst exercising their right to strike.

To guarantee the right to strike, article 2 of the DLRT prohibits waivers of the right, so any agreement or commitment by which a worker manifests that he will waive the right to strike shall be void. However, so-called 'peace-clauses' by which trade unions temporarily promise not to call strikes are allowed.

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[28] Antonio Martín Valverde, Fermín Rodríguez Sañudo Gutiérrez and Joaquín García Murcia, *Derecho del Trabajo,* Tecnos Publishing House (2013) 22nd edition, pages 404-440.

[29] The term "workers" should be understood as individuals who work on an employee-basis, given that the objective of strikes is to put pressure on employers to improve working conditions. In particular, case law has recognised that article 28.2 of the Spanish Constitution is only applicable to individuals who provide remunerated work to others. Also, the right to strike belongs to workers who are subject to labour legislation, regardless, in principle, of whether they work in the public or private sector.

When workers consider that their right to strike has been violated, they may turn to the labour jurisdiction and take the action provided for this purpose in the legal system, specifically, they may set in motion the special defence process provided for in article 177 of the labour jurisdiction law for the fundamental rights. Any conduct that places obstacles on the exercise of the right to strike shall be subject to an administrative penalty or, when particularly serious, a criminal penalty.

Notwithstanding the foregoing, the right to strike shall be modulated with the other rights recognised in our legal system. First of all, the right to strike shall be exercised without foregoing essential services for the community, as established in article 28.2 CE. A second boundary is the public order and state security where, for example, in the event of a stoppage in the services, the authorities may declare a state of alarm. Also, in a state of siege or emergency situation, strikes may be prohibited, and may be restricted in the event of posing a threat to public safety. Lastly, the exercise of the right to strike can have an impact on other workers or even third parties. In particular, strikes may not cause more nuisance than strictly necessary, and must always comply with the proportionality required in these cases, without giving rise to abuse, duress or acts of violence. In addition, they may not be exercised in an abusive way or cause damage to or deterioration of capital assets. Similarly, strikes should observe the freedom to work of workers who decide not to join the strike.

Strikes in Spain must commence with a declaration, and a series of preparatory steps should be taken beforehand to coordinate positions. However, there are no rules governing this aspect. A strike agreement must be written and communicated to the employer in question. Likewise, the competent labour authority must be informed of the plans in order to safeguard the public interests that may possibly be affected. With regard to the exercise of the strike, the law in Spain requires the designation of a strike committee to manage the exercise of the right and ensure negotiation and the settlement of the dispute. A strike may be called off through an agreement or unilaterally by the workers/trade unions who called the strike.

The immediate effect of the exercise of a strike is the suspension of the employment contract and the freezing of the basic obligations: to work and to remunerate the work. In other words, a strike entails the loss of the right to receive pay during the period in which the right is being exercised. However, absences for taking part in a strike are not considered work absences, and may not reduce entitlement to holidays or rest periods or affect any pay due for such rest periods. In terms of social security, a worker on strike is in a special situation of active employment in the Social Security office, where he or she is not required to contribute to the social security and may not claim unemployment benefit whilst exercising the right to strike.

On another front, strikes that infringe the rules of the Royal Decree that governs them or that agreed in the collective agreement are considered illegal. 'Abusive strikes', i.e., strikes that cause disproportionate damage to the employer, are also considered illegal. In the event of an illegal strike or an illegal act during a strike, liability may be claimed from the people who called the strike or the participants.

According to the Ministry of Development, the years with more strike disputes in the Spanish surface and pipeline transport sector since 1991, have been 1997, 2000 and 2008[30]. Although the number of participants in the strikes held in the sector is generally lower than in the national total, the number of days not worked in the Spanish surface and pipeline transport sector

[30] Ministry of Development of the Kingdom of Spain, *Evolución de los indicadores económicos y sociales del transporte terrestre* (2013), page 333.

is higher than in the national total[31]. Therefore, we can conclude that **the Spanish surface and pipeline transport sector has had fewer but longer strikes than the national total**[32].

Table 4 – Strikes in the Spanish surface and pipeline transport sector by participants and days not worked.

	No. of participants in strikes		No. of days not worked due to strikes	
	National total	Surface and pipeline	National total	Surface and pipeline
1991	1.944.500	69.800	4.421.300	116.600
1992	5.169.600	69.900	6.246.500	215.100
1993	997.200	18.600	2.012.700	58.700
1994	5.427.700	45.000	6.254.700	145.600
1995	569.906	29.000	1.442.906	76.300
1996	1.078.034	13.700	1.552.872	23.000
1997	630.962	66.700	1.790.100	590.300
1998	671.878	23.800	1.263.536	30.500
1999	1.125.056	34.400	1.477.504	119.00
2000	2.061.349	142.622	3.577.301	392.932
2001	1.242.458	28.126	1.916.987	54.532
2002	4.528.210	26.558	4.938.535	130.229
2003	728.481	9.977	789.043	87.190
2004	555.832	7.634	4.472.191	27.760
2005	331.334	10.956	758.854	58.635
2006	499.240	8.939	927.402	34.225
2007	492.15	22.566	1.182.782	88.411
2008	542.508	68.837	1.508.719	333.501
2009	653.483	4.436	1.290.852	14.038
2010	340.776	13.620	671.498	36.803
2011	221.974	10.984	485.054	64.868
2012	323.871	45.831	1.290.114	99.678

Source: Ministry of Development

In **France** and **Italy**[33], the right to strike has reinforced protection and is also recognised in the constitutions. Specifically, in France, the Preamble of the 1946 Constitution, recalled in the 1958 Constitution, recognises the right to strike under the body of the laws that regulate it. Along these lines, article 40 of the 1948 Italian Constitution declares the same. Furthermore, as in Spain, the right to strike in both Countries is considered an individual right exercised collectively, but not a trade union right. Unlike Spain, both in France and Italy, the right to strike has not been implemented through ordinary legislation, but the courts decided to apply it directly and define its limits and scope of application. In particular, in France, the Court of Cassation has protected this constitutional guarantee in a very broad fashion. Nevertheless, the right to strike must be in answer to professional grievances and, therefore, purely political strikes are prohibited.

[31] Ibid.
[32] Ibid.
[33] Federico Fabbrini, *Fundamental Rights in Europe: challenges and transformations in comparative perspective* (Oxford University Press, 2014), pages 144-153.

That broad interpretation is also applied by the Italian courts. For example, the Court of Cassation has affirmed that the motive of a strike is immaterial and, therefore, recognised that all forms of strikes that are considered appropriate by the workers to achieve their objectives are admissible. Moreover, the Italian Constitutional Court has recognised that political strikes are lawful unless they seek to disturb the public order. Thus, strikes in Italy are an individual right that can be freely exercised without prior mediation or any procedural requirement, as well as without any impact on the worker's employment contract. In addition, in 1970, the Italian Labour Code guaranteed that workers on strike and employees participating in trade union activities shall not suffer any reprisal by their employer except the non-payment of their salary during the length of the strike. Likewise, given its constitutional nature, the right to strike may only be limited for the purpose of guaranteeing another right of equivalent rank. With this aim, in 1990, the Italian parliament published a framework code regulating the right to strike in the essential public services sector to protect the interests of users in sectors like healthcare, justice, police, public transport, etc. For this reason, trade unions are required to communicate in advance their intention to strike, the length of the strike and the manner in which the strike will be held. It is worth highlighting that, during a strike, workers are required to provide the minimum services agreed in the collective agreement or in the trade unions' self-government codes, as is also the case in the Spanish system.

With regard to **Sweden** and **Finland**[34], the right to strike is firmly grounded in the Constitution. However, in both systems, the regulation of labour disputes is competence of the social partners through the collective agreements.

In Sweden, article 17 of the Constitution establishes that any trade union and employer or any workers' association shall have the right to strike, impose lockouts or take any other similar measure, unless otherwise established in the law or an agreement. Consequently, the options of lawful action are very wide and include secondary action, boycotts and blockades. However, at the same time, collective agreements establish peace obligations, unless the strike pursues objectives outside the scope of the collective agreement. It is worth highlighting that, **contrary to what happens in Spain, the right to strike in Sweden is centralised in the trade unions**. According to the Swedish co-decision law of 1976, trade unions must communicate their decision to exercise their right to strike seven working days in advance to ensure the possibility of mediation.

In **Finland, the right to strike also belongs to the trade unions.** It is derived from the freedom of association and collective bargaining, in accordance with section 13 of the Constitution, and has been interpreted in a very broad fashion by the Finnish courts. In the Finnish system, strikes can include secondary action and be motivated by political reasons. However, as in Sweden, collective agreements establish peace obligations, unless the strike pursues an objective not covered in the collective agreement. Likewise, trade unions are required to communicate to the employer and the national conciliation office, fourteen days in advance, their intention to strike, the length of the strike and the duration of the stoppage in the provision of services.

In **Germany**[35], the system is different. First of all, **the right to strike is not constitutionally protected**. However, article 9.3 of the German Fundamental Law recognises the constitutional freedom of association to protect and improve the labour and economic conditions. And it is from that freedom that the German courts derive the right to strike. Despite having been recognised as early as 1955, the right to strike in Germany is subject to many restrictions, such as the peace

[34] Ibid.
[35] Ibid.

obligation until the expiration of a collective agreement, and the prohibition to exercise the right to strike in the event of conflicting rights. Specifically, the German system only authorises strikes whose objective is to strengthen the workers' position in the negotiation, and prohibits political and solidarity strikes.

Furthermore, **the right to strike in this country is assigned to the trade unions, and not to individuals, given that it may only be exercised by associations authorised to sign collective agreements.** The most characteristic feature of the Germany system is the principle of 'last resort', which means the application of the principle of proportionality in the sphere of labour law. Based on this principle, a strike shall only be legal if it is necessary and the last possible measure to settle a labour dispute. Consequently, trade unions do not have an unlimited right to strike, given that, prior to exercising the right, all conciliation possibilities must have been exhausted. The proportionality of a strike is determined by the industrial tribunals, which, as the case may be, may declare it illegal and, where appropriate, order the payment of any direct or indirect damage. To sum up, the German system gives rise to a strict right to strike.

A similar system governs in **Poland**[36], where **the right to strike is also a right of the trade unions**, recognised in article 59.3 of the Constitution, but subject to the restrictions established in the Labour Code. The details of these restrictions on industrial action are specified in the law of 1991 on the settlement of collective labour disputes. As in Germany, in Poland strikes are allowed for purposes of settling disputes concerning interests rather than disputes concerning rights, and the Labour Code's definition of strike excludes strikes in answer to political or socio-economic grievances. Strikes are considered a last resort used to settle a dispute, and trade unions are therefore required to negotiate and mediate with the employer before calling a strike. Thus, the strike is configured as a 'last resort' and is hinged around the principle of proportionality: the measures taken by the employee representatives must be proportional to the losses generally caused by strikes, not only to the parties to the dispute but also to third parties.

The **United Kingdom** has the **strictest rules on the right to strike**[37]. The right is currently regulated in the 1992 Trade Union and Labour Relations (Consolidation) Act (TULRCA). In accordance with that law, an act done by a person in contemplation or furtherance of a trade dispute is not actionable. Strikes whose objective is to ensure a 'closed-shop' policy are prohibited. (Closed-shop is an employer's agreement promising to only hire workers affiliated to a given trade union). Strikes aimed at ensuring the recognition of a trade union are not valid, and secondary strikes and political strikes are prohibited. Specifically, only strikes involving a labour dispute between the trade union and the employer are protected. Thus, strikes may only be held for economic reasons.

When the trade unions seek to begin a strike, they must follow a strict procedure. They shall first hold a ballot to establish that the workers support the action, and then inform the employer of the ballot and of the categories of workers who wish to participate in the ballot. After the ballot, the trade union must inform the employer and the workers entitled to participate in the ballot of the results of the ballot.

With regard to the protection of workers who participate in a strike, up until recently UK laws did not offer remedies for dismissals motivated by the mere exercise of the right to strike. However, today, the Labour Relations Act amending the 1999 TULRCA establishes remedies for workers in such a situation. In particular, it establishes that the dismissal of a worker shall be

[36] Ibid.
[37] Ibid.

regarded as unfair if the reason for it was that the worker took part in a strike. On the other hand, the worker shall not be protected if the action was carried out in an unofficial manner. It is worth highlighting that UK law does not envisage the readmission of the worker, even if the dismissal was clearly unfair, if the employer does not wish to readmit the worker. Therefore, the only remedy shall be to claim compensation for the harm suffered.

In **Austria**[38], **Belgium**[39] and the **Netherlands**[40], **the right to strike is not recognised in the Constitution or specifically in the legislation, and therefore the courts have played a major role in defining the right.**

Strike action is not generally prohibited in Austria, although it is subject to some restrictions. **In Austria, the ownership of the right to strike is held by the trade unions**, as in Germany.

With reference to **Belgium, although the right to strike is not specifically regulated in its national legislation, it is recognised as a fundamental right exactly as it is stipulated in various international instruments ratified by the country.** Furthermore, there are many collective agreements at sectoral and enterprise levels that include peace clauses until the expiration of the agreement. Some of these agreements contemplate industrial conciliation and establish procedures for communicating strikes. These requirements normally establish that conciliation should be attempted prior to resorting to strike action and that the intention to take strike action should be communicated in advance.

Lastly, the **Netherlands has also ratified international agreements that protect this workers' right.** Thus, the European Social Charter (ESC), the Charter of Fundamental Rights of the European Union and the International Labour Organisation Convention recognise the right. In particular, the Dutch Supreme Court has taken article 6.4 of the ESC as the starting point to define the right to strike in the Netherlands, in view of the absence of national laws on the subject. The general rule is that strike action is allowed. The restrictions imposed on the right must be established in a law, in accordance with article 6 of the ESC, and must be necessary in a democratic society to protect the rights and freedoms of others, the public order, national security and public and moral health. This is applicable in all the EU countries because they are all a party to the ESC as members of the Council of Europe.

In **Bulgaria**, article 4.2 of the **Labour Code establishes that trade union organisations shall be responsible for organising strikes.** The right to strike is specifically regulated in Chapter III of the Law on the Settlement of Collective Disputes. Furthermore, Bulgaria has a National Conciliation and Arbitration Institute made up of state representatives, employers' organisations and trade unions. It is a body attached to the Ministry of Labour and Social Policy responsible for assisting in the settlement of this type of disputes in the framework of the Law on the Settlement of Collective Disputes[41].

In the **Czech Republic**, the right to strike is recognised in article 27 of the Charter of Fundamental Rights and Freedoms. The only legal implementation that exists in connection with this right is contained in the Law on Collective Bargaining, which establishes the right in the context of collective bargaining. **The stoppage of the activity is initiated by the trade union and requires the approval of two-thirds of the workers** and, at least, half of the staff must take part in the ballot.

[38] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2012), Austria chapter.
[39] Global Legal Group, The International Comparative Legal Guide to: Employment & Labour Law (2014), Belgium chapter.
[40] Paul F. van der Heijden, International Right to Strike under stress, (The Hague Institute for Global Justice, University of Leiden).
[41] See section 3.4.

Furthermore, **the workers must be informed of the intention to go on strike at least three days in advance**, as well of the reasons for the action, the dates when the action will be exercised, the objectives, the number of participants, and which work departments will be out of service.

In **Estonia**[42] the right to strike is guaranteed in the Constitution. However, strikes in the public sector are not protected – they are banned. Other workers have the right to take strike action, and reprisals against strikers are prohibited. As in Spain, **the right may be exercised by both workers and trade unions** against employers or employers' associations. Political strikes are not allowed, although solidarity strikes are permitted if they last less than three days, in accordance with article 18.2 of the Law on the Settlement of Collective Labour Disputes. Furthermore, participation in illegal strikes can give rise to dismissal and to claims for damage[43].

Ireland[44] **has complicated laws governing the right to strike.** In essence, trade union laws require holding a ballot before taking strike action. After the ballot, the trade union is required to advise the employer one week in advance, otherwise the employer may have the strike prohibited by a court. Furthermore, the right to strike may only be exercised in the context of a legitimate trade dispute.

In **Greece**[45], this right has constitutional protection and is also established in Law 1264/1982. **Its exercise is subject to the authority of the General Assembly of the trade union members.** The trade union calling the strike must ensure security in the company's premises and prevent accidents or damage. The intention to take strike action must be communicated to the employer twenty-four hours in advance. If it is a legal strike, the employer may not operate the company with members of the trade union, declare a lockout or prohibit the strike. However, if it is an illegal strike, the leaders of the trade unions are required to postpone the action; otherwise they may be subject to penalties and even dismissal.

In **Croatia**[46], the Labour Code protects workers exercising their right to strike and limits the right of employers to impose lockouts during a labour dispute. In particular, **Croatian workers may only strike at the end of a contract or in specific circumstances mentioned in the contract.** If the initial arbitration is unsuccessful, the Social Economic Council designates a mediator, and this is an obligatory procedure before strike action can be taken. Specifically, a declaration that the negotiations are not progressing towards an agreement has to be made. If the strike is declared illegal, the strikers may be dismissed and the trade union may be held liable for damage. The Social Economic Council, which is made up of government representatives, trade unions and employers, meets on a monthly basis to review labour disputes.

In **Cyprus**, the right to strike is recognised in article 27 of the Constitution and, **with regard to its restrictions, Cyprus is in line with Europe,** i.e., the restrictions must be based on the protection of the public security, constitutional order, public order, maintenance of the basic minimum services for human life and the protection of the rights and freedoms guaranteed in the Constitution to all individuals. It is important to highlight that the settlement of labour disputes must follow the procedure established in the Labour Code[47], which requires prior negotiation and mediation. A strike may only be called if the aforementioned mechanisms prove unsuccessful.

[42] International Trade Union Confederation,
[43] Michele Tiraboschi and Paolo Tomassetti, *A legal analysis on proceedings on conflict of interests in Estonia* (2011).
[44] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2011), Ireland chapter.
[45] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2012), Greece chapter.
[46] Federation of European Employers, *Industrial Relations across Europe.*
[47] Cyprus' Labour Code.

In **Latvia**[48], the right to strike is recognised in the Constitution. **The right may be exercised by all or some of the workers in an enterprise.** To be able to exercise the right to strike, there must be economic or professional interests at stake and the strike may only be called as a last resort. No worker can be forced to strike or be prohibited from striking. As in other systems, the provision of minimum services must be guaranteed. Like in Spain, the establishment of a Strike Committee and notice of the intention to strike to the employer are required.

In **Lithuania**[49], strikes must be in answer to labour, social or economic interests, and are regulated in the Labour Code, but also recognised in the Constitution. **To call a strike in an enterprise, the approval of at least half of the staff is required.** The intention to go on strike must be communicated to the employer seven days in advance, or even fourteen days in special circumstances. The communication shall be issued by the respective trade union or works council. In this country too, the minimum services must be guaranteed, and strikes that pose a threat to human life, human health or public security are prohibited. Strikes are not allowed in state of emergency situations, natural disasters or during the term of the collective agreement. Furthermore, strikes may only take place if the parties did not manage to settle the dispute through mediation, conciliation or arbitration. Workers are not entitled to receive pay whilst on strike, but are entitled to social security. Lastly, no one can be forced to participate or not participate in a strike.

In **Luxembourg**, although collective action is generally allowed without major restrictions, **the right to strike is strictly regulated.** For instance, a strike shall be illegal if conciliation attempts have not been made prior to the strike. In particular, the parties are required to refer the dispute to the National Conciliation Office, which shall certify that all conciliation efforts have been made prior to the strike. Given that this procedure is obligatory, individuals who go on strike without having gone through this procedure may be fined. Also, **only trade unions are allowed to organise strikes**, and there are social peace obligations **during the term of collective agreements.** It is worth highlighting that strikes are extremely rare in Luxembourg.

In **Hungary**[50], the only regulated collection action is the strike. Strikes **may only be started by the trade unions**. Whether or not other forms of collective action are allowed is open to debate.

In **Malta**, the right to strike is not constitutionally protected. However, labour legislation does recognise strikes and lockouts as expressions of the right to freedom of association. However, **these actions can be prohibited by law in certain circumstances**. Also, these rights may only be exercised when concerning labour relations and when not breaching a peace obligation. As is the norm in all EU countries, workers are not entitled to receive pay whilst on strike.

In **Portugal**, the right to strike **is a workers' right** of an unalienable nature. The workers are also responsible for defining the interests to be defended in the exercise of the right. However, only the trade unions can decide to call a strike. The right to strike is recognised in article 57 of the Portuguese Constitution and outlined in articles 530 and 531 of the Portuguese Labour Code[51]. As in Spain and other countries, workers must guarantee the provision of minimum services to satisfy the basic social needs. They must also ensure the maintenance of the work equipment and premises.

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[48] *The Littler Mendelson Guide to International Employment and Labor Law*, 2nd edition, Volume III, Latvia chapter.

[49] Roger Blanpain and Andrzej Świątkowski, *The Laval and Viking Cases. Freedom of Services and Establishment v Industrial Conflict in the European Economic Area and Russia* (Alphen aan den Rijn, Kluwer Law International, 2009), pages 119-121.

[50] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2014), Hungary chapter.

In **Romania**[52], despite the fact that the Labour Code recognises the right to strike as a right of the workers, **only the trade unions are authorised to call collective action** when considered the best option for defending the interests of the workers. The main collective action is the strike. A strike may only be started if the employer has received notice of the strike at least forty-eight hours in advance and if the procedural steps established in Law 62/2011 have been previously taken. There are three types of strikes. The first is the warning strike, which may not last more than two hours. The second is the proper strike, which involves the collective and voluntary stoppage of work by the workers in a given company or industry. And the third type is the solidarity strike, which may not last more than twenty-four hours. On another front, the Labour Code recognises that participation is optional, and no one can be forced to participate or not participate in a strike.

In **Slovenia**[53], the right to strike is established in article 77 of the Constitution. Despite recognising the ownership of this right to the workers, **the right may only be exercised collectively**. The rules on how trade unions should organise a strike are established in the Law on the Right to Strike.

Specifically, a Strike Committee is required to announce the strike to the executive bodies of the enterprise and/or the employer at least five days in advance. However, if involving strikes that affect special categories of workers or a specific activity sector, or in the event of a general strike, the decision must be communicated to the competent body of the Chamber of Commerce and/or the respective professional association. When the trade union does not take part in organising the strike, its representatives may be a party to the negotiations aimed at settling the dispute if they are invited by the parties involved. Furthermore, the Strike Committee participating in the strike must organise and manage the strike in a way that it does not pose a threat to the health and safety of individuals or property, and that the work may be resumed after the strike. The Strike Committee and the workers who exercise their right to strike may not stop workers who do not wish to participate in the strike from working.

Workers employed in a particularly socially relevant sector or in organisations of major importance to national defence, the right to strike shall be exercised guaranteeing minimum services. In these cases, the communication shall be made ten days in advance and, in that time, a dispute settlement proposal must be put forward.

In **Slovakia**, the right to strike is guaranteed in article 37 of the Constitution. This right is **not developed in any law as whole, but partially regulated in law 2/1991 on collective bargaining**. Article 16 refers to strikes in disputes concerning a collective agreement, and article 20 lists the cases in which this type of action is considered illegal. Therefore, and also based on the Slovakian constitutional law which provides that all individuals may do anything that is not prohibited by the law, and that no one may be forced to do anything that is not legally allowed, a strike

[51] As an example, we can highlight that the collective agreement between ANTRAL (Association of Light Automobile Road Hauliers) and FECTRANS (Federation of Transport and Communications Trade Unions) or the collective agreement between ANTRAL and FESTRU (Federation of Road Transport and Urban Transport Trade Unions), which establish the right to strike in article 14, specify details regarding the right to strike in the area of transport.

[52] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2014), Romania chapter.

[53] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2014), Slovenia chapter.

shall be legal if and when it falls within the legally established limits.

3.4 CONCILIATION, MEDIATION AND ARBITRATION

In this section we make a comparative analysis of the collective right to alternative dispute settlement procedures in the road transport sector within the EU-28. Conciliation, mediation and arbitration make it possible to settle collective labour disputes without resorting to the courts. They are thus an extra-judicial channel. As highlighted by the ILO (International Labour Organisation)[54] it is necessary to draw a distinction between:

- An individual dispute: between a single worker and his or her employer; and
- A collective dispute: between a group of workers, generally represented by a trade union and an employer or group of employers.

In turn, collective disputes are divided into:

- Disputes concerning interests: which take place when there is a disagreement concerning rights and obligations or the modification thereof. They are typical in cases or situations not regulated by a collective agreement or arise during the collective agreement negotiation process;
- Disputes concerning rights: which take place when there a disagreement concerning the interpretation or application of existing rights recognised in the law or in a collective agreement.

According to the legal doctrine *"labour disputes may be settled through judicial or extra-judicial means (…) each offers advantages and disadvantages: as a general rule, extra-judicial means can act with greater immediacy, they can give more attention to the specific interests at stake and be used to prevent strikes or other dispute measures; however, they generally lack the specialisation and experience of judicial means. They are not exclusionary means: extra-judicial means often act as a procedure or a step prior to taking legal action "*[55]. There are legal instruments at international level fostering the prevention and alternative settlement of collective labour disputes[56].

In the context of the EU-28, we are again faced with a diverse situation due to the different implementation of the culture of collective autonomy in the European countries studied here: recognition of conciliation, mediation and arbitration; prevalence of laws or collective agreements when it comes to regulating the functioning of conciliation, mediation and arbitration; interventionism by the public authorities; compulsory or not; pre-strike cooling off periods or not, etc. Some countries even establish the obligation to resort to alternative dispute settlement channels by stipulating the specific mechanism to be used (for example, compulsory arbitration when involving priority public services) in a law.

The carriage of goods and passengers by road is, in principle, not among the above-mentioned priority public services (healthcare, education, public security, etc.), and therefore the exercise of these rights is –with differences in the EU-28, as we will see later- established in the legal and conventional regulations (collective agreements). The three extra-judicial options for settling

[54] *Collective Dispute Resolution – European and ILO perspectives*, High Level Tripartite Seminar (Nicosia 2007).
[55] Antonio Martín Valverde, Fermín Rodríguez Sañudo Gutiérrez and Joaquín García Murcia, *Derecho del Trabajo,* Tecnos Publishing House (2013) 22nd edition, page 437.
[56] For example: Voluntary Conciliation and Arbitration Recommendation (No. 152, 1951), Collective Bargaining Convention (No. 154, 1981), Examination of Grievances Recommendation (No. 130, 1967).

collective disputes are:

- **Conciliation**: the third party has no other role than to provide a favourable context without liaising between the parties;
- **Mediation**: the third party has more possibilities of intervening, gathering the opinions of the parties, mediating in their disputes and proposing non-binding solutions. Conciliation and mediation are increasingly becoming one and the same as a result of experience[57];
- **Arbitration**: the third party or arbitrator assumes decision-making powers, bringing the dispute to an end and binding the parties. Therefore, the parties need to have signed an 'arbitration agreement' beforehand.

Apart from the regulatory measures that we will be looking at, the public authorities make available to workers and employers, agencies, bodies and other instruments to foster good labour relations and prevent collective disputes[58].

Overall, the general principle that the exercise of the collective right to strike must be preceded by conciliation and mediation measures prevails in the EU-28, with the sole exception of Belgium, whose legal framework of industrial relations does not require that strikes be declared after exhausting such measures. The EU-15 countries generally have more regulations and institutions than the EU+10 (new countries of Central and Eastern Europe) in this area. However, there is no uniformity of the alternative dispute settlement mechanisms and procedures because of the differences in the economic fabric and the different territorial organisation. The fees paid to conciliators, mediators and arbitrators - an important aspect to bear in mind before using these mechanisms - also vary[59].

In the majority of the EU-28 countries, the use of mediation is the most frequently and mediation and conciliation are increasingly becoming one and the same. Arbitration also exists, but as widely used. The mixed structure of the labour-law system applicable to alternative collective dispute settlement channels is also common. It involves a model that combines legislation and collective agreements and where specific institutions, agencies and bodies are legally established to intervene, for example, Spain has the SIMA (Inter-confederal Mediation and Arbitration Service) and the Autonomous Dispute Settlement Agreement (ASAC), in force until 2016.

In **Spain**, the legal means for the extra-judicial settlement of collective disputes coexist with those stemming from collective bargaining (collective agreements and special bipartite and tripartite agreements).

Legal means

Compulsory arbitration is recognised in instances where a strike is declared in *"public services of recognised and unpostponable need"* and there are *"particularly grave circumstances that pose a serious threat to the national economy"*[60]. Also, article 76 of the Workers' Statute provides for compulsory arbitration in the event of disputes in elections to employee representatives in an enterprise.

The Spanish laws regulate the collective dispute settlement procedure with the labour autho-

[57] For example, in Slovenia and Malta.
[58] ACAS in the United Kingdom (Advisory, Conciliation and Arbitration Service), conciliation, mediation and arbitration services established in the Spanish Autonomous Regions CEMAC, UMAC, SEMAC).
[59] For example, in the Czech Republic the fees are paid by the state and are quite reasonable. The aim is to encourage employers and workers to use the lockout or strike only as a last resort.
[60] Article 10 of Law-Decree on Labour Relations (DLRT).

rity as an alternative to calling a strike. Article 17 and following of the Law-Decree on Labour Relations establish that workers may only exercise their right to initiate the collective dispute settlement procedure before exercising their right to strike or after abandoning the strike action. However, the procedure shall be suspended if the employers have set the procedure in motion and, in that time, the workers initiate a strike.

Conventional means

In terms of the conventional means for fostering the alternative dispute settlement mechanisms, article 91 of the Workers' Statute establishes that the joint committees shall have the powers, but also states that collective agreements shall establish the mediation and arbitration mechanism.

Thus, **in road transport, a large number of the Spanish collective agreements analysed**[61] **are submitted to collective dispute settlement mechanisms normally agreed at regional or state level (ASEC), as a measure prior to the competent jurisdiction, after exhausting the actions established by the joint committee**. Also, articles 8 and 59 of the General Carriage of Goods by Road Agreement (AGTMC) fully recognise the existence of these mechanisms in the collective agreements that opt for procedures at the level of each Autonomous Region, which are deal through their respective service, such as, for example, SERCLA (Andalusia) or ASEC-EXC (Extremadura). Lastly, in Spain, the SIMA (Inter-confederal Mediation and Arbitration Service) and the ASAC (Autonomous Dispute Settlement Agreement) are examples of specialised services in the settlement of this type of disputes arising from collective bargaining.

In **Austria**, conciliation is not envisaged, but just mediation and arbitration. The public authority plays a secondary role, giving greater prominence to collective autonomy. We should remember that strike and collective dispute rates in Austria are very low. The institutions in charge of mediation divide the disputes between them according to the number of workers involved (up to 200 and up to 400).

It is striking that, in **Belgium**, negotiation (conciliation, mediation and arbitration) does not have to precede the exercise of the right to strike. Also worth highlighting is the fact that, together with Estonia and unlike the other EU-28 countries, arbitration does not exist. As in Austria, collective autonomy prevails over interventionism by the public authorities in the alternative dispute settlement procedures, which is something that, according to some, is due to the poor reputation of the Belgian labour judicial system. Lastly, the Belgian legal framework of industrial relations allows so-called 'strike alerts' that do not interrupt negotiation.

Bulgaria envisages conciliation and arbitration and, like Spain and Sweden, it regulates a number of special cases for compulsory arbitration. It is one of the few EU+10 and EU-28 countries with specific laws on the settlement of labour disputes, despite its extremely high strike rates compared with the rest of the EU[62].

In the **Czech Republic** only mediation and arbitration are envisaged. 'Strike alerts' are allowed, which, however, do not interrupt negotiation in the framework of prevention of a collective dispute. It is not possible to go on strike or impose a lockout without having held negotiations in the presence of a mediator. If such negotiations prove to be unsuccessful, the parties may select a new mediator from a list drawn up by the Ministry of Labour, who drafts up a settle-

[61] National Advisory Committee on Collective Agreements, *La negociación colectiva en el sector del transporte por carretera* (2005).

[62] Thousands in recent years due to lack of efficacy of mechanisms and culture for settling these disputes (High Level Tripartite Seminar, ILO- Nicosia 2007).

ment proposal. Arbitration in the Czech Republic is only possible after 30 days from the start of the above-mentioned mediation procedure. Mediators and arbitrators are paid by the Ministry of Labour.

In **Denmark**, public intervention is rare due to its deep-rooted culture of collective autonomy. The law does not envisage arbitration for settling disputes concerning interests, i.e. those arising during collective bargaining or concerning matters not regulated in a collective agreement. Danish law even establishes fines imposed by a labour judge if the workers or employers fail to assume their commitment to negotiate each of the stages. To know in detail the ways in which the right to alternative dispute settlement is exercised in the road transport sector, it is essential to examine the collective agreements in force at each given time. After examining a number of them, we can affirm that the so-called 'peace obligation' is enshrined. The peace obligation is an unequivocal compromise to first of all settle the dispute at local level and, if that is not possible, to use mediation in the workplace and, only as a third avenue, to resort to collective bargaining between the social partners (employers and trade unions). Only a failure in collective bargaining in Denmark opens the door to the labour arbitration tribunal or, as a last resort, the courts of justice[63].

In **Germany**, as in Denmark, collective autonomy 'reigns' and intervention by the labour inspectors or other public authorities is rare. Road transport collective agreements –whether at federal, *länder* or individual enterprise level- envisage conciliation and mediation, although they both tend to be a same process. Arbitration exists in Germany, but with a poor reputation among employers, who feel that it is a slow and expensive mechanism. Trade unions refuse to eliminate it because they feel that this would threaten their co-decision rights[64].

In **Estonia**, only mediation is legally regulated. In 1995, a Public Mediator was legally established following tripartite negotiation, and was appointed for a term of three years with the mission to designate 24 local mediators. Since the establishment of the Public Mediator, the Public Mediation Office has dealt with 300 cases, and settled 80% satisfactorily. Arbitration does not exist in Estonia.

Ireland envisages conciliation, mediation and arbitration. Here, arbitration is a quasi-judicial procedure and mediation is the traditional dispute settlement mechanism.

In **Greece**, as in France and Spain, the model is far removed from that of the Nordic countries and a more prominent role is given to the public authorities (i.e. the labour inspectors) in the conciliation, mediation and arbitration procedures. There is the OMED (Mediation and Arbitration Service), which is made up of eleven members representing all areas of industrial relations.

France, as we mentioned above, gives much prominence to the public authority in conciliation, mediation and arbitration. The right to strike, which the alternative dispute settlement mechanisms attempt to avoid, requires consensus between workers and prohibits an individual worker from exercising the right, in the same way that strikes for political reasons are prohibited.

In **Italy**, only mediation and arbitration exist. Road transport collective agreements specify such procedures in detail. Italy has the most drastic pre-strike cooling off period in the EU-28 as whole: three months before and one month after the expiry of an agreement.

Cyprus does not have conciliation, only mediation and arbitration. As in Germany, the United

[63] Denmark envisages the role of the Public Conciliator.
[64] See section 3.5 of this study.

Kingdom and the Nordic countries, the public authorities seldom intervene.

Latvia only has conciliation and arbitration and, like in Bulgaria and Poland, they are regulated through specific laws on the subject (rights of the parties, cooling off periods, etc.). Before setting in motion an alternative conciliation or arbitration mechanism envisaged in, for example, road transport collective agreements, Latvia has Conciliation Committees whose decisions are binding on employers and workers, as are collective agreements.

In **Lithuania**, the three classical extra-judicial dispute settlement procedures are used: conciliation, mediation and arbitration. There is extensive legislation and, like in Latvia, there are Conciliation Committees that come into play prior to mediation or arbitration. Unlike Latvia, in the event of lack of agreement between the parties, the Conciliation Committee may refer the issue to arbitration or a 'third party' court[65] or conclude with a disagreement protocol.

The labour laws in **Luxembourg** envisage conciliation, mediation and arbitration.

Conciliation, mediation and arbitration (the latter only for disputes concerning interests, not rights) are also envisaged in **Hungary**. Prior to the 1999 reform, Hungarian legislation envisaged a now abolished compulsory pre-conciliation at the level of each enterprise, which the trade unions are now calling for its reinstatement. This mechanism, which takes place in the presence of a neutral third party, very much resembles the mediation whose benchmark institution is the Labour Mediation and Arbitration Service (MKDSZ).

In **Malta**, conciliation and mediation are similar. Arbitration also exists. The public authorities (Department of Employment and Industrial Relations) make conciliation services available to the parties. Between 1989 and 2002, 80% of the collective labour disputes were submitted to conciliation and nearly 79% were settled satisfactorily. Mediation is compulsory when negotiations fail.

In the **Netherlands**, conciliation, mediation and arbitration are used. The exercise of conciliation, mediation and arbitration is established by employers and workers in the exercise of their collective autonomy, and there are no laws or ad hoc institutions that intervene.

In **Poland**, only mediation and arbitration exist, and they are regulated through specific laws. The labour inspectors intervene to conduct frequent inspections and impose fines if the regulations governing these procedures are not observed. Mediation comes into play when the parties fail in their private negotiations, and they have five days to reach an agreement. If an agreement is not reached, they can ask the Ministry to appoint one of the mediators that appear on a list. After the law of 2003 on the Tripartite Committee, mediators in Poland act as 'good will' emissaries and try, not only to settle, but prevent future disputes.

Portugal recognises conciliation, mediation and arbitration.

In **Romania**, conciliation, mediation and arbitration are strongly intervened by the Public authority (Ministry of Labour, Social Solidarity and the Family). The parties contribute to the payment of mediators' and arbitrators' fees. According to a recent survey conducted by the European Foundation for the Improvement of Living and Working Conditions, both Romanian employers and workers expressed their dissatisfaction with the functioning of the Romanian dispute settlement system[66].

[65] The third-party court is an ad hoc institution presided over by a labour judge, in which six arbitrators appointed by the parties have 14 days to settle the issue.
[66] EUROFUND.

In **Slovenia**, conciliation is likened to mediation, and arbitration is set apart. The legislation is dispersed, and there is a specialised and independent, although publicly funded, Public Agency.

Slovakia does not envisage conciliation, and legislation establishes that workers shall be paid up to half of their hourly pay during a lockout. It also seeks to safeguard the fairness of the process by preventing an individual who has previously acted as mediator from intervening as arbitrator.

In **Finland**, mediation – which, here too, is likened to conciliation - is compulsory. However, the parties are not required to reach an agreement. Arbitration is also used.

In **Sweden**, the will of the parties (collective autonomy) is prevails. The public authorities play a small role in the exercise of the right to mediation and arbitration (conciliation does not exist). The National Mediation Office has highly qualified mediators (former lawyers with court experience) whose term in office is 12 months. The aforementioned Office has the power to request a cooling off period of 14 days to increase the possibilities of reaching an agreement before a strike is called or a lockout imposed.

In the **United Kingdom** there are specialised bodies (Advisory Conciliation and Arbitration Service, ACAS) in public services like metropolitan passenger transport.

Table 5 – Alternative settlement of collective disputes mechanisms and procedures most frequently used in road transport

EU-28 country	Procedure	Most frequently used mechanism
Austria	Med + Arb	Mediation and Arbitration Committee National Economic Commission Federal Arbitration Committee
Belgium	Con + Med	Federal Public Employment Service
Bulgaria	Med + Arb	National Conciliation and Arbitration Institute
Czech Republic	Med + Arb	Ministry of Labour
Cyprus	Med + Arb	Ministry of Labour
Germany	Con-Med + Arb	Autonomous bodies set up by social partners
Denmark	Con-Med + Arb	Public Conciliation Service Industrial Tribunal (49 members) Industrial Arbitration Tribunals
Estonia	Con + Med	Public Conciliator Independent Labour Committees
Greece	Con + Med	OMED Ministry of the Interior, Public Administration and Decentralisation
Spain	Con + Med + Arb	SIMA Labour inspectors and SS
Finland	Con-Med + Arb	National Conciliation Office Ministry of Labour
France	Con + Med + Arb	Conciliation Commission Ministry of Labour
Croatia		
Hungary	Con + Med + Arb	MKDSZ
Ireland	Con-Med + Arb	Labour Relations Commission (LRC)
Italy	Med + Arb	Autonomous bodies set up by social partners Guarantees Commission (strikes in essential services)
Lithuania	Con + Med + Arb	Conciliation Commission
Latvia	Con + Arb	Conciliation Commission National Tripartite Council
Luxembourg	Con + Med + Arb	
Malta	Con-Med + Arb	Director of Employment and Industrial Relations Conciliation Panel designated by the Ministry of Labour
Netherlands	Con + Med + Arb	Autonomous bodies set up by the social partners
Poland	Med + Arb	Association of Mediators Social Dialogue Commission
Portugal	Con + Med + Arb	
Romania	Con + Med + Arb	Ministry of Labour, Solidarity and the Family
Sweden	Med + Arb	National Mediation Office Autonomous bodies set up by the social partners
Slovenia	Con-Med + Arb	Economic and Social Council Autonomous bodies (some set up by the Chamber of Commerce)
Slovakia	Med + Arb	Ministry of Labour, Social Affairs and the Family
United Kingdom	Con + Med +Arb	ACAS Central Arbitration Committee

Con=conciliation, Med=Mediation, Con-Med=integration of both procedures, Arb=Arbitration

Source: Prepared by the authors (based on information found in *Collective dispute resolution in an enlarged European Union*, EIRO thematic feature – European Foundation for the Improvement of Living and Working Conditions, Dublin 2006).

3.5 INFORMATION, CONSULTATION AND PARTICIPATION

The rights to information, consultation and participation are defined as rights of a collective nature which entitle workers to:

- **Receive qualitative information** in good time concerning issues related to the enterprise they work for that affect their labour activity;
- **Be consulted** by the decision-making and governing bodies of the enterprise, and the result of the consultation shall be binding (the right of co-decision) or merely of consultative value;
- **Participate in the governing and decision-making bodies** (the board of directors, the oversight committee and the general meeting of shareholders). The maximum level of expression of this right is *co-management*.

The exercise of these three rights is, obviously, associated with the rights of association and trade union freedom discussed in section 3.1, given that information, consultation and participation require the prior election of employee representatives to be effective. Consequently, in this section of our comparative analysis we will make reference to the conditions governing the establishment of works councils in the EU-28.

The right to 'information and consultation' has the rank of constitutional law at European level because it is established in Title IV (Solidarity) of the Charter of Fundamental Rights of the European Union. At the level of EU secondary law, Directive 2002/14/EC establishes the general framework of the rights of workers to be informed and consulted, and extends these rights to enterprises with more than 50 workers or work centres with more than 20. As some author pointed out *"Directive 2002/14 contains a declaration of respect for the different national systems, which presupposes a considerable disparity between them"* [67]. The exercise of these rights takes place at the level of each Member State by establishing systems that guarantee their exercise.

We can affirm that all the labour-law systems of the 28 Member States envisage the rights to information and consultation and, with minor differences, establish mechanisms to guarantee their exercise (active legal standing, representation mechanisms through works councils or staff delegates, voting, binding or non-binding nature of the consultation, instances of compulsory information/consultation, etc.).

Furthermore, albeit with some differences in respect of its compulsory or non-compulsory nature for the employer, we have found that the right of workers to appoint their representatives in the enterprise (works councils, staff delegates) is widespread and, from there, they organise the right to information, consultation and participation in line with the established requirements. However, **with regard to the right to participation and, specifically, the possibility of co-deciding on an equal footing** certain matters or participating in the governing bodies of the enterprise (co-participation) **the reality is more divergent**.

In **Spain**, legislation confers the right to establish a works council in enterprises with more than 50 workers, and staff delegates in enterprises with less than 50 workers. Apart from the rights to information and consultation, neither co-decision nor co-management is recognised. According to the Workers' Statute, in Spain, the works council shall be informed every three months

[67] Antonio Martín Valverde, Fermín Rodríguez Sañudo Gutiérrez and Joaquín García Murcia, *Derecho del Trabajo*, Tecnos Publishing House (2013) 22nd edition, page 304.

on a series of matters, such as the enterprise's performance, changes in the working conditions (i.e. extra hours), occupational safety and environmental actions. With the due frequency, the works council is entitled to have access to information on the balance sheet and the profit and loss account, as well as on other matters like functional mobility, transfers or assignment contracts, which also extends to so-called economically dependent self-employed workers.

In **Austria**, as well as the above-mentioned rights, workers have the right to legal representation in industrial tribunals.

In **Bulgaria**, unlike other EU+10 countries, the Labour Code is more demanding on employers. It establishes that, when envisaged in the law, the employer shall consult the workers on 'business management' issues (articles 7 and 37) and shall invite them to draw up the enterprises' internal rules of procedure. It also establishes a specific right to information in the event of collective dismissal and, in line with Directive 2002/14/EC, in enterprises with more than 50 workers, one employee representative may participate (although without a casting vote) in the general meeting of shareholders. The Bulgarian system is meticulous in establishing penalties and fines for employers who breach the obligation to consult the workers in the instances contemplated in the regulations.

In **Cyprus** it is established that, in the event of selling an enterprise, the workers or their representatives shall be previously informed and consulted, otherwise the employer may be fined 850€.

In **Belgium**, the workers elect their works council every four years (enterprises with more than 100 workers) from lists drawn up by the trade unions, and the range of issues they are regularly informed and consulted about is very wide (productivity, working conditions, etc.). With some exceptions, in Belgium the right to co-decision does not exist, and the right to participate in the enterprise's decision-making bodies (co-management) is not recognised.

In **Finland**, employers are not legally required to establish a works council. It is a right that should be activated by the workers, although 'delegates' are normally appointed for very specific matters like occupational health and safety.

In **France**, works councils are mandatory in enterprises with more than 50 workers, and the list of issues the workers are informed and consulted about is very long. The law also regulates the instances where the workers' favourable opinion or non-objection (constructive abstention) is required before the employer can decide. With regard to co-management, French legislation envisages the presence of employee representatives in the board of directors' meetings, who must be informed just like the board members and may give their opinion but not vote. The same principle applies to the general meeting of shareholders.

In **Germany**, where the rights to information and consultation are legally established, the right to co-management reaches its maximum expression, although confined to public limited companies, limited liability companies and cooperatives employing more than 2000 workers. Half of the members of the oversight committee are employee representatives, and the committee's chairman is elected with the vote of two-thirds of the members. If that majority is not reached, the representatives of the capital elect the chairman, who also has a casting vote in the votes of the committee. The oversight committee elects the board of directors.

In **Greece**, the establishment of a workers council is optional for enterprises with more than 50 workers and enterprises with more than 20 workers without trade unions. Employers are requi-

red to consult the workers in certain cases. The right to co-decision exists in very few cases and co-management is not recognised.

In **Luxembourg**, the right to co-decision is recognised only in enterprises with more than 150 workers, and co-management is not recognised.

In **Portugal**, the right to co-decision is optional and, with some exceptions, co-management is not recognised[68].

In the **Czech Republic**, employers are not required to establish a works council, but it is conceived as a collective right of workers. A participation quorum of at least half of the workers is required, and the employee representatives' term in office in the council is three years. The works council in the Czech Republic merely exercises its right to information and consultation. Co-management is only possible in exceptional cases, although in enterprises with more than 50 workers, the workers elect one-third of the members of the oversight committee.

In **Hungary**, the decision to set up a works council is left to the discretion of the workers but the option is only open to enterprises with more than 50 workers. Co-decision is only envisaged in very exceptional cases, such as the administration of pension funds. Co-management does not exist, except for the possibility of having employee representatives in the oversight committee in enterprises with more than 200 workers.

The model is similar in other EU-15 countries like **Italy** and the **United Kingdom**, which recognise workers the right to set up a works council but not the rights to co-decision or co-management.

In **Slovenia**, the rules governing the instances where employers are required to consult the workers are very strict, although the outcome of the consultation is not binding. Co-management is recognised, and employee representatives may participate in the meetings of the decision-making and governing bodies of large enterprises with more than 500 workers.

Slovakia envisages the right to information and consultation.

In **Romania**, only the right to set up works councils is recognised in accordance with EU Regulations, and the rights are confined to information and consultation.

[68] One exception is article 74 of the Agreement between the trade union, FECTRANS (Federaçao de Transportes e Comunicaçoes), and the company, Carros de Ferro Lisboa S.A.

4. INDIVIDUAL RIGHTS OF WORKERS

4.1. SALARY

The right to receive pay is a basic individual right of road transport workers, and represents a substantial operating cost for the employer.

We should not forget that the main asset of a road transport enterprise is its driver. In the specific case of road haulage, studies have put the cost of drivers (in terms of the gross salary paid by the employer) in the region of **34.7% of the operating costs**[69].

The following table shows the weight of a driver's salary on an enterprise's operating costs:

Table 6 – Percentage of the operating costs represented by the driver (per hour).

	IT	DE	FR	ES	PL	AT	HU	SL	RO	DK
Driver	34	33	39	34	23	35	28	31	25	56

Source: Report of the High Level Group on the Development of the EU Road Haulage Market

The comparative analysis of drivers' salaries and the consequential operating cost to employers (at European level) clearly highlights the large differences between the EU-28 countries. However, it has been difficult to systemise the analysis for several reasons.

Apart from basic methodological difficulties, such as the different salary levels in the carriage of **goods and passengers** subsectors and the **partial reliability of the information** offered by existing studies in this field[70], we came up against additional obstacles like the extraordinary **complexity of the salary structure** in the road transport sector[71] and the **different regulatory instruments** that come into play in the determination of the amount of the salary.

With regard to the complexity of the salary structure, the example of **Spain** suffices to illustrate the difficulty involved in reliably determining the salary received by a worker in this sector, and the consequent annual cost that it entails for his or her employer. Thus, the Workers' Statute redirects one to whatever is decided under the collective agreement or the employment contract[72], but the salary is made up of a basic salary, salary allowances and other specific salary

[69] AECOM, *Report on the State of the EU Road Haulage Market. Task B: Analyse the State of the European Road Haulage Market, Including an Evaluation of the Effectiveness of Controls and the Degree of Harmonisation* (2014), page 64.

[70] There is hardly any literature to enable us to make a consistent comparative and the one available comes from different sources (the private sector, universities, research institutes, public administrations) and has diverse methodologies and objectives. Furthermore, the sources only offer partial reliability that is even recognised by the authors of those documents. It also appears that some studies are very nationally focused and centred on demonstrating that their costs are the highest possibly with a view to justifying the adoption of protectionist measures. Hence, the studies always defend that a given country has higher costs than the others.

[71] On top of the basic salary (fixed or variable), which depends on the worker's length of service, the worker receives many allowances and bonuses, and the number of pays received a year varies (in some, not all, countries there are extra pays that range from 13 months in France to 15 in Spain), etc. Therefore, we would need equivalent individual profiles for each of the 28 countries to reach fully substantiated conclusions, which would require having the adequate information.

items[73]. The basic salary is a fixed amount received by the worker for each of the time modules in which he or she provides the services (day, month, hour or year)[74] as well as the numerous and diverse allowances that are added to it[75].

In terms of the different regulatory instruments that come into play in the determination of the salary, it is worth highlighting that it can be determined according to **state law, collective agreement** and the **individual employment contract**, which further complicates the systemisation of the comparative analysis. (One need only consider the number of collective agreements there are when it comes to determining a worker's salary). For example, even within a same country (**Germany**) there are significant differences in the annual gross salary established in the different collective agreements[76].

Indeed, in **Germany** there are **significant differences between the salary** established in the eastern states (the lowest minimum salary can be found in the Mecklenburg-West Pomerania collective agreement, which is 5.81 €/hour) and those established in the western states (the minimum salary can be found in the South Baden collective agreement, which is 13.49€/hour). Large differences are also found in the collective agreements in **Spain**, where the annual gross salary established in the Asturias collective agreement is 211.18% higher than the lowest (Soria)[77]. The Spanish collective agreement with the highest annual gross salary (Asturias, 26,019.60 €), is followed by Barcelona (25,939.65€) and then Vizcaya (25,162.23€)[78]. On the other hand, the Soria collective agreement establishes the lowest annual gross salary (12,321€), followed by Las Palmas (12,492.88€)[79].

According to some authors, the salaries of road transport workers in Spain are generally between 1,200 and 2,000€ per month[80]. In terms of the annual cost to the employer, **existing**

[72] Article 26.3 of the Workers' Statute.

[73] Ibid.

[74] Antonio Martín Valverde, Fermín Rodríguez Sañudo Gutiérrez and Joaquín García Murcia, *Derecho del Trabajo*, Tecnos Publishing House (2013) 22nd edition, page 645.

[75] The Workers' Statute redirects us to collective bargaining when it comes to identifying the allowances, although three types of allowances are envisaged (personal allowances, job-based allowances, and work volume or work quality-based allowances). Personal allowances tend to be established in collective agreements and are determined on the basis of the worker's personal circumstances, i.e. length of service in the enterprise, qualifications or special knowledge, use of languages, and similar. Work volume or work quality-based allowances include amounts paid to workers on the basis of the profits made by the enterprise. Examples of these allowances that appear in collective agreements covering the carriage of both passengers and goods include incentives, premiums, and activity, availability and attendance bonuses, as well as extra hours and similar. On another front, examples of the job-based allowances include the bonus for hazardous, arduous and toxic work, the bonus for night work, the driver's bonus, etc. In turn, the General Road Haulage Agreement (for this specific subsector) and the collective agreements (for both goods and passengers) add other allowances like, for example, the collective agreement bonus, allowances in kind or allowances that are paid regularly but not every month (the most typical being the extra pays). With regard to the extra pays, in passenger road transport there are normally three extra pays per year (although there can sometimes be up to four), and in haulage, the General Agreement establishes three extra pays (Christmas, summer and profits) and the collective agreements tend to establish the same number (but collective bargaining may improve this): see National Advisory Committee on Collective Agreements, *La negociación colectiva en el sector del transporte por carretera* (2005), pages 62 and 238. Other frequent extra salary payments established in road transport collective agreements include food and accommodation allowances, the transport bonus, compensation for currency devaluation, and others like the bonus for wear and tear of equipment and tools that appears in some passenger transport collective agreements or, in school transport, the obligation of the employer to cover the cost of renewing the worker's driver's licence, which is established in some passenger transport collective agreements.

[76] Comité National Routier, *Le TRM en Allemagne* (2012), page 44.

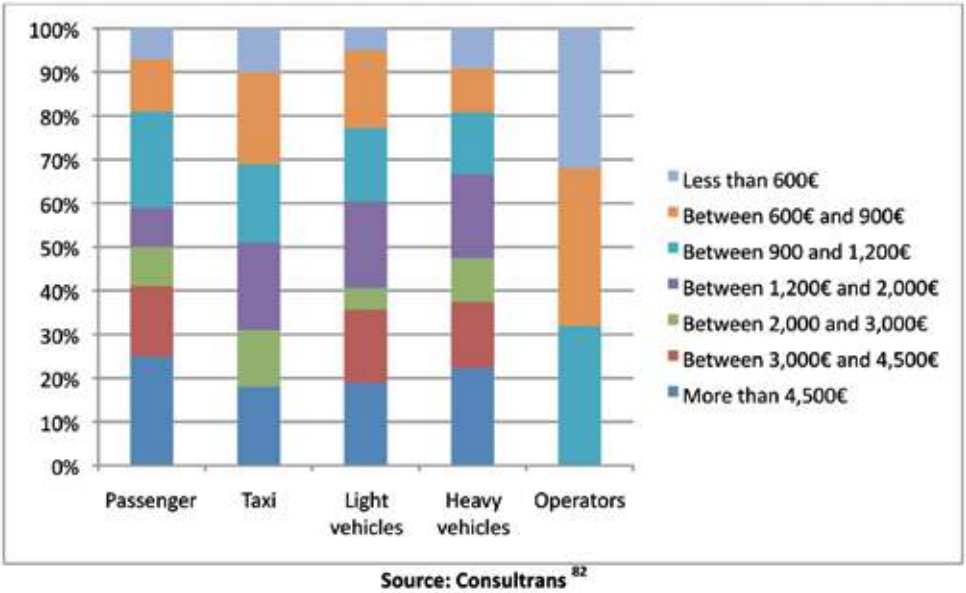
[77] This study has been conducted based on 54 provincial collective agreements for a mechanical driver with ten years of service. See the magazine, Transporte Profesional, Monográficos del Transporte, *La negociación colectiva en el transporte de mercancías por carretera*, Booklet No. 339 of June 2014, page 7.

[78] Ibid.

[79] Ibid.

studies estimate that in Spain the cost is 37,697€[81].

Table 7 – Breakdown of employees in the Spanish road transport sector by salary.



Source: Consultrans [82]

Despite all of the above-mentioned difficulties, the study allows us to reveal some significant results in respect of the annual cost of a driver to the employer in the carriage of goods subsector of several Member States. Faced with the inability to take a same year as a reference due to lack of data, we have used the years 2011 and 2012 as the only reference for eight EU-28 countries.

[80] Consultrans, *Estudio socio-económico del transporte por carretera en España* (2005), page 86. There are also studies that assure that the average salary of a driver in Spain is 19,170.30€ per year: see the magazine, Transporte Profesional, Monográficos del Transporte, *La negociación colectiva en el transporte de mercancías por carretera*, Booklet No. 339 of June 2014.

[81] Comité National Routier, *Le Transport routier de marchandises espagnol* (2011), page 55.

[82] Ibid.

Table 8 – Estimate of the annual cost of a road haulage driver in the EU

Country	Year	Annual cost for employer
BE	2012	54,351.76
DE	2012	41,947.82 (West) 30,509.93 (East)
ES	2011	38,227.00
FR	2012	46,032.00
IT	2011	52,484.93
HU	2012	18,957.33
PL	2011	19,686.00
SL	2011	23,444.00

Source: Prepared by the authors using data from studies [83]

For further information, in Annex VI you will find a series of tables relating to the subject of a driver's salary in several EU countries.

4.2 WORKING TIME AND REST PERIODS

The body of rules governing the area of social standards for the carriage of goods and passengers has been gradually established by the EU since 1969. Today, the regulatory evolution is consolidated through **Directive 2002/15/EC** on the organisation of the working time of persons performing mobile road transport activities[84], **Regulation (EC) No. 561/2006** on the harmonisation of certain social legislation relating to road transport and **Directive 2006/22/EC** on minimum conditions for the implementation of social legislation relating to road transport activities[86]. These three legislative acts are supplemented by **Directive 2003/59/EC** on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods and passengers[87] and **Regulation (EU) No. 165/2014** on tachographs in road transport[88]. We should also remember that **Regulation (EC) No. 1073/2009** on common rules for access to the international market for coach and bus services, amended Regulation (EC) No. 561/2006 and introduced more restrictive provisions for the carriage of passengers by road.

Regulation 561/2006 regulates driving times and rest periods and distinguishes four types of activities: 1) driving times 2) rest periods 3) breaks and 4) other work, which includes the time used by the driver in non-driving activities, such as cleaning and maintenance of the vehicle, going through customs controls or loading and unloading goods. To ensure compliance with

[83] See studies by *Comité National Routiere and Ministero delle infrastrutture e dei trasporti* (Italian Ministry of Infrastructure and Transport).
[84] Official Journal of the EU No. L 080 of 23/03/2002 p. 0035 – 0039.
[85] Official Journal of the EU No. L 102 of 11/04/2006 p. 0001 – 0013.
[86] Official Journal of the EU No. L 102 of 11/04/2006 p. 0035 – 0043.
[87] Directive 2003/59/EC of the European Union and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No. 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC. Official Journal of the EU No. L 226 of 10/09/2003.
[88] Official Journal of the EU No. L 60 of 28/02/2014.

the provisions in this area, article 27 of the Regulation includes the obligation to install a digital tachograph in vehicles registered in an EU Member State as of 1 May 2006.

This Regulation applies to national and international transport undertaken exclusively within the Community, between the Community and Switzerland[89] or between the Community and the countries party to the Agreement on the European Economic Area (EEA). On another front, the EU has signed the **European agreement concerning the work of crews of vehicles engaged in international road transport (AETR)** concluded in 1970 in the framework of the **International Labour Organisation (ILO).** The agreement's scope of application is wider than that of the Regulation.

Driving time is subject to a series of rules. Thus, the daily driving time is restricted to **nine hours**, and may be extended to ten hours twice a week. The weekly driving time is restricted to **56 hours**. The total accumulated driving time during two consecutive weeks is restricted to **90 hours**. The driver shall record in the tachograph as '**other work**' the working time during which he is not driving, as well as the time spent travelling by train or ferry when he does not have access to a bunk or couchette.

With regard to the daily rest period, in the event of **multi-manning**, the drivers shall have taken a new daily rest period of at least nine hours within 30 hours of the end of a daily or weekly rest period. The regular daily rest period, when a driver accompanies a **vehicle transported by ferry or train**, may be interrupted not more than twice by other activities not exceeding one hour in total. During that regular daily rest period, the driver shall have access to a bunk or couchette.

With regard to the weekly rest period, the obligatory weekly rest period is a **minimum of 45 hours (regular weekly rest period)** or **24 hours (reduced weekly rest period)**. The regular or reduced weekly rest period shall start no later than at the end of six consecutive 24-hour periods from the end of the previous weekly rest period. For example, if the weekly rest period ended on Monday at eight in the morning, the following weekly rest period shall start no later than the following Sunday at eight in the morning. In the course of **two consecutive weeks** the driver shall have to take at least two regular weekly rest periods or one regular weekly rest period and one reduced weekly rest period of at least 24 hours. However, the reduction shall be compensated by an equivalent period of rest taken uninterruptedly before the end of the third week. In respect of breaks, after a driving period of four and a half hours, a driver shall take an uninterrupted break of **not less than 45 minutes**, or a **break of 15 minutes followed by a break of 30 minutes**, unless he takes a rest period. During the break, the driver shall not drive or perform any other work.

The Member States are responsible for ensuring the correct implementation of the legislation in their territory and for imposing penalties in the event of non-compliance, and the sanctions must be **effective, proportional** and **sufficiently dissuasive**. Furthermore, the Member States are required to inform the European Commission every two years of the implementation of the directive.

If the journey includes more than one driver, each driver shall observe the rules on maximum driving time and rest periods. The rules on the daily rest period may differ, given that each driver must take a daily rest of at least 9 hours within a period of 30 hours from the previous weekly or daily rest period, and there must be two drivers in the vehicle (this rule does not apply to the first driving hour).

[89] It is not known whether the recent referendum held in Switzerland at the beginning of 2014 will have an impact on the different agreements affecting freedom of movement between the EU and Switzerland.

The transport enterprise is responsible for organising the worker's working time in compliance with the legislation, and constantly checking that it is observed. The enterprise and the driver shall share the responsibility of fulfilling the obligations derived from the regulation. Furthermore, the employer is required to keep the tachograph records of the road transport driver's working time. In certain circumstances it may be necessary to keep other records, such as of the time worked in the warehouse.

Directive 2002/15/EC supplements Regulation (EC) No. 561/2006, given that it establishes minimum daily and weekly rest periods for road transport sector workers, provides for adequate break times and puts a maximum limit on the number of hours worked per week and per day. In fact, Regulation 561/2006 does not define a maximum working time (which includes the time dedicated to driving and to other activities, such as loading and unloading), but merely defines the allowable maximum driving time. Also, the Directive provides a broader definition of working time in the road transport sector, establishing that **working time includes not only the driving time but also other activities, such as loading and unloading and the cleaning and technical maintenance of the vehicle**.

In relation to the scope of application, the Directive applies to mobile workers (essentially drivers, crews and other travelling staff) who work in vehicles covered by **Regulation 561/2006**, or who fall within the scope of application of the **European agreement concerning the work of crews of vehicles engaged in international road transport (AETR)**. Also, as of March 2009, the working time regime was extended to **self-employed workers**, who had been temporarily excluded from the scope of the Directive.

The Directive includes a number of definitions, such working time, periods of availability, workstation, mobile worker and self-employed driver[90]. The average weekly working time of the mobile worker shall be 48 hours, and the maximum weekly working time may be extended to 60 hours only if, over four months, an average of 48 hours a week is not exceeded. The average weekly working time shall be the sum of all the hours worked by the mobile worker in the different undertakings in which he is employed. Persons performing mobile road transport activities shall not work for more than six consecutive hours without a break. Working time shall be interrupted by a break of at least 30 minutes, if the working hours total between six and nine hours, and of at least 45 minutes, if the working hours total more than nine hours. In any case, breaks shall be of at least 15 minutes. Regulation (EC) 561/2006 goes on to establish the provisions on rest periods. If night work is performed, the daily working time shall not exceed ten hours in each 24-hour period.

The Directive also includes a number of obligations for the employer and the Member States, requiring the employer to keep a **record of working time** for at least one year, making the Member States responsible laying down a system of effective and dissuasive penalties for breaches of the national provisions adopted pursuant to the Directive, and imposing on the Member States the obligation to inform the Commission every two years of the implementation of the Directive.

Directive 2006/22/EC lays down clear, common rules on minimum conditions for checking the correct and uniform implementation of Regulation 561/2006. The Directive establishes the obligation of the Member States to undertake **roadside checks, concerted roadside checks by two or more Member States and checks at the premises of undertakings**. And also establishes a minimum percentage of days worked by drivers to be checked, which has been gradually in-

[90] See definitions in art. 3 of Directive 2002/15/EC.

creased since 2008 [2% (2008), 3% (2010) and 4% (2012)]. Since 2008, it has been established that at least 50% of the checks shall be carried out in the premises of undertakings and 30% on the roads. Lastly, the Member States are required, at least six times per year, to undertake concerted roadside checks in collaboration with other Member States. The Directive promotes the use of mechanisms that boost cooperation between the authorities of other Member States, who are responsible for the implementation of the Directive. Furthermore, the Member States are required to designate an **Intra-community liaison body** whose tasks shall be to coordinate the activities of the Member States as regards the regulation on working hours, offer assistance to the other Intra-community bodies, and provide biennial statistics to the Commission.

In 2009, Directive 2006/22/EC was amended by **Directives 2009/4/EC**[91] **and 2009/5/EC**[92] on the tachograph. The introduction of the tachograph took place in the late 1960s, through **Regulation (EEC) No. 543/69**, which was the first attempt to improve the working conditions of hauliers and prevent distortion of the market. Later, in 1970, the regulatory system was amended with the adoption of the AETR. Further process was made in 1998 with the adoption of **Regulation (EEC) No. 2135/98**, which introduced the digital tachograph to prevent tax fraud by means of a recording system. The use of the digital tachograph is not confined to the geographical area of the EU, but it is also obligatory for the AETR signatory countries. In 1985, another change took place in the legislative framework with the introduction of two regulations: **Regulation (EEC) No. 3820/85 and 3821/85**, which were adopted to replace **Regulation (EEC) No. 543/69** and constitute the central axis with regard to the use of the tachograph, providing all the basic information on the control device. These two regulations have been repealed by Regulation 561/2006 and the recent Regulation 165/2014, respectively.

Consequently, the above-mentioned regulations established the standards that constitute the legal framework for the use of the recording device, and paved the way for the subsequent legislative developments that have taken place with the adoption of **Regulation (EC) No. 561/2006**, which made the installation of the digital tachograph in vehicles obligatory from 1 May 2006. Other fundamental changes included in the provisions of the regulations were the imposition of new obligations on drivers, the increase in the information to be recorded through the tachograph, the introduction of new obligations for transport operators and the introduction of stricter requirements with regard to repairing the tachograph. The objectives of the new Regulation 165/2014 are to reduce the administrative burden and prevent the use of fraudulent devices to manipulate the tachograph[93].

With the aim of ensuring compliance with Directive 2006/22/EC, the Member States have designated different agencies and authorities to monitor compliance with the provisions on driving. Cooperation between the Member States in the implementation of the directive takes place in different ways:

- **On a mandatory basis** through the **Intra-community liaison bodies** designated by the Member States, whose tasks include the coordination of roadside checks, forwarding statistical data to the Commission every two years, assisting the competent authorities of other Member States in gathering the necessary data to carry out the roadside checks and promoting the exchange of information, experience and good practices.

[91] Official Journal of the EU No. L 21, of 24.01.2009.

[92] Official Journal of the EU No. L 29, of 31.01.2009.

[93] According to the new regulation, new vehicles shall be adapted with modern digital tachographs within three years after the European Commission has published the technical specifications thereof. Within a period of 15 years, these tachographs shall be adapted or retro-adapted to all trucks and buses in the EU. The new tachographs shall enable to control the position of the driver through the speedometer, the distance, the origin and the destination point of the journey.

• **On a voluntary basis:** through, for example, **bilateral or multilateral agreements or common programmes financed** from European funds. Multilateral/bilateral cooperation is used well when the signatory countries have a large share of non-resident offenders (i.e. **Belgium, Luxembourg** and the **Netherlands**) or when the cooperating countries are transit countries and have to deal with a large volume of foreign traffic (one such case is the cooperation established between **France, Germany** and **Spain**). Cross-border cooperation entails **concerted checks** involving the authorities of two or more Member States, which are undertaken at least six times a year. Practically all the Member States comply with the obligation regarding the minimum number of concerted checks. As an anecdote, **Romania** carried out 47 concerted checks with Bulgaria and Hungary in the period 2009-2010, and 12 multilateral checks with Austria, Belgium, France, Germany, Hungary, Poland, Spain, the Netherlands and the United Kingdom. There are also examples of informal collaboration aimed at sharing information and exchanging best practices, such as TISPOL, Euro Contrôle Route (ECR) and CORTE. For example, **Spain**, which is a member of all three bodies, carried out 15 concerted checks as part of ECR, and two joint controls with France. It also participated in multilateral training programmes in the context of ECR, as well as in bilateral training programmes with France. Furthermore, there are programmes financed by the EU related to the application of the legislation on road transport[94].

With regard to the **national authorities in charge of the application of the EU regulations**, in general the policies and the regulatory framework at national level are established at ministerial level, in particular by the Ministry of Transport. The **operational side** of the application activity tends to be carried out by **specific agencies or national authorities**. Other options include the establishment of **specific working groups** (as it happens in France with the *contrôleurs des transports terrestre*) or ad hoc coordination structures (such as in Italy with the Coordination Office). Other countries like **Germany** and **Poland** have decided to operate the control system at regional level.

Normally, these bodies in charge of ensuring the application of the EU regulations also assume the responsibility of carrying out the checks in the premises of undertakings (through labour inspectors), with the main responsible body being the National Labour Inspectorate, whilst roadside inspections and checks tend to be the responsibility of the police. Therefore, in most of the Member States, the police plays a major role, assisting the competent authorities in carrying out the checks and detecting possible infringements. Lastly, other control bodies may prove to be necessary.

According to the latest data published by the European Commission[95], practically all the Member States exceeded the minimum number of checks required, with the exception of **Greece, Portugal, Slovenia, Denmark** and the **Netherlands**. By contrast, **France, Germany, Romania, Bulgaria, Austria, the Czech Republic** and **Luxembourg** performed a much higher number of checks than that required by law (679% and 550% higher than the number of checks established in the legislation). Furthermore, between **Germany** and **France** alone half of the number of working days checked at EU level was performed. On another front, these checks may be performed at the **premises of transport undertakings or at the roadside**. Directive 2006/22/

[94] Among these programmes, we can highlight "Transport Regulators Align Control Enforcement" (TRACE) http://www.traceproject.eu/

[95] Commission Staff Working Document. *Report on the implementation in 2009-2010 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive2002/15/EC on the organisation of the working time of persons performing mobile road transport activities.*

EC established that, as of 2008, at least 30% of the total number of working days checked shall be performed at the roadside, and at least 50% shall be performed at the premises of undertakings. This balance has barely been achieved by the different Member States and, in fact, although most Member States met the minimum number of checks to be performed at the roadside, they fell very short of the number of checks to be performed at the premises of transport undertakings.

In general terms, national workers receive more pressure from the national control authorities and are subject to more roadside checks than foreign workers. Thus, in most Member States around 90% of the controls performed involved national drivers, and the EU average exceeds 80%. However, transit countries seem to have a higher percentage of non-national vehicles checked, and therefore the checks involving national workers is also lower, such as in the case of **Luxembourg** (60%), **Slovenia** (61%) and **Germany** (62%). **In Spain**, the vast majority of the drivers checked were Spanish (85-88%).

According to the latest data from the European Commission[96], the **total number of offences detected** in the period 2007-2008 was just under 3.2 million, with the highest number reported in **Germany** (nearly one million), followed by **France** (around 290,000) and **Poland** (just over 240,000). This trend continued in the period 2009-2010, when the number of offences detected increased significantly to a total of 4.5 million within the EU, marking a considerable increase of 38%. The **most significant increases** took place in **Italy** (337%), **Sweden** (296%) and the **United Kingdom** (246%). **Romania** and **Slovakia reduced the number of offences detected**, with reductions of 6.6% and 37.4% respectively. Although it is important to highlight that the frequency of offences detected has fallen to an average of 3.1 offences detected per 100 working days checked, in comparison with the 3.8 offences detected in the period 2007-2008, it is worth noting if a distinction is drawn between the checks performed at the roadside and those performed at the premises of enterprises, the figures show that 66% of the offences were detected on the roadside, and the remaining 34% at the premises of transport undertakings.

Also, the rate of offences detected was systematically **higher in the carriage of goods** in the period 2007-2008, around 10 offences were detected per 100 checks in the carriage of goods, and 2.2 in the carriage of passengers. The following tables provide information on offences in the different countries.

[96] Commission Staff Working Document. *Report on the implementation in 2007-2008 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive2002/15/EC on the organisation of the working time of persons performing mobile road transport activities.*

Table 9 – Number of offences by type and EU Member State relating to checks performed at the roadside in the period 2009-2010.

	Driving time	Breaks	Rest periods	28 days record sheets	Recording equipment	Lack of records for 'other work'	TOTAL
AT	35047	42238	43149	6893	1282	2067	130676
BE	2214	1049	2204	8	101	93	5669
BG	274	903	1600	4329	237	0	7343
CY	41	99	70	0	244	0	454
CZ	3729	4976	5540	7663	1112	2152	25172
DK	21	28	35	39	0	0	123
EE	452	1299	632	1449	734	1593	6159
FI	No information provided						9385
FR	69993	53188	111123	33779	32981	0	301064
DE	275135	319877	264659	119373	62937	49446	1091427
EL	114	57	115	104	0	11	401
HU	8555	4719	4205	2786	3249	2841	26355
IE	2026	4103	3639	143	1143	6573	17627
IT	40565	24265	21737	30365	2244	8523	127699
LV	436	687	501	1033	390	131	3178
LT	1576	2221	2078	3079	1063	452	10469
LU	37	82	29	13	21	1	183
MT	8	8	12	19	4	2	53
NL	1185	2902	2533	98	118	2	6838
PL	39704	46088	77850	10842	15927	6131	196542
PT	307	875	1451	640	1379	1163	5815
RO	5887	2062	3799	4215	2308	397	18668
SK	1274	3889	3589	1509	489	60	10810
SL	411	679	741	677	295	606	3409
ES	15441	8832	26465	51029	18910	0	120677
SE	8854	12570	12234	26	73		33757
UK	3181	3853	16187	49858	34584	4632	112295
TOTAL	516467	541549	606177	329969	181825	86876	2272248

Source: European Commission[97]

[97] Commission Staff Working Document. *Report on the implementation in 2009-2010 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive2002/15/EC on the organisation of the working time of persons performing mobile road transport activities.*

Table 10 – Number of offences by type and EU Member State relating to checks performed at the premises of undertakings in the period 2009-2010.

	Driving time	Breaks	Rest periods	28 days record sheets	Recording equipment	Lack of records for 'other work'	TOTAL
AT	38007	48478	46822	6910	1923	2067	144207
BE	8098	9338	6481	2299	1990	1342	29548
BG	274	1051	1600	4508	237	261	7931
CY	161	591	454	0	330	0	1536
CZ	10106	13945	14298	11886	1185	2815	54235
DK	453	1215	1262	879	61	0	3870
EE	945	1966	1479	1925	734	2413	9462
FI	6534	31631	9436	2879	337	13	60215
FR	77139	66519	127579	38676	40845	0	350758
DE	467681	850956	496700	147066	90590	253025	2306018
EL	164	59	165	125	0	18	531
HU	9199	7586	6426	2925	4571	4060	34767
IE	5807	22329	11223	162	2075	35037	76633
IT	71315	77176	64337	201596	4400	10523	429347
LV	554	810	595	1183	395	247	3784
LT	5255	3890	6343	8172	1063	999	25722
LU	37	82	29	13	21	1	183
MT	8	8	12	19	4	4	55
NL	4947	13941	8357	183	125	11	27564
PL	76507	97054	165141	144353	30428	38929	552412
PT	307	875	1451	792	1379	1163	5967
RO	6406	2588	4755	4519	2380	433	21081
SK	5123	11175	13838	3137	1013	92	34378
SL	2212	6437	4600	2350	1187	2155	18941
ES	17966	10041	28923	52720	19617	0	129267
SE	8854	12570	12234	26	73	0	33757
UK	3727	6425	17510	50954	36987	5764	121367
TOTAL	827786	1298736	1052050	690257	243950	361372	4483536

Source: European Commission [98]

[98] Ibid.

The following chart illustrates the six categories of distinct offences that can be blamed on transport companies or the driver of the vehicle.

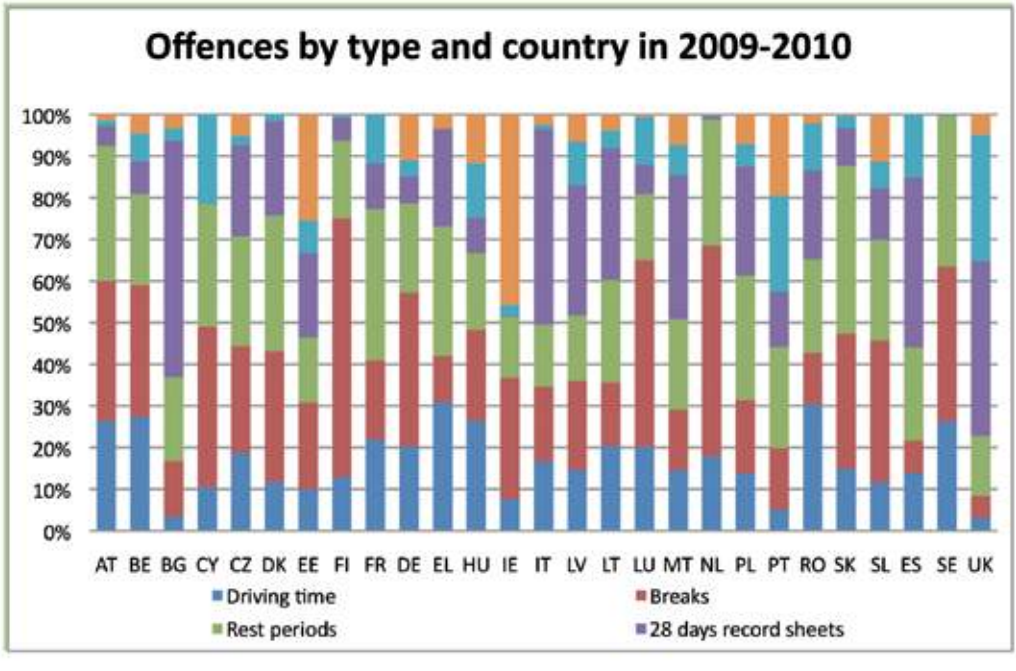
Table 11 – Type of offences detected

R6		R7	R8	D	R10 & 26
Driving times	Tachograph records	Breaks	Rest periods	Tachograph	Preservation of records
Infringements of the daily, weekly and fortnightly limit.	Infringements related to driving time records.	Infringements of obligatory breaks to be taken during driving time.	Infringements of minimum daily and weekly rest periods.	Incorrect functioning and manipulation of tachograph.	Preservation of tachograph records for one year.

Source: Prepared by the authors using data from the European Commission [99]

The most frequent offences in the period 2009-2010 were violations of breaks, rest periods and driving times. The following graph provides a picture of the main types of offences detected in the period 2009-2010 by country.

Table 12 – Type of offences by Member State in the period 2009-2010



Source: Prepared by the authors using data from the European Commission [101]

[99] Ibid.
[100] Ibid.

With regard to the penalties, one should bear in mind the lack of harmonisation of national legislations due to the fact that it is the responsibility of the Member States to enforce and determine the penalties. Three elements set the different Member States apart: the severity of the penalty system, the type of penalty and level of penalties and the corresponding fine. The current practice in the Member States includes **4 types of penalties.**

Table 13 – Financial penalties.

Financial penalties		
• The fines vary from country to country from a minimum of 58.23€ in Malta to a maximum of 5,000€ in Austria for drivers. • The large differences may be associated with existing socio-economic differences between the different Member States.		
Immobilisation of the vehicle	**Prison**	**Temporary withdrawal of driver's licence**
•In serious offences. •15 Member States have introduced a provision in their national legislation with this type of penalty.	• 7 Member States (AT, CY, DA, FR, IE, LU and UK) envisage this penalty in their legal systems.	• 5 Member States include the temporary withdrawal of the driver's licence in their national legislation (BU, DA, GR, IE, UK).

Source: Prepared by the authors

On another front, one **type of offence** may be regarded as very serious in one national legal system and a minor offence in another. As an example, the incorrect functioning of the tachograph in **Hungary** is considered a very serious offence, whilst in **Estonia** and **Cyprus** it is regarded as a minor offence. With **persistent offenders**, the highest fines are given in **Austria, Bulgaria, France, Italy, Slovakia** and the **United Kingdom**. Similarly, the detection of offences in some countries, such as the **United Kingdom**, does not automatically lead to a penalty but merely a first warning. Another disparity between countries is the distinction between **administrative and criminal penalties**, as there are countries that ignore that distinction. Other countries, like **Spain** and the **United Kingdom**, do not differentiate **penalties imposed on drivers** from **penalties imposed on undertakings**, whilst others, like **Sweden**, do make that distinction. There are countries that impose **different types of penalties and fines on drivers, transport managers and transport undertakings**, respectively (**Poland** and **Slovenia**).

Other differences relate to **how national and foreign drivers are treated**. For example, the Polish authorities require foreign drivers fined during a roadside check to pay the fine immediately. By contrast, Polish drivers and transport undertakings are given 21 days to do so. Furthermore, some legal systems include a **more detailed list of offences**, whist others are characterised by a lower level of differentiation of the offences and the penalties imposed. For example, **Austria, Ireland, Luxembourg** and the **Czech Republic** may include in their provisions minimum and maximum penalty levels applicable to offences, whilst in **Malta** only one penalty amount is applied.

Table 14 – Amounts of fines and other characteristics of the penalty system in different Member States

Member State	Amount of fine (minimum and maximum)	Other characteristics
Spain	309 – 4,600€	
Romania	350 – 3,750€	Imposed on undertaking and driver
Slovenia	40 - 600€ Driver 300 - 600€ Manager 800 – 3,300€ Undertaking	
Sweden	200 – 3.200€ Conductor 100 - 200.000€ Empresa	
Italy	38 – 7,078€*	Withdrawal of driver's licence
Slovakia	0 – 16,597€	In determining the amount of the fine, recidivism, the seriousness of the offence and the undertaking's ranking in the risk system is taken into account.
United Kingdom	223 – 5,590€	
France	Max. 30,000 €	Possible withdrawal of the undertaking's transport licence (repeated offences)
Austria	Very serious (5,000€)	No distinction between driver and undertaking
Cyprus	3,417€	The penalty is imposed through a court judgement. No distinction between driver and undertaking.
Estonia	Max 800€ (worker)	Possible termination of the undertaking's transport licence.
Ireland	0-5,000€ (sentence) Up to 100,000€	The amount of the fine is left to the discretion of the judge.

* In certain cases the maximum fine can be increased.

Source: prepared by the authors

4.3 NON-DISCRIMINATION

Combating discrimination is a major challenge for the EU and one of its fundamental values. In **article 151 of the Treaty on the Functioning of the European Union (TFEU)**, the EU and the Member States declare having as objectives the promotion of employment, better working and living conditions, adequate social protection, dialogue between management and labour, and the development of human resources with a view to lasting high employment and **combating social exclusion**.

Also, article 157 of the TFEU states *"each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied [...]"*. In this respect, it is worth highlighting the historical judgement of the Court of Justice of the European Union in the case **Defrenne v. Sabena**[101], where the judge held that discrimination for gender reasons has an impact on the economic and social dimension of the EU.

Furthermore, **article 19 of the TFEU** authorises the EU to adopt measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, age, disability or sexual orientation. The EU's commitment to non-discrimination was reaffirmed with the adoption in Cologne of the **Charter of Fundamental Rights in the European Council** in 1999, which became legally

[101] In the Defrenne v. Sabena case (1978): Gabrielle Defrenne, an airhostess, filed a lawsuit with the industrial tribunal in her country against her employer, Societé Anonyme Belge de Navigation Aérienne Sabena, on grounds of discrimination in the workplace, arguing that the terms of her employment contract were different to those of her male colleagues, and seeking compensation for the discrimination she had suffered as a woman.

binding 10 years later with the entry into force of the Lisbon Treaty.

The EU has a general framework in place for combating discrimination: the prohibition of discrimination based on sex, religion or belief, disability, age or sexual orientation in the field of employment and occupation is regulated **in Directive 2000/78/EC**, under which the prohibition also applies to nationals of third countries. Discrimination based on nationality, race and ethnic origin is covered by **Directive 2000/43/EC**, which prohibits discrimination throughout the EU in areas like employment, education, social security, healthcare and access to goods and services. Lastly, **Directive 2006/54/EC** covers the implementation by the Member States of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

On another front, the Member States have signed international treaties on non-discrimination and are required to observe the obligations assumed under the European Convention on Human Rights (1950) and different UN international conventions on the elimination of racial discrimination, on the principle of equal treatment, etc.

In the transport sector, sex discrimination calls for particular attention. Today, the principle of equality of men and women is established in article 157 of the TFEU, which lays down that each Member State shall ensure that men and women receive the same pay for equal work or work of equal value. Furthermore, there are specific regulations on equal treatment of men and women supplementing the above-mentioned **Directive 2000/78/EC**. Transport is one of many sectors traditionally considered a 'workplace for men'. In many aspects and countries this still continues to be case, as only a small percentage of professional drivers are women. In particular, road transport has proven to an unattractive sector for women, and although the number of women employed in the sector has increased in the past 10 years[102], the imbalance between men and women is clearly visible.

One of the fundamental reasons for this gender inequality is that the road transport sector is not adapted to women's needs and there are certain obstacles in the way of women's full participation in the sector, including in managerial and supervisory functions. One main obstacle is **ergonomics**, given that the design of the vast majority of trucks and other haulage vehicles is tailored to the physiological characteristics of men, for example the cabs and the driver's seats. Other obstacles include lack of toilet facilities in service stations and rest areas. Furthermore, **working conditions**, including working hours, are often incompatible with family life.

In **Spain**, equality is one of the most important values of the legal system established by the 1978 Spanish Constitution. The most important international instruments for combating discrimination have been ratified during the democratic period that began in 1976. The Spanish Constitution establishes that all fundamental rights, including equality, shall be protected by the ordinary courts. Spain also has the Law on Fiscal, Administrative and Social Measures which underpins the prohibition of direct and indirect discrimination.

Disputes associated with employment are generally settled through the labour jurisdiction, which is made up of the socio-labour courts of first instance and the specialised courts (Labour Courts of One Instance), the labour chambers of the first and second instance courts, the high regional courts (High Courts of Justice), the National Criminal Court and the Labour Chamber of the Supreme Court. In the area of employment, the labour jurisdiction envisages a compulsory conciliation procedure to be followed before judicial remedy can be sought. Similarly, a

[102] European Commission, *She moves. Women's Issues in Transportation.*

worker considered a victim of discrimination in the workplace may file a claim with the criminal courts in accordance with the Criminal Code. Also, Spain has national bodies specialised in the promotion of non-discrimination. Since 2009, there is the Council for the Promotion of Equal Treatment and Non-discrimination of Persons based on Racial or Ethnic Origin.

The Republic of **Austria** is a federal state. According to the Austrian Constitution, the legal powers are exercised by both the Bund (Federation) and the Länder (States). Under the Constitution, neither the Federation nor the provinces have exclusive power to regulate 'non-discrimination', leading to a dispersed legal framework with more than 30 provincial laws and five main federal laws, among them the Law on Equal Treatment.

In cases of disputes and with only a few exceptions, the judicial procedures generally used are the civil-law or labour-law procedures, although a good number of victims of discrimination have initiated procedures with the Federal Equal Treatment Commission before turning to the courts. Administrative criminal law is used only against discriminatory advertising. The Federal Equal Treatment Commission deals with issues associated with discrimination based on gender, ethnic origin, religion, belief, age and sexual orientation.

Belgium has concluded the majority of the international agreements on combatting discrimination, and also has a Federal Racial Equality Law. Disputes are settled in the civil courts (courts of first instance) or, when involving a labour relationship, in the specialised courts (industrial tribunals). Furthermore, Belgium has the Centre for Equal Opportunities and Opposition to Racism at federal level, which deals with issues of discrimination based on race, skin colour, ethnic and national origin, nationality, age, sexual orientation, marital status, birth, wealth / income, religious or philosophical beliefs, health conditions, disability, physical characteristics, political opinion, genetic features and social origin.

In **Bulgaria**, the Law on Protection against Discrimination of 2004 is the main anti-discrimination law, which was introduced for the purpose of transposing the EU directives on equality into national legislation. The Law on Protection against Discrimination envisages two alternative procedures for ensuring observance of the rights to non-discrimination: judicial procedures with the general civil courts and specialised quasi-judicial procedures with the independent equality body. Victims may choose between the two. This independent equality body is called the Commission for Protection against Discrimination and deals with cases of discrimination based on sex, national origin, human genome, nationality, origin, religion or belief, education, political affiliation, personal or public situation, disability, age, sexual orientation, family situation, ownership status or any other reason provided for in the law or an international treaty ratified by Bulgaria.

The **Czech Republic** has ratified all the instruments for combating discrimination in both the main international human rights systems: the United Nations and the Council of Europe. The national legal system is defined by the Czech Constitution, which refers to the Charter of Fundamental Rights and Freedoms of the Czech Republic as part of the Constitutional order. As secondary law in this area, the country has the Law on Employment and the Law against Discrimination. The courts are responsible for settling legal disputes concerning discrimination. However, there is also the Public Defender of Rights, who deals with issues of discrimination based on sex, race, ethnic origin, sexual orientation, age, disability, religion, beliefs and nationality.

The legislation on non-discrimination in **Denmark** consists of a combination of many laws, which have been introduced and amended as and when the public debate has centred on a specific field of application or a specific vulnerable group. Protection against discrimination is guaran-

teed under a range of civil and criminal legislation, spanning from the Constitution to specific acts covering areas in and outside the labour market. Consequently, there is a law that prohibits differential treatment in the labour environment and another on equal ethnic treatment.

In Denmark, the bodies in charge of receiving complaints of discrimination and imposing the appropriate measures are:

- Civil courts: The ordinary courts, the Maritime and Commercial Court and the Supreme Court examine cases related to the provisions of the Law on Equal Ethnic Treatment and the Law on the Prohibition of Discrimination in the Labour Market implementing Directive 2000/43/EC and Directive 2000/78/EC.
- Labour courts: It is important to highlight that the Industrial Tribunal and the labour arbitration bodies only interpret collective agreements and deal with cases involving infringements of collective agreements. They are not responsible for hearing cases concerning infringements of the legislation on discrimination.
- Council for Equal Treatment: In practice, most discrimination complaints are deal with by the Administration Council for Equal Treatment, which began operating on 1 January 2009. The Board handles complaints of discrimination in the labour market based on gender, race, colour, religion or beliefs, political opinions, sexual orientation, age, disability, and national, ethnic or social origin.

There is also the Danish Institute of Human Rights, although the Law does not mention that it deals with other complaints besides racial or ethnic discrimination.

In **Germany**, the Constitution or Fundamental Law (*Grundgesetz*) is vitally important to understand the German legal system in the area of discrimination. Under the Fundamental Law, the fundamental rights are the hard core of the national legal system, and there is also a General Law on Equal treatment. Workers can report anyone responsible of discrimination in the workplace. On another front, there are no special procedures for filing claims for discrimination and, therefore, the general procedures are used, including administrative review in public issues and court decisions. There is also the possibility of mediation, which is increasingly used in Germany. The country has a Federal Anti-discrimination Agency that deals with issues of discrimination based on race or ethnic origin, sex, religion or belief, disability, age and sexual identity.

According to its Constitution, the standards established in the international treaties ratified by **Estonia** have priority over national legislation. Estonia has signed and ratified the majority of the international instruments aimed at combating discrimination. It also has a Law on Equal Treatment.

In general, victims of discrimination can turn to either the quasi-judicial institutions or the courts to protect their rights. The Law on Equal Treatment stipulates that cases of discrimination shall be settled by the courts and the labour committees. Furthermore, conciliation procedures can be handled by the Chancellor of Justice (discrimination in the private sphere). In this context, the decision of the courts or a labour dispute committee or the agreement between the parties in a conciliation procedure shall be legally binding. There is also a Commissioner for equality and equal treatment, which is attached to the Ministry of Justice and is responsible for dealing with issues of discrimination based on gender, ethnic origin, race, skin colour, religion or other beliefs, age, disability, sexual orientation, etc.

In **Ireland**, equality is enshrined in the Constitution. The Irish legislation against discrimination is made up of the Employment Equality Act 1998-2011 and the Equality Act 2000-2011.

Another four laws also contain provisions prohibiting discrimination, namely, the Pensions Act 1990-2008 and the Unfair Dismissals Act 1977-2007. There is also an Equality Act for the area of employment and an Equal Status Act.

Complaints of discrimination can be filed with the Equality Tribunal or the Employment Appeals Tribunal. There is also an Equality Authority that deals with cases of discrimination based on sex, age, race, religion, family status, disability, marital status, sexual orientation, etc.

In **Greece**, Law No. 3304/2005 on the application of the principle of equal treatment, irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation, implements Directives 2000/43/EC and 2000/78/EC. Victims of discrimination in the private sector, including the labour environment, may file a complaint with the Greek civil or criminal courts. Also, the Ombudsman, the Labour Inspectorate and the Committee for Equal Treatment deal with issues of discrimination based on racial or ethnic origin, religion or any other belief, disability, age or sexual orientation.

In **France**, the legal system relating to discrimination is found in the Labour Code, the Criminal Code and the Civil Code, as well as case law. This country has a Law on Adaptation of National Legislation to EU Legislation in the area of Discrimination.

Complaints of discrimination may be settled through the courts or extra-judicial mechanisms. Cases of discrimination by a private individual –an employer, a provider of services, a landlord, etc. – are filed with the civil courts. When involving cases associated with employment, a private-sector employee or a contract agent of an industrial or commercial public service may file the complaint with the Labour Tribunal (*Conseil de prud'hommes*). There is also the Defender of Minorities which deals with issues of discrimination. However, the Law does not mention that it deals with other types of discrimination besides that based on race or ethnic origin.

Croatia has ratified all the treaties against discrimination that are part of international law, with the exception of the European Social Charter, which it has signed and revised, but not yet ratified. It also has a law against discrimination.

Victims of discrimination can seek protection through judicial procedures - civil and / or criminal (via the ordinary courts) and / or misdemeanour (for minor offences through the courts of misdemeanours). There is also an Ombudsman who deals with issues of discrimination based on race or ethnic origin, skin colour, language, religion, political opinions or other beliefs, national or social origin, economic status, trade union affiliation, education, social status, marital or family status, age, state of health, genetic make-up, gender identity and expression and sexual orientation.

In **Italy**, in 1998 specific and detailed legislation against discrimination based on race, ethnic origin and religion was introduced into the Italian legal system. Before that, the only specific legal instrument was the criminal legislation on 'hate speech'. In this country there are important laws like Legislative Decree No. 215 of 2003 on the implementation of Directive 43/2000/EC, Legislative Decree No. 216 of 2003 on the implementation of Directive 78/2000/EC, Legislative Decree No. 286 of 1998 containing the consolidated text of the provisions on the regulation of immigration and the situation of foreign citizens, as well as the Law on Measures for the Judicial Protection of Persons with a Disability who are Victims of Discrimination.

Since 7 October 2011, an 'accelerated' or express procedure is used in discrimination lawsuits. In the framework of this fast-track procedure, a victim of discrimination can appear before the

judge (ordinary Civil Court) acting in the claimant's place of residence. There is also the National Office against Racial Discrimination, although the law only mentions that it deals with cases of discrimination based on race or ethnic origin.

The Constitution of **Cyprus** contains a general provision against discrimination (article 28), which corresponds with article 14 of the Charter of Human Rights of the European Union, and also includes discrimination for belonging to the Turkish or Greek community. Age, disability and sexual orientation are not explicitly covered in the Constitution, although they are considered to be included in the phrase *"any other reason"* in article 28. There is also a Law on Equal Treatment in Employment and Occupation, a Law on Equal Treatment Irrespective of Race and Ethnic Origin and another amending the Law on Persons with a Disability.

Cases concerning labour issues are handled by the Industrial Tribunal. Also, the Ministry of Labour has the power to appoint labour inspectors to ensure the best application of the law on discrimination in employment. In addition, the Authority for Equality and Non-discrimination deals with issues of discrimination based on race or ethnic origin, religion or beliefs, age, sexual orientation, disability, skin colour, political or other opinions and national origin.

In **Latvia**, the cornerstone of the prohibition of discrimination is found in article 91 of the Constitution which, among other aspects, establishes that human rights shall be respected without any form of discrimination. Although the Constitution prohibits all forms of discrimination, it does not explicitly specify the different types of discrimination. The Constitution is considered to have direct effects. Whilst discrimination in the public sector is prohibited, even without the introduction of any new laws, special laws prohibiting discrimination in the private sector are essential (for example, a Labour law). The same thing occurs with international treaties: the treaties ratified by Latvia are only binding on the public institutions.

Claims for discrimination are normally filed with the general jurisdiction courts. Most cases of discrimination dealt by the general courts are associated with discrimination in employment, especially for gender reasons. The Ombudsman also deals with issues related to discrimination, although the law does not mention any other motives besides discrimination based on race or ethnic origin.

In **Lithuania**, the principle of equality is established in the Constitution. Even though discrimination based on age, disability and sexual orientation is not explicitly mentioned in the Constitution's clause on equality, it could be interpreted as included. Lithuania also has a Law on Equal Treatment. There are no special judicial, administrative or conciliation procedures at national level for cases of discrimination. Although mediation in cases of discrimination is not included in the national legislation, in practice the Defender of Equal Opportunities acts as mediator, albeit the procedure has not been formalised.

In the event of a labour dispute, the victim may use the procedures established in the Labour Code. The Code does not specify the penalties for discrimination in the work place. However, they are established in a code of administrative infringements. Victims can file a claim directly with the Commission for Employment Disputes or the courts. According to the Labour Code, employers are responsible for establishing a commission for settling employment disputes. There is also the institution of the Defender of Equal Opportunities, which deals with issues of discrimination based on age, disability, sexual orientation, race, ethnicity, origin, religion, beliefs or opinions, language and social status.

Luxembourg has signed and ratified the European Convention on Human Rights which, under

article 14, prohibits discrimination based on sex, race, colour, language, religion, political or other opinions, national or social origin, belonging to a national minority, economic wealth, birth or any other social condition. This article is directly applicable to the judicial cases examined by the Luxembourgish legislation. Luxembourg has also ratified Protocol No. 12 on discrimination, and has a Law on Equal Treatment.

The mechanisms available to victims of discrimination are judicial procedures or mediation. In instances of discrimination in the field of employment, the case can be submitted to the industrial tribunal. There is also the Centre for Equal Treatment, which deals with issues of discrimination based on race, ethnic origin, religion or beliefs, disability, age, gender or sexual orientation.

Hungary has ratified nearly all of the main international instruments on combatting discrimination, with the exception of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which it has signed but not ratified. The cornerstone of the regulations is the general clause on non-discrimination of the Fundamental Law, adopted by Hungary in 2011. The general prohibition of discrimination established in the aforementioned constitutional provision is specified in the Law on Equal Treatment and Promotion of Equal Opportunities (amended many times since 2003).

Victims of discrimination may file a claim with the civil courts or the so-called 'labour and administrative' courts, if the Labour Code is applied. There is also the Equal Treatment Authority, which deals with issues of discrimination based on sex, racial origin, skin colour, nationality or belonging to an ethnic minority, mother tongue, disability, state of health, religion or beliefs, political or other opinions, family status, maternity (pregnancy) or paternity, sexual orientation, sexual identity, age, part-time, temporary or other types of employment contract, membership of an organisation representing the interests of employees, other situations, attribute or characteristic of the individual or group.

In **Malta**, the principles of equal treatment and non-discrimination were introduced for the first time in the 1964 Constitution. There are also Regulations on Equal Treatment in Employment and an Order on the Equal Treatment of Individuals. The legislation defines different types of action that can be taken by victims of discrimination: apart from filing a claim with the civil courts (first chamber), depending on the nature of the case, the following bodies are available to victims: the industrial tribunals (under the 2002 Law on Employment and Labour Relations), the National Commission for Persons with a Disability (for victims of discrimination based on disability), the Ombudsman, and the Commission for Employment, among others. Malta also has a National Commission for the Promotion of Equality of Men and Women, which deals with issues of discrimination based on gender, equal treatment irrespective of racial or ethnic origin, etc.

In the **Netherlands**, the courts may apply the international laws on equal treatment and non-discrimination directly, even when involving regulatory acts. It has laws like the General Law on Equal Treatment, the Law on Discrimination based on Disability and the Law on Discrimination based on Age.

In the Netherlands, the fulfilment of the principle of non-discrimination can be ensured through criminal procedures. If the discrimination takes place in private-sector employment, the civil-law procedures are applied, and if it occurs in public-sector employment, the administrative employment law procedures are applied. Apart from that, the legislation on equal treatment establishes a special procedure (non-compulsory) through the NIHR (pseudo-judicial body

which issues non-binding opinions). After the aforementioned body has issued a decision, the complainant may still file the complaint with the civil/administrative court to obtain a binding judgement. There is also the Commission for Equal Treatment, which deals with issues of discrimination based on race, religion and beliefs, political opinions, sexual orientation, gender, nationality, marital status, disability, chronic illnesses, age, working hours and type of employment contract.

The 1997 Constitution of **Poland** contains general clauses on non-discrimination, although the different forms of discrimination are not specified. In 2010 Poland had transposed the directives on equality, mainly in the area of employment. However, existing voids, which had caused certain clashes with the Court of Justice of the European Union, mobilised the Polish government to finally approve the Law on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment, which came into force on 1 January 2011. Poland also has a Law on the implementation of certain provisions of the European Union in the area of equal treatment.

Claims may be filed with the industrial tribunals or the Conciliation Committee, and shall be submitted by the worker or the employer. The conciliation procedure tends to be fast. There is also an Ombudsman, who has the title of Commissioner for the Protection of Civil Rights, although the law does not mention that he deals with other issues besides discrimination based on race or ethnic origin.

Portugal has ratified various international agreements and treaties, and also has a Law on the Principle of Equal Treatment and a Law on the Prohibition of Discrimination based on Disability and a Pre-existing Risk to Health. In the event of discrimination in the field of employment, there are specialised industrial tribunals that hear cases involving labour legislation in the area of labour relations, accidents at work, occupational diseases, appeals against fines and disputes concerning social security rights, and handle all issues derived from the drafting, implementation and termination of employment contracts.

On another front, the Labour Code does not provide for specific mediation procedures. However, it is obligatory that the judge presiding over the case holds at least one conciliation session with the parties prior to the trial. If the discrimination is considered an offence under the Criminal Code, the victim may file a complaint with the police or the Public Ministry [Public Prosecutor], or file a civil-law claim. There is also the ACIDI (High Commissioner for Immigration and Dialogue), although the Law does not mention that this institution deals with other types of discrimination besides racial or ethnic discrimination.

The Constitution of **Romania** guarantees equal treatment to all citizens. However, the constitutional provisions are not directly applicable. There is also a law on the prevention and punishment of all forms of discrimination.

If a worker feels that he or she has been discriminated against, the law establishes that the victim shall first inform his or her employer of the discrimination. Afterwards, if the worker's demands are not met, he or she may file a claim with the competent court. The Romanian anti-discrimination system establishes a mixed system of procedures: administrative, civil and criminal. In the event of an alleged act of discrimination, the victim or any other interested party may choose between filing a complaint with the CNCD (National Council for Combating Discrimination), and/or filing a claim with the civil courts, unless the act is criminal, in which case the provisions of the Criminal Code shall be applied. The National Council for Combating Discrimination deals with issues involving discrimination based on race, nationality, ethnic ori-

gin, language, religion, social status, beliefs, gender, sexual orientation, age, disability, chronic illness, positive HIV, membership of a disadvantaged group or any other reason.

In **Slovenia**, discrimination based on any personal reasons is prohibited under article 14 of the Constitution. In 2009, the Constitutional Court confirmed that the Constitution prohibits discrimination for sexual orientation reasons. On another front, Slovenia has ratified all the main human rights treaties on discrimination - the most recent being Protocol No. 12 to the European Convention on Human Rights. It also has a Law on the Implementation of the Principle of Equal Treatment.

Any individual who suffers harm is entitled to claim compensation directly from the individual or body responsible for causing the harm. In cases of a violation of the prohibition of discrimination, individuals discriminated against may initiate judicial and administrative procedures. Slovenia also has the institution of the Defender of the Principle of Equality, which deals with issues of discrimination based on gender, race or ethnic origin, religion or beliefs, disability, age, sexual orientation or any other personal reason.

Slovakia has ratified several international human rights treaties, and also has an Anti-discrimination Law. Workers may file a complaint with their employer, and the employer is required to respond without unjustified delays, remedy the situation, stop the conduct, and eliminate the consequences of the discrimination. On another front, under the Law on Employment Services, citizens are entitled to file a complaint with the authorities (office of employment, social affairs and the family) if their rights have been violated in the provision of job search, education and training for the labour market services. There is also the National Centre for Human Rights, which deals with issues of discrimination based on sex, religion or beliefs, race, nationality or ethnic group, disability, age, sexual orientation, marital status and family situation, skin colour, language, political or other opinions, national or social origin, economic status, lineage / gender or any other social status, health conditions, family obligations, and membership of or participation in a political party or movement, trade union or any other association.

In **Finland**, the main provisions covering discrimination are established in the Constitution, the Law on Non-Discrimination and the Criminal Code. The prohibition of discrimination is also included in many employment contracts as a general clause. There is also a Law against Discrimination. Finland's procedures for ensuring observance of the principle of equal treatment vary according to the area of life in which the violation takes place and the reasons for the discrimination[103]. In the areas of employment, education (access to training) and provision of services, victims of discrimination may file a claim with a district court. On another front, in the areas of employment, education, provision of services, the exercise of public authority and the composition of public meetings, victims of discrimination may file criminal charges. There is also the institution of the Defender of Minorities, although the Law does not mention that it deals with other issues besides discrimination based on race or ethnic origin.

In **Sweden**, the main provisions covering discrimination are established in the Constitution, the Law on Non-discrimination and the Criminal Code. The prohibition of discrimination is also included in many employment contracts as a general clause. There is also a Law against Discrimination. The Industrial Tribunal is subject to the ordinary civil-procedure laws. A considerable number of cases are settled outside the courts. Lastly, criminal procedures may be initiated by a public prosecutor or a private party. There is also the institution of the Defender of Equality, which deals with issues involving discrimination based on gender, ethnic origin, religion or

[103] There are special provisions for the Åland Islands.

other beliefs, disability, sexual orientation and age.

Because the **United Kingdom** does not have a written constitution, non-discrimination is established in its legislation. The United Kingdom has ratified the main international treaties on human rights. Under UK law, international treaties are not directly applicable, but must be incorporated into laws passed by the British Parliament. In this country there is the Equality Act 2010, the Racial Relations Act, the Employment Equality Regulations, and the Equality Act (Sexual Orientation) Regulations.

Complaints of discrimination associated with employment can be filed through the labour jurisdiction (Industrial Tribunals or Fair Employment Tribunal in Northern Ireland, which deal with the entire range of labour disputes). Claims for unfair dismissal or discrimination can also be submitted to the Conciliation and Arbitration Boards or, in Northern Ireland, the Labour Relations Agency. The agreements reached in these forums are binding on both parties. There is an Equality and Human Rights Commission in the UK and an Equality Commission in Northern Ireland, both dealing with issues associated with discrimination based on race or ethnic origin, sexual orientation, religion, beliefs, disability, age, sex and human rights.

4.4. SOCIAL SECURITY: STATUS OF EMPLOYEES V. SELF-EMPLOYED WORKERS

There are two types of contributory schemes in Spain's social security system: the **General Scheme**, which covers all employees not affiliated to other special schemes and some categories of civil servants, and **three special schemes** for self-employed workers, miners and sea workers. All workers are required to pay social security as soon as they start working. The contributions are calculated by applying a percentage, called contribution rate, to an amount called contribution base. The contribution bases and rates are established by the government each year. In the General Scheme, an employee's contribution base is roughly the same amount as the employee's real salary. However, there is a minimum limit, which is equivalent to the minimum interprofessional salary increased by one-sixth when the activity is full time, and a maximum limit, which is equivalent to slightly more than five times the minimum salary.

It is worth bearing in mind that a large number of workers in the road transport sector are self-employed. In 2009, in Spain there were 108,963 persons working in surface transport as independent workers or entrepreneurs without employees, which was 18.2% of the total number of persons working in surface transport[104]. In 2012, the percentage of employees in the surface and pipeline transport sector was 71.9%[105] of all the workers in the sector. This percentage is much lower than the national average (82.4%) and is justified by the higher number of self-bosses (i.e., hauliers who own a vehicle or a small fleet of vehicles) in road transport[106].

The inclusion of a worker in the Special Self-employed Workers' Scheme carries the obligation to pay contributions on at least the established minimum base, although the worker may choose a higher base within the limits of the established minimum and maximum bases. Later, the worker may change the base by choosing another from the bases established within the aforementioned limits. In certain circumstances, a worker may also choose increased protection and include insurance against accidents at work and occupational illnesses. Self-employed workers

[104] Ministry of Development of the Kingdom of Spain, *Evolución de los indicadores económicos y sociales del transporte terrestre* (2013), page 248.
[105] Ibid, page 250.
[106] Ibid.

are responsible for paying their contributions to the social security, whereas with employees, the employer deducts them from the employee's salary and transfers them to the General Treasury of the Social Security together with his or her own contributions.

Thus, in Spain, an employee's social security contribution rate is 6.35% or 6.40% of his or her salary (depending on whether the employee's employer contract is permanent or temporary, respectively), and the employer's contribution rate is 33.60% of the employee's salary. By contrast, a self-employed worker's social security contribution rate is 29.9% of the chosen contribution base, with the minimum base being 875.70€ and the maximum 3,597€, being free to choose an intermediate base.

Before going on to talk about the different social security systems in the EU countries, it is worth noting the categorisation of the schemes. Thus, the following types of welfare schemes are available in Europe, which we have clustered according to similarity[107]:

- In the first place, the systems in countries like Ireland and the United Kingdom, which cover a limited number of risks;
- In second place, the systems in Austria, Belgium, France, Germany, Italy, the Netherlands and Spain;
- In third place, the systems in Nordic countries (Denmark, Sweden and Finland), which tend to offer universal coverage for a wide range of social risks;
- In fourth place, the systems in the former Eastern bloc countries, which share characteristic features[108];

The respective legislations of the EU-28 countries tend to include different specific provisions for self-employed workers that increase their social protection[109]. As in Spain, in Europe it is common to see that self-employed workers make up a large share of the road transport workers. It is difficult to estimate the total number of self-employed workers in the sector in the EU as a whole. However, it has been suggested that one out of six road transport workers in Germany and Denmark is self-employed, whilst the rate in Belgium and Poland is one out of three, and the rates are even higher in countries like the Czech Republic (98%)[110]. Although the number of self-employed workers in this sector is rising, the increase is not exponential due to the fact that some employers refuse to contract self-employed workers because their companies must remain responsible for their assets (for example, their vehicles) and even the goods they transport (in the case of the road haulage subsector)[111]. The European Commission estimates that 69% of the EU drivers in this sector are employees and 31% are self-employed workers[112] (in haulage, the self-employed workers average in the EU would be 19.6%)[113]. Of that 31%, the Commission estimates that 50% are economically dependent self-employed workers[114]. We will now make a brief analysis of the social security systems in the EU Member States.

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[107] Gøsta Esping-Andersen, *The three worlds of welfare capitalism* (Politi Press, 1990), and; Gøsta Esping-Andersen, *Social foundations of postindustrial economies* (Oxford University Press, 1999).
[108] European Foundation for the improvement of living and working conditions, *Self-employed workers: industrial relations and working conditions* (2010), page 24.
[109] Ibid, page 21.
[110] European Parliament, *Social protection rights of economically dependent self-employed workers* (European Union, 2013), page 58.
[111] Ibid.
[112] Ibid, page 59.
[113] European Parliament, *Shortage of qualified personnel in road freight transport* (European Union, 2009), page 29.
[114] Ibid, page 106; European Parliament, *Social protection rights of economically dependent self-employed workers* (European Union, 2013), page 59.

The social security system in **Austria**[115] includes sickness, accidents (accidents at work and occupational diseases), pensions and unemployment insurance. Employees pay contributions to the sickness, unemployment and pension insurance (invalidity, old age and survival). The amount they pay is a certain percentage of their salary (including the 13th and 14th month) and, in general, half is paid by the employee and the other half by the employer. In the case of drivers, and calculated on the gross salary, the employer pays 20.65% (3,7% of sickness insurance, 12.55% of pension insurance, 1.4% of accident insurance and 3% of unemployment insurance) and the employee pays 17.2% (3.95% of sickness insurance, 10.25% of pension insurance and 3% of unemployment insurance). However, self-employed workers pay contributions to the sickness, accidents and pension insurance according to their professional income (in some cases, a minimum contribution) up to the limit of the maximum amount established each year (for example, 4,230€/month)[116].

In **Belgium**[117], the social security scheme for employees includes sickness and maternity benefits, accidents at work and occupational diseases insurance, death grants, invalidity benefits, old-age and survivors' benefits, unemployment benefits and family benefits. However, special provisions may be applied to self-employed workers. The amount paid by employees to the social security amounts to a certain percentage of their salary. The basic contribution rate paid by employers and employees is 37.84 %, apart from a 'wage moderation' contribution that can vary. Sickness, maternity, invalidity, old age, survival and unemployment insurance are also financed from other special contributions. Furthermore, accidents at work are covered by the insurance paid by employers. The only contribution that an employee may have to pay out of his or her pocket would be whatever his health insurance fund may charge for certain discretionary supplementary benefits.

In **Bulgaria**[118], the social security offers compensation in cash, benefits and pensions for: temporary incapacity to work; maternity; temporary reduction of the capacity to work (re-assignation of tasks), unemployment, invalidity, old age, and death. The system is financed from the contributions to the national insurance paid by companies, employees and self-employed workers and, partly, the state budget. The social assistance system is exclusively financed from the state budget. The contributions to the social security are calculated as a percentage of taxable income. The maximum monthly taxable income is 2,000 BGN (1,023 €). According to European Commission reports, of the total contribution amount, the insurer pays 60 % and the insured 40 % (only the 'General Sickness and Maternity Fund' and the 'Unemployment Fund'). However, for certain categories of workers, the total contribution to the pension fund is 17.8 % (9.9 % paid by the insurer and 8.0 % by the insured). If the insured was born after 31 December 1959, the contribution to the pension insurance is 12.8 % (7.1 % paid by the insurer and 5.7 % by the insured). Since 1 January 2009, the state makes transfers to the 'pension' fund, representing 12 % of all income from contributions received in the calendar year from all persons insured.

Self-employed workers pay the full amount of their contributions[119]. All self-employed workers are included in the category of self-insured parties, and they are personally responsible for paying their contributions to the social security and submitting all the social security information required by law[120]. In practice, they may choose the number of benefits they will pay contribu-

[115] European Commission, Employment, Social Affairs and Inclusion, *Social security in Austria* (European Union, 2012).
[116] European Commission, Employment, Social Affairs and Inclusion, *Social security in Austria* (European Union, 2012).
[117] European Commission, Employment, Social Affairs and Inclusion, *Social security in Belgium* (European Union, 2012).
[118] European Commission, Employment, Social Affairs and Inclusion, *Social security in Bulgaria* (European Union, 2012).
[119] Article 21.5 of Bulgaria's Labour Code.
[120] European Foundation for the improvement of living and working conditions, *Self-employed workers: industrial relations and working conditions* (2010), page 24.

tions towards within the maximum and minimum monthly income range established by law. The law requires self-employed workers to join pension and care schemes, but they can decide to take out insurance cover for other social risks (sickness, maternity) on a voluntary basis. In 2010, the minimum contribution base for self-employed workers was between 420 BGN (215 €) and 550 BGN (282 €) depending on their annual taxable income. For individuals who did not perform a gainful activity in 2010 and self-employed workers who began their economic activity in the following years, the minimum contribution base is 420 BGN (215 €).

In the **Czech Republic**[121], the system encompasses the pension insurance and sickness insurance schemes, as well as the national employment policy scheme and the non-contributory social security scheme. Workers may join as employees or self-employed workers[122]. The sickness insurance, pension insurance and national employment policy insurance are compulsory for all individuals performing an economic activity, although the sickness insurance scheme is voluntary for self-employed workers. The cost of social security for a self-employed worker is 29.2% of his or her income. With employees, the employer pays 25% of the employee's salary to the social security and the employee pays 6.5% (if the employee does not pay towards the old-age pension) or even 3.5% (if the employee pays towards the old-age pension).

In **Denmark**[123], the social security benefits cover sickness, hospitalisation, maternity and unemployment, and they support the family in the event of accidents at work, subsequent rehabilitation and occupational diseases. The benefits also include invalidity, old age and extraordinary pensions, as well as funeral expenses. The benefits are financed from state and municipal taxes, including the contribution to the labour market (*arbejdsmarkedsbidrag*).

Germany[124] underwent a major reform in 1994 and introduced a universal social security system comprising the following five pillars: sickness insurance, long-term care insurance, pension insurance, accident insurance and unemployment insurance. Since then, self-employed workers may join a private medical insurance system on a voluntary basis or a compulsory one required by law. Since 2009, self-employed workers not covered by a medical insurance system are required to join the compulsory system. Furthermore, since 2006, self-employed workers may (under certain conditions) be included in the unemployment public insurance system. Normally, 53 % of the contribution amount is paid by the employee and around 47 % by the employer. By contrast, self-employed workers pay the full amount of their contributions to the sickness, long-term care and pension insurance. The contributions to the accident insurance are exclusively paid by the employer.

In **Estonia**[125], in principle, there are no differences between employees and self-employed workers. Self-employed workers are regarded as self-employers and pay their social security contributions based on the income earned from their activity[126]. The Estonian social protection system is organised into three social security contribution schemes: old age and invalidity insurance, sickness insurance and unemployment insurance.

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[121] European Commission, Employment, Social Affairs and Inclusion, *Social security in the Czech Republic* (European Union, 2012).
[122] European Foundation for the improvement of living and working conditions, *Self-employed workers: industrial relations and working conditions* (2010), pages 24-25.
[123] European Commission, Employment, Social Affairs and Inclusion, *Social security in Denmark* (European Union, 2012).
[124] European Commission, Employment, Social Affairs and Inclusion, *Social security in Germany* (European Union, 2012).
[125] European Commission, Employment, Social Affairs and Inclusion, *Social security in Estonia* (European Union, 2012).
[126] European Foundation for the improvement of living and working conditions, *Self-employed workers: industrial relations and working conditions* (2010), page 25.

In **Ireland**[127] there are three types of social security benefits: contributory benefits, which are based on the number of pay-related social security contributions (PRSI) made over a given period; non-contributory benefits, which are social assistance, and universal benefits. Irish legislation does not envisage a specific social security scheme for certain categories of workers. Thus, self-employed workers and employees are part of the same general social security scheme. However, self-employed workers are not entitled to unemployment, invalidity or disability benefits[128].

Normally, employees pay the universal social charge and the pay-related social insurance. But there is no obligation to pay the universal social charge if the worker's annual income is less than 10,036 € or is receiving social benefits. Social security contributions (excluding sickness and maternity benefits in kind) are paid 4.0 % by the employee[129] and 8.5% by the employer.

The social security system in **Greece**[130] is based on the principle of tripartite financing (employee, employer and the state), with annual state subsidies to social security institutions. Article 22.5 of the 1975 Greek Constitution establishes the obligation of the state to provide social security to employees and self-employed workers. The system operates through self-governed social security organisations and covers the working population of the country as a whole. It is divided into three pillars: a system of mandatory and supplementary/auxiliary insurance provided through insurance funds: typically based on current financing (pay-as-you-go system); optional occupational-supplementary systems: a funded scheme provided through insurance funds; optional private insurance policies: a funded scheme provided through numerous private insurance companies.

All workers in Greece are entitled to the social security benefits. However, not all Greek insurance institutions are governed by the same rules. Therefore, the social security benefits, the conditions for entitlement and the supporting documents required differ from one institution to another. In this respect, the Social Insurance Institute – General Employees' Insurance Fund, known as IKA-ETAM, is the country's largest employees' social security organisation. Social security contributions are paid by both the worker and the employer (salary contribution and employer contribution) to cover the risks of old-age, invalidity, death, accidents at work and occupational diseases, sickness, maternity and unemployment. The amount of the employee's contribution is a percentage of gross salary, which is withheld by the employer from the person's pay packet immediately or at most two months after the corresponding period. The amount of the employer's contribution, which is also a percentage of the employee's gross pay, is paid by the employer and is added to the wage bill. The Social Insurance Funds pay contributions for sickness benefits in kind. The new insurance funds programme for self-employed workers includes the former Greek fund for craftsmen and small shopkeepers, the insurance fund for retailers and the pension fund for drivers. In general, the funds for self-employed workers do not offer protection for temporary incapacity to work (for example, in the event of sickness or maternity).

In **France**[131], the social security system has five main components: the general scheme (covering the majority of employees and other categories of people who have joined it over the

[127] European Commission, Employment, Social Affairs and Inclusion, *Social security in Ireland* (European Union, 2012).
[128] European Foundation for the improvement of living and working conditions, *Self-employed workers: industrial relations and working conditions* (2010), page 21.
[129] Excluyéndose los primeros 127 € de la retribución semanal del cálculo del porcentaje que se debe pagar y eximiendo a los trabajadores por cuenta ajena con una retribución de hasta a 352 € semanales.
[130] Comisión Europea, Empleo, Asuntos sociales e Inclusión, *La seguridad social en Grecia* (Unión Europea, 2012).
[131] Comisión Europea, Empleo, Asuntos sociales e Inclusión, *La seguridad social en Francia* (Unión Europea, 2012).

years: students, recipients of certain benefits, residents); the special employee schemes (some of which cover all risks and others only old-age pension insurance); the agricultural scheme (which covers self-employed and employed agricultural workers); the schemes for non-agricultural self-employed workers (who are covered by a single social security system since 2006 -*Régime social des indépendents*- which replaced three independent old-age pension schemes for self-employed workers and a sickness insurance scheme[132]); the unemployment and the mandatory supplementary pension schemes. The general scheme has four branches: the sickness, maternity, invalidity and death branch; the accidents at work and occupational diseases branch; the old-age pension branch, and the family branch. Apart from that, there are supplementary collective schemes, both compulsory and voluntary in nature. The social security system is financed from national insurance contributions paid by employers and employees, as well as taxation and earmarked charges. The insured pays to the social security in contributions a percentage of his or her salary. The employer withholds these contributions from the employee's salary and pays them to the pertinent body. Self-employed workers pay their contributions themselves and they are calculated based their professional income.

The social security system in **Croatia**[133] is predominantly based on a social insurance that covers pensions, healthcare and unemployment. There is no distinct insurance for accidents at work and occupational diseases, and cash benefits for sickness and healthcare are provided from uniform pension insurance. Social insurance is complemented by family benefits and social assistance schemes, which are non-contributory and means-tested. The system is financed from taxes and social security contributions. Unemployment insurance is financed from employers' contributions. The pension insurance contribution is paid by insured persons. Basic health insurance is financed from the contribution of employers (from payroll) and self-employed workers. There are two additional contributions for accidents at work and occupational diseases, and medical treatments during a stay abroad.

In **Italy**[134], the legislation provides for the coverage of the following social security branches: old age, invalidity, survivors', sickness, unemployment, early retirement, family, maternity, and equivalent paternity benefits, as well as for benefits in respect of work injuries and occupational diseases. All workers performing their gainful activity in the Italian territory are compulsorily covered by social security insurance. Both employees and self-employed workers are to be registered in the General Compulsory Insurance Scheme on a mandatory basis. The system is financed from social security contributions paid by employers and employees, as well as general tax revenue[135]. Employees' contributions are calculated as a percentage of pay. The rates are fixed by legislative provision (29% by the employer and 9% by the employee), but they vary depending on the company's activity sector, the employee's professional qualification, the number of employees, the location of the business, etc. Self-employed workers' contributions (22% of their gross salary) are calculated on the total earned income declared on the income tax return for the relevant year. Special provisions are applied to certain categories of self-employed workers[136].

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[132] European Foundation for the improvement of living and working conditions, *Self-employed workers: industrial relations and working conditions* (2010), page 23.

[133] European Commission, Employment, Social affairs and Inclusion, *Your social security rights in Croatia* (European Union, 2013).

[134] European Commission, Employment, Social Affairs and Inclusion, *Social security in Italy* (European Union, 2012).

[135] The National Health Service (Servizio Sanitario Nazionale) is financed from taxes paid by all individuals residing in Italian territory.

[136] For example, self-employed worker's family members actively participating in the gainful activity (paying contributions at a lower rate if they are under the age of 21) farmers, sharecroppers and smallholders (paying contributions as a pro rate of the average taxable income, set each year by law).

In **Cyprus**[137], the system covers all persons gainfully employed in Cyprus either as employees or self-employed workers. The system provides for the following benefits: sickness benefit; maternity grant; maternity allowance; benefits for accidents at work and occupational diseases, including temporary incapacity (injury benefit), disablement benefit and death benefit; invalidity pension; unemployment benefit; old-age pension; widows' pension; orphans' pension; funeral grant, and; marriage grant. Employees are entitled to all the above benefits. However, self-employed workers are not entitled to unemployment benefit or to benefits for accidents at work and occupational diseases. Since 1 April 2009, for employees, the contribution is 17.9 % of their 'insurable earnings', which is shared between the employer, the employee and the state in the proportion of 6.8 %, 6.8 % and 4.3 % respectively. For self-employed workers, the contribution rate is 16.9 %, of which 12.6 % is paid by the self-employed worker and 4.3 % by the state.

In **Latvia**[138], the social security system covers healthcare services, sickness insurance and maternity and paternity benefits; benefits in the event of accidents at work and occupational diseases; funeral allowance; invalidity pensions; old-age and survivors' pensions; unemployment insurance, and family allowances. The contribution rate for compulsory social insurance is 35.09 % of gross salary, of which 24.09 % is paid by the employer and 11 % by the employee. The employer pays these contributions and automatically withholds the percentage established in the legislation from the employee's salary. For self-employed workers, the compulsory social security contribution is calculated on the basis of income from production, performance of work, provision of services, exceptional and occupational activities and other income.

In **Lithuania**[139], the social security system covers the following risks: healthcare, sickness, maternity/paternity, death grants, disability pension, old-age pension, early retirement pension, survivor's pension, unemployment benefit and family benefits. The main requirement for entitlement to social security benefits is that the claimant is an employee or a self-employed worker and has paid contributions. Employees are covered for all the risks mentioned above whilst self-employed workers are only covered for some of them (pension, healthcare, maternity/paternity), but may pay towards the others on a voluntary basis. Thus, self-employed workers are not automatically covered by sickness, unemployment, accidents at work or occupational diseases insurance, but they are covered by compulsory pension insurance. Sickness insurance is compulsory for all residents, and although the benefits are common to all residents, the contribution rates differ for employees and self-employed workers (as with pensions). Social security schemes are financed from contributions and taxation. The basic contribution rate paid by the employer is 30.8% of gross earnings and covers all risks (except accidents at work and occupational diseases), and the basic contribution rate paid by the employee is 9%.

In **Luxembourg**[140], the system provides sickness, maternity and long-term care benefits; accidents at work benefits; invalidity benefits; old-age and survivors' pensions; unemployment benefits; early retirement pensions; and family benefits. The payment of contributions towards sickness and maternity insurance, long-term care insurance and pension insurance (old-age, invalidity and survivors') is compulsory. The amount of the contributions is calculated as a certain percentage of professional earnings. Half of the contribution amount is paid by the employee (of which 3.05% is for health insurance, 1.4% for care insurance and 8% for old-age insurance) and the other half by the employer (3.05% for health insurance, 1.15% for accident insurance

[137] European Commission, Employment, Social Affairs and Inclusion, *Social security in Cyprus* (European Union, 2012).
[138] European Commission, Employment, Social Affairs and Inclusion, *Social security in Latvia* (European Union, 2012).
[139] European Commission, Employment, Social Affairs and Inclusion, *Social security in Lithuania* (European Union, 2012).
[140] European Commission, Employment, Social Affairs and Inclusion, *Social security in Luxembourg* (European Union, 2012).

and 8% for old-age insurance). To determine the contribution amount for long-term care insurance, the social security office also takes income from property into account. However, no contributions are paid for accidents at work insurance, family benefits or unemployment benefits. Self-employed workers pay their own contributions (6.1% for health insurance, 16% for old-age insurance, 1.4% for care insurance and 1.1% for accident insurance).

In **Hungary**[141], the social security system offers protection against sickness, maternity, old-age, invalidity, occupational diseases and injuries, accidents at work, survivorship, children's education and unemployment. All persons who are gainfully employed and those of equivalent status are insured against all risks: employees, (including those in public administration), self-employed workers (including members of co-operative societies), numerous groups of persons of equivalent status, persons receiving income subsidy, job-seeker benefit and job-seeker aid before pension. Self-employed workers are entitled to certain social benefits, such as pensions, medical care, parental support and unemployment benefits[142]. Until 2006, the majority of self-employed workers paid a fixed rate to the social security calculated on the basis of the minimum salary After the system reform, self-employed workers pay contributions to the social security on the basis of an income forecast that is double the current minimum salary (335.27€[143]).

In **Malta**[144], the Social Security Act provides for two basic schemes: namely the contributory scheme and the non-contributory scheme. The basic requirement for entitlement under the contributory scheme is that specific contribution conditions are met. In the non-contributory scheme, the basic requirement is that the conditions of the means-test are met. Under the contributory scheme, employees and self-employed workers[145] or persons not in receipt of a salary[146] pay contributions on a weekly basis. There are two classes of contributions: class 1 contributions for employees, and class 2 contributions for self-employed workers. The system is financed from taxation and contributions from employers, employees and self-employed workers. For each person who is considered to be in insurable employment, three different contributions are payable: one by the employee, one by the employer and one by the state. Every person employed under a contract of service is considered to be in insurable employment, and therefore a class 1 contribution is due. The contribution rate for the employee and the employer is equivalent to 10 % of the basic salary, subject to a minimum contribution of 6.62 EUR and a maximum contribution of 33.50 EUR per week for persons born on or before 31 December 1961, and 37.85 EUR for persons born on or after 1 January 1962. Persons over the age of 18 working part-time and whose weekly wage is lower than the minimum salary can choose to pay 10% of their basic weekly wage instead of the flat contribution rate of 15.35 EUR.

In the **Netherlands**[147], the system includes the following social insurance branches: sickness and maternity, occupational disability insurance, old-age pensions, survivors' benefits, unemployment and child benefits. As a rule, all employees and self-employed workers are insured. In fact, the Dutch tax authority regards all employment relationships as employer-employee relations-

[141] European Commission, Employment, Social Affairs and Inclusion, *Social security in Hungary* (European Union, 2012).
[142] European Foundation for the improvement of living and working conditions, *Self-employed workers: industrial relations and working conditions* (2010), page 25.
[143] EUROSTAT data for 2013.
[144] European Commission, Employment, Social Affairs and Inclusion, *Social security in Malta* (European Union, 2012).
[145] i.e. persons performing an economic activity and earning more than 1,005 € if single, or 1,470 € if married.
[146] i.e. persons under the age of 65 who are neither employed nor self-employed and whose income does not come from economic activity but from other sources such as rents, dividends, etc.).
[147] European Commission, Employment, Social Affairs and Inclusion, *Social security in the Netherlands* (European Union, 2012).

hips or as 'virtual employer-employee relationships[148]. For employees, the employer pays the due contributions to the various social security schemes. Self-employed workers receive a form stating the contributions they have to pay, which is proportional to revenue.

In **Poland**[149], social security consists of old-age pension, invalidity pension, sickness and maternity insurance, insurance against accidents at work and occupational diseases and health insurance. In addition to this, Poland has a system of family benefits, social assistance benefits and unemployment benefits. The social security system covers practically all people in active employment, i.e. employees and self-employed workers, as well as their family members. Employee contributions are determined on the basis of salary. In road transport, the employer pays 20% of the employee's gross salary and the employee pays 13%. Self-employed workers in the road transport sector pay 30% of their income.

In **Portugal**[150], the social security system is based on universality and encompasses the citizenship social protection system, the insurance system and the supplementary system. The insurance system is based on compulsory contributions paid by employees and employers, and encompasses the general social security scheme[151] and the voluntary social security scheme, which covers persons who can work but are not covered by the compulsory scheme. Both employers and employees pay contributions. The employer pays 23.75% and the employee 11% of gross salary. Self-employed workers pay their own contributions (normally, 29.6%). Insurance against accidents at work is paid by the employer and is also compulsory for self-employed workers.

In **Romania**[152], social security contributions for pensions, healthcare and unemployment are mandatory for employees and employers, whilst self-employed workers pay contributions on a voluntary basis[153]. Social protection is financed from social contributions, local taxes and the state budget. Family benefits and social assistance are financed from taxation. The other branches are primarily financed from contributions.

In **Slovenia**[154], the social security system encompasses social insurance, family benefits and the social assistance scheme. The social insurance schemes consist of compulsory pension and invalidity insurance, compulsory health insurance, unemployment insurance and parental protection insurance. These are compulsory for all employees and self-employed workers. The system is financed from social security contributions paid by employees and employers. Slovenian social insurance schemes are financed from social security contributions from insured persons and employers. However, the state is under the constitutional obligation to cover any possible

[148] European Foundation for the improvement of living and working conditions, *Self-employed workers: industrial relations and working conditions* (2010), page 24.
[149] European Commission, Employment, Social Affairs and Inclusion, *Social security in Poland* (European Union, 2012).
[150] European Commission, Employment, Social Affairs and Inclusion, *Social security in Portugal* (European Union, 2012).
[151] Mandatory for employees and self-employed workers. In 1993, Portugal reformed its general social security system and introduced a new scheme for self-employed workers. This new scheme is mandatory for all individuals who perform a professional activity without an employment contract or any equivalent legal contract. This special regime provides two contribution schemes: a basic mandatory scheme (with a contribution level of 25.4%) covering maternity, invalidity, old age and death, and a broader voluntary scheme (with a contribution level of 32%) which provides further protection in the event of illness, occupational diseases and family-related expenses. Self-employed workers with employees are included in the general system of social security for employees, although with some differences. The main variation concerns the level of social contributions: employees pay a contribution of 11% of their gross salary (and their employers pay another 23.7%), while self-employed workers with employees pay 31.25% of their work-related income (up to a maximum of 12 times the value of the national minimum wage. European Foundation for the improvement of living and working conditions, Self-employed workers: industrial relations and working conditions (2010), page 23.
[152] European Commission, Employment, Social Affairs and Inclusion, *Social security in Romania* (European Union, 2012).
[153] European Foundation for the improvement of living and working conditions, *Self-employed workers: industrial relations and working conditions* (2010), page 25.
[154] European Commission, Employment, Social Affairs and Inclusion, *Social security in Slovenia* (European Union, 2012).

losses in social insurance schemes. Unemployment insurance and parental protection insurance are mainly financed from the state budget, whilst family benefits and social assistance are financed entirely from the state budget.

In **Slovakia**[155], social security covers all employees and self-employed workers[156]. There are different procedures for paying the social security contributions of employees and self-employed workers. In this country, self-employed workers are not, and cannot, be insured against accidents at work and occupational diseases[157]. Self-employed workers pay between 133.42 and 1,344.28 € per month in social security. With employees, the employer pays 20.45% of the employee's gross salary in social security and the employee pays 9.4%. The Slovakian social security is a universal healthcare scheme for all inhabitants, based on residency and funded with compulsory insurance contributions paid by employees, employers, self-employed workers and by the state, and offers the following benefits: sickness insurance, pension insurance (including old-age insurance and invalidity insurance), insurance against accidents at work, unemployment insurance and a guarantee fund, protecting an employee against the risk of an employer's inability to honour his or her commitments to the employee, and paying arrears on old-age insurance contributions due by the employer to the basic old-age savings plan. There is also a compulsory retirement insurance that includes compulsory old-age insurance and a compulsory savings plan.

In **Finland**[158] all residents are covered by social security schemes which govern basic pensions (national pensions and the guaranteed minimum pension), sickness and maternity benefits and family benefits. All employees are entitled to benefits based on employment, such as statutory earnings-related pensions and benefits for accidents at work and occupational diseases, as well as in unemployment. Although self-employed workers have the same social security scheme as employees, they have the possibility to choose both the composition and the level of their social security protections[159]. In practice, this opportunity means that the general level of social benefits of self-employed workers is lower than that of employees, mainly because self-employed workers often choose the minimum level of social security.

In **Sweden**[160], the general social security regime is compulsory (except for the earnings-related part of unemployment insurance) and offers the following benefits: health insurance; benefits in respect of accidents at work and occupational diseases; invalidity benefits; old-age and survivors' pensions; unemployment benefit, family benefits and parental insurance. No major distinctions are made between employees and self-employed workers. Therefore, self-employed workers enjoy the social protection of the general system. The system is financed from taxation and social contributions. Employers' contributions, amounting to 31.42% of the wage bill, cover most of the cost. Self-employed workers pay insurance contributions equivalent to 28.97 % of their income. The contributions for self-employed workers can be slightly reduced if they accept a longer grace period in the sickness insurance.

In the **United Kingdom**[161], the social security schemes include the National Insurance Sche-

[155] European Commission, Employment, Social Affairs and Inclusion, *Social security in Slovakia* (European Union, 2012).
[156] With the exception of members of the state security forces.
[157] European Foundation for the improvement of living and working conditions, *Self-employed workers: industrial relations and working conditions* (2010), page 25.
[158] European Commission, Employment, Social Affairs and Inclusion, *Social security in Finland* (European Union, 2012).
[159] European Foundation for the improvement of living and working conditions, *Self-employed workers: industrial relations and working conditions* (2010), page 24.
[160] European Commission, Employment, Social Affairs and Inclusion, *Social security in Sweden* (European Union, 2012).
[161] European Commission, Employment, Social affairs and Inclusion, *Your social security rights in the United Kingdom* (European Union, 2012).

me (NIS), the National Health Service (NHS), the child benefit and Child Tax Credit schemes, non-contributory benefits for certain categories of disabled persons or carers and other statutory payments made by employers to employees when a child is born or placed for adoption. The system is financed from national insurance contributions paid by employers and employees and general tax revenue. There are important distinctions between insurance, category and income/asset based benefits. In the United Kingdom, self-employed workers pay lower income tax rates, but the requirements for entitlement are stricter for them. They are not protected against unfair dismissal (including compensation) or are entitled to guaranteed pay[162].

4.5 RETIREMENT, UNEMPLOYMENT AND SICKNESS [163]

In this chapter we make a brief comparison of some of the individual social security rights of workers in the EU-28 that we mentioned in section 4.4, such as old-age, unemployment and sickness benefits.

Due to the enormous casuistry and extensiveness of the information, so characteristic of social security law, we will merely concentrate on **basic information** on the requirements to be met for entitlement to these rights (retirement **age**, prior **contribution** periods, **grace** periods, etc.), the **duration** of the right and the calculation of the **amount**. On another front, due to the similarity that we found in the 28 EU countries with regard to the requirements for entitlement to certain benefits like, for example, unemployment, we will merely highlight aspects of individual countries that are particularly unusual.

Lastly, although the competence in this area lies with the Member States, the EU has been legislating since the decade of 1970 with the aim of coordinating the application of such laws[164]. More recently, in 2012, the European Commission published the white paper *"An agenda for adequate, safe and sustainable pensions"*[165].

OLD-AGE AND RETIREMENT PENSIONS

In the current context of economic crisis, the vast majority of the EU countries are considering increasing the legal age for entitlement to the retirement pension.

In **Spain**, the normal retirement age has been gradually increased. Consequently, as of 2027, the retirement age will be 65 years for individuals who have paid social security contributions for 38 years and 6 months or more, or 67 years for individuals who have paid social security contributions for less than 38 years and 6 months. Spanish legislation allows for other forms of retirement such as early retirement (or pre-retirement), partial retirement and flexible retirement.

[162] European Foundation for the improvement of living and working conditions, *Self-employed workers: industrial relations and working conditions* (2010), page 21.
[163] European Commission, Employment, Social Affairs and Inclusion, Section: Your rights country by country.
[164] Regulation (EEC) No. 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community; Regulation (EEC) No. 574/72 of the Council of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community; Regulation (EC) No. 883/2004 of 29 April 2004 on the coordination of social security systems; Regulation (EC) No. 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No. 883/2004 on the coordination of social security systems.
[165] *White paper: "an agenda for adequate, safe and sustainable pensions"*, COM (2012) 55 final of 16/02/2012.
Fourth European Survey, European Foundation for the Improvement of Living and Working Conditions, EF/06/78/ES.

In **Austria**, a distinction is made between the normal retirement pension (*altersrente*) and the early retirement pension **(vorgezogene rente)**. The entitlement age for the normal retirement pension is 60 (women) and 65 (men), and these will be gradually increased between 2024 and 2033. The early retirement pension may be claimed at the age of 62 by men and women or at the age of 60 by persons performing heavy work, provided they have done this for at least 10 of the past 20 years and have paid insurance for 45 years.

In **Belgium**, the normal retirement age is 65 for everyone. To collect a full pension, a working career of 45 years is required. The general rule in this country is that everyone who has worked in the country under an employment contract is insured for old-age benefits.

Men and women receiving benefits under the system of unemployment with company supplement (*régime de chômage avec complément d'entreprise/stelsel van werkloosheid met bedrijfstoeslag*) are not entitled to a retirement pension (*retraite/rustpensioen*) before the age of 65.

The retirement pension in **Bulgaria** can be claimed at the age of retirement when a certain number of insurance years have been accumulated. Since 31 December 2011, the variables for entitlement to the retirement pension have increased:

- The length of insurance: 4 months per calendar year until reaching 40 years for men and 37 years for women.
- The retirement age: 4 months per calendar year until reaching 63 years for women and 65 years for men.
- The retirement age for persons not having acquired the necessary length of insurance: 4 months per calendar year until reaching the age of 67.

In the **Czech Republic**, the retirement age is different for men and women. Men may retire at the age of 62 years and six months, while for women the age of retirement depends upon the number of children raised, ranging from 60 years and eight months if she has no children, to 56 years and eight months if she has five or more children. The retirement age will be gradually increased for men and women.

To retire at the legal retirement age, individuals must have paid contributions to the insurance scheme for at least 29 years (this minimum contribution period shall be 35 years in 2018). Parallel to the public pensions system, there are voluntary private schemes.

In **Denmark**, all residents with at least 40 years of residence in the country are entitled to a standard retirement pension (*folkepension*) when they reach the age of 65 (67 years if the individual reached the age of 60 before 1 July 1999).

In addition, there is a compulsory supplementary pension scheme (ATP) for employees. All persons who have reached the age of 16 and are employed in Denmark are covered by the ATP scheme, provided that they work at least nine hours a week. Employees who became self-employed can continue to be covered by the ATP scheme.

Lastly, the standard pension consists of a basic amount and a pension supplement. To be entitled to this pension, the individual must have lived in Denmark for at least three years.

In **Germany**, the retirement pension can be claimed at the age of 65 if the individual has completed a minimum period of insurance of five years (grace period), although this age requirement is being gradually raised to 67 years between 2012 and 2029, beginning with those born in the year 1947. On another front, an early-retirement (reduced) pension may be claimed at

the age of 63, after having contributed to the pension insurance for 35 years.

In **Estonia**, people who have worked at least 15 years are entitled to a retirement pension. The retirement age is 63 years for men and 62 years for women. By 2016 the retirement age for both sexes will be aligned at 63 years. The public (state pension) system coexists with the private one.

With some exceptions, in **Ireland** all employees and apprentices aged 16 years and over are compulsorily insured. Since 1 January 2014, the state pension contributory system is applied to everyone. Under this system, all insured persons who meet certain requirements can claim the pension from the age of retirement (which will rise from 67 years in 2012 to 68 years in 2028). In addition, Ireland has a non-contributory state pension for people aged 66 or over who do not qualify for the contributory state pension, subject to certain requirements such as habitual residence in the country.

In **Greece**, the retirement age in 2015 will be 65 years for men and women. The Greek law is exhaustive in scenarios and requirements: full or reduced pension, pension because of heavy and unhealthy occupation, full pension with full insurance record, etc.

France pays the full retirement pension to workers who have completed a minimum insurance period and have reached the minimum age, which will gradually increase from 60 to 62 (in 2017) and from 65 to 67 (in 2022). There is a compulsory supplementary pension scheme.

In **Croatia**, entitlement to a retirement pension (*starosna mirovina*) depends on three variables: age, gender and length of qualifying period. A minimum period of insurance of at least 15 years is required, as well as having reached the age of 65 (for men) and 61 (for women). People can retire early (*prijevremena starosna mirovina*) at the age of 60 (for men) and 56 (for women). Alongside this pension there is another compulsory private pension based on capitalised savings, which, unlike the public pension, does not have a maximum or a minimum limit.

The pension reform law of 2011 in **Italy** has reduced the retirement benefits to the retirement pension and the early-retirement pension. The changes introduced by the new provisions of the law are: increase in the retirement age and flexibility in access to retirement for the early pension.

Effective as of 1 January 2012, the minimum retirement age for men (private sector employees, self-employed workers and civil servants) and for female civil servants is 66 years and 3 months. As regards women employed in the private sector, it has been fixed at 62 years and 3 months (63 years and 9 months for self-employed women), but it will be gradually increased to 66 by 2018.

The retirement age in **Cyprus** is 65 years, but under certain special conditions people may also retire at the age of 63. The law does not envisage early retirement.

In **Latvia**, women and men who have reached the age of 62 and have completed a period of insurance of at least 10 years can collect a retirement pension. Under certain circumstances people may be entitled to early retirement.

In **Lithuania**, contributing to the old-age insurance scheme that entitles individuals to receive a retirement pension is compulsory for employees and self-employed workers. The minimum number of insurance years to qualify for a retirement pension is 15 years, although 30 years is required to receive the full pension. In addition, the age requirement must be taken into account: in 2013, the retirement age for the normal pension was 62 years and 10 months for men,

and 60 years and 8 months for women. Currently, the age is being gradually increased to reach 65 years for both sexes by 2026.

In **Luxembourg**, to be entitled to receive a retirement pension, workers must have been insured for at least 120 months and reached the age of 65. Under certain conditions, workers are entitled to an early-retirement pension at the age of 57 or 60. It is worth highlighting that if a worker does not qualify for a pension at the age of 65, the contributions that he or she has paid will be reimbursed.

Hungary has a pension system based on two main pillars. The first pillar is a compulsory 'pay-as-you-go' scheme financed from contributions, and the second pillar comprises the capitalised compulsory private pension scheme, which is supervised by the Ministry for National Economy. The retirement age is being gradually increased since 2010, and by the year 2022 will be 65 for individuals born after 1957.

In **Malta**, a labour reform has gradually increased the age of retirement. Under the latest reform, individuals may retire early after reaching the age of 61.

People living and working in the **Netherlands** are insured against old age and entitled to receive a retirement pension when they reach the age of 65 years and one month. This age is being gradually increased to 67 years by 2023. As regards supplementary pension schemes, many sectors have a compulsory occupational pension scheme, such as the road transport sector.

The 1999 social security system reform in **Poland** introduced new requirements for entitlement to a retirement pension. Since 1 January 2013, the retirement age is being gradually increased to 67 for men and women.

In **Portugal**, the old-age pension may be collected at the age of 65 as long as the individual has accumulated at least 15 years of paid contributions. Early retirement is possible between the ages of 55 and 65 and under certain conditions.

In **Romania** the retirement ages are: for men (64 years and 7 months on 1 July 2013, increasing to 65 years on 1 January 2015) and for women (59 years and 7 months on 1 July 2013, increasing to 63 years on 1 January 2030). An identical minimum contribution period of 14 years and 2 months on 1 July 2013 is required from men and women, increasing to 15 years on 1 January 2015. A law on the organisation and functioning of the private pension payment system is pending in Romania.

In **Slovenia**, the requirements for entitlement to a retirement pension for both men and women are to have reached the age of 65 and have paid insurance contributions for 15 years. The age is reduced to 60 if insurance contributions have been paid for 40 years.

In **Slovakia** an insured person is entitled to an old-age pension if he or she has completed at least 15 years of insurance and reached the retirement age of 62 in 2014. From 2017 onwards, the legal retirement age will be gradually increased depending on the increase in life expectancy.

Finland has two pension systems: the statutory earnings-related pension scheme and the national pension scheme, which includes the minimum pension guaranteed (*takuueläke*). Under the earnings-related pension scheme, it is possible to retire between the ages of 63 and 68.

As regards the national pension scheme, persons over 65 years of age who are Finnish nationals

or citizens of other EU countries who have lived in Finland for at least three years are entitled to the national old-age pension. The amount of the pension also depends on the length of residence in Finland. To receive the full pension, a minimum residence period of 40 years is required.

Sweden also has a contributory system and a guarantee system. The contributory pension is available to persons aged 61, whereas the guaranteed pension is available to persons who have reached the age of 65 and have lived in the country for three years (40 years of residence is required to be entitled to the full pension). Flexible retirement is possible as of the age of 61, as well as the possibility of working after the age of 67 if the employer agrees to it.

The basic retirement pension in the **United Kingdom** is collected at the age of 65 (for men) and 63-65 (for women). In December 2018, both ages will be gradually increased to 66 years by October 2020.

UNEMPLOYMENT AND UNEMPLOYMENT BENEFIT

To be entitled to unemployment benefits in **Spain**, individuals must meet certain requirements established by law (they must have paid social security contributions, be actively looking for work, be over the age of fifteen, etc.). There are two types of unemployment benefits: contributory unemployment benefit and special unemployment assistance. The amount of the unemployment benefit varies depending on family circumstances. Unemployment assistance is a form of unemployment benefit paid in certain circumstances to people who are not entitled to the contributory unemployment benefit.

In **Austria**, all workers participating in a vocational re-adaptation programme with earnings above the marginal earnings threshold are covered by unemployment insurance. As a general rule, there is no possibility of voluntary insurance. However, since 1 January 2011, self-employed workers may join the unemployment insurance system on a voluntary basis. Unemployment benefit (*arbeitslosengeld*) coexists with unemployment assistance (*notstandshilfe*), and it is possible to claim unemployment assistance once the right to unemployment benefit has been exhausted and there is a situation of need.

Generally speaking, people employed in **Belgium** are insured against the risk of unemployment (*chômage/werkloosheidsuitkeringen*) if, among other requirements, they have worked between 21 and 42 months (depending on age) and they are in a re-adaptation period or actively looking for work. There is no unemployment scheme for self-employed workers, with the exception of a special bankruptcy allowance.

In **Bulgaria**, people who have paid contributions for at least 9 of the previous 15 months are entitled to claim unemployment benefit. The daily unemployment benefit amounts to 60% of the average wage or the average of the contributions paid in the 24 calendar months prior to the month when the individual stopped paying insurance. The minimum daily unemployment benefit amount is determined annually by the public social insurance budget (in the region of 7.20 BGN=3.68€).

The social security system in the **Czech Republic** provides unemployment benefit for a maximum of five months and, in certain cases, this five-month period is increased for people aged between 50 and 55.

Unemployment insurance is voluntary in **Denmark**. The unemployment insurance funds (*ar-*

bejdsløshedskasserne) are divided into occupational sectors (in 2013, there were 26 insurance funds). As in other EU countries, to be entitled to unemployment benefit the claimant must be out of work, be registered in a public employment office (*Jobcenter*), be actively looking for work and, lastly, be available to join the labour market.

The right to unemployment benefit is normally acquired after one year of paying contributions to a recognised unemployment fund. Moreover, the first time unemployment benefit is claimed the worker must have worked as an employee for a minimum number of hours. Unemployment benefit amounts to 90% of earnings from the previous job, up to a maximum of 801 DKK=101€ per day.

Unemployment benefit in **Germany** has a grace period (claimants must have been in employment for at least 12 months in the previous two years), and is subject to the classical conditions, such as being registered as a job seeker and be able to work. To calculate the benefit, the average daily wage in the previous year is taken into account, up to an income ceiling of 5,800 € per month in the old *Länder* and 4,900 € per month in the new *Länder*. The duration of benefits depends on the length of the contribution period and the claimant's age, and the maximum duration is 24 months.

In **Estonia**, unemployment benefits come from a compulsory contribution system and the right to receive them is subject to similar requirements to the rest of the EU-28 countries (situation and qualification of the claimant, minimum age). The amount is between 40 and 50% of previous earnings and is paid during a period of 6 months to one year. The grace or waiting period is 7 days.

In **Ireland**, the jobseeker's benefit coexists with the jobseeker's allowance, and both are paid after the fourth day in unemployment (grace period). Unlike the jobseeker's benefit, the jobseeker's allowance is subject to a residence test and a minimum age of 18 years (which is only 16 for the jobseeker's benefit).

To claim unemployment benefit in **Greece** the claimant must have paid insurance contributions for at least 80 days in one of the two years preceding unemployment. The basic benefit amounts to 360€ per month, plus a 10% increase for each dependent member of the family.

In **France** only employees can claim unemployment benefit and, to do so, they must meet the usual requirements applicable in the other EU-28 countries (be registered as a jobseeker, have become unemployed through no fault of your own, be physically fit for work, be genuinely and continuously seeking employment, etc.). As a peculiarity, claimants are required to produce evidence that they have been insured under the unemployment insurance scheme for at least four of the previous 28 months (36 months if the claimant is over 50 years old).

The benefit is made up of a fixed part and a variable part, and cannot be lower than 57.4% of the wage used a reference or exceed 75%. The unemployment benefit payment period (between four and 24 months – or 36 months if the claimant is 50 years or over) depends on the prior period of insurance and the age of the jobseeker.

The eligibility requirements in **Croatia** are the usual ones, plus having worked at least 9 months in the previous 24 months. Claimants must be aged between 15 and 65. The benefit is paid from the first day in unemployment (70% of the wage used as a reference during the first 90 days and then 35%). The actual duration of the benefit depends on the length of the previous employment period, and may be extended if the claimant is registered in the Croatian Employment

Service (HZZ) uninterruptedly for more than 12 months.

Since 2013, unemployment benefit in **Italy** is known as ASPI (*Assegno Sociale per l'Impiego*). It is not paid in the event of voluntary resignation, with some exceptions.

In order to be eligible for the ASPI, the claimant must have been insured with the National Institute for Social Security (*Istituto Nazionale della Previdenza Sociale*) for at least two years and have accumulated at least 52 weeks of contributions in the two years prior to dismissal. Unemployed workers who do not qualify for the ASPI can be eligible for the so-called mini-ASPI if they have completed at least thirteen weeks of contributions during the twelve months prior to dismissal. The amount of the mini-ASPI is the same as that of the ASPI but it is paid during a shorter period of time.

The amount of the benefit is calculated as a percentage of the claimant's gross earnings in the two years prior to dismissal. It is equal to 75% of the monthly wage used as a reference (with a ceiling of 1,119.32 € per month), and the percentage is reduced to 60% and 45% after twelve months. There are special rules for the transition period 2013-2015.

In **Cyprus**, unemployment benefit is payable to claimants aged between 16 and 63 who were employed on an employee-basis, and the requirements are similar to those of the other EU-28 countries. The period during which unemployment benefit is payable shall not exceed 156 days.

To be eligible for unemployment benefit in **Latvia**, the claimant must have paid contributions during at least nine of the previous twelve months. The amount of the unemployment benefit is calculated on the basis of the wage used as a reference, and it ranges from 100% (first three months), to 75% (4-6 months) and to 50% (7-9 months).

The unemployment insurance (*Nedarbo draudimo išmoka*) in **Lithuania** is compulsory. The minimum contribution period required to be entitled to unemployment benefit is 18 months during the three years prior to registration in the Employment Office, although there are exceptions.

The grace or waiting period is seven calendar days. The benefit has a fixed and a variable component. The fixed component equals the state supported income (*Valstybės remiamos pajamos*) of 350 LTL (101€) per month. The variable component is linked to the jobseeker's previous insured income and is reduced to 50% after the third month.

The maximum amount of the unemployment insurance benefit cannot exceed 650 LTL (188€) per month (figures for 31 December 2013). The duration of the benefit ranges from 6 to 9 months depending on the number of years worked.

People who work in **Luxembourg** are covered against the risk of unemployment under similar conditions to those in the other EU-28 countries. Claimants must have worked in Luxembourg for at least 26 weeks in the 12 months prior to becoming unemployed. The amount of the unemployment benefit is 80% of previous earnings (up to 85% if family burdens).

Apart from the unemployment benefit, the unemployment benefit system in **Hungary** includes the right to information on employment and the labour market, occupational guidance and counselling, local employment tips and job offers. A jobseeker who has worked for at least 360 days in the three years prior to becoming unemployed is entitled to one day of benefit for every ten days worked.

Unemployment benefits in **Malta** are paid if the claimant has paid contributions during a mi-

nimum number of weeks in the year prior to becoming unemployed. Unemployment benefit is paid at a flat rate (11.26 € per day for a single parent or a married person with a dependent spouse who is not in full-time employment, and 7.37 € per day for other persons). There is no grace period and the benefit is paid for a maximum of 156 days.

People who become unemployed in the **Netherlands** are entitled to unemployment benefit under the Unemployment Benefits Act (*Werkloosheidswet o WW*). In this country there are special rules for entitlement to unemployment benefit, namely the claimant needs to have lost at least five working hours per week as an employee (and the corresponding wage) and received a wage during at least 26 of the 36 weeks immediately before becoming unemployment.

The amount of the unemployment is 75% of the wage used as a reference during the first two months, and 70% thereafter. The determination of the duration of the benefit is intricate and limited by factors like the number of weekly working hours that the claimant has lost which have been rise to the unemployment benefit. In certain cases, if the benefit is lower than the social minimum, the claimant is entitled to claim a supplementary benefit under the Supplementary Benefits Act (*Toeslagenwet*). Some municipalities offer social assistance benefits.

Unemployment insurance in **Poland** is public and compulsory. It covers both employees and self-employed workers. In addition to meeting similar requirements to those seen in other countries, to be able to claim unemployment benefit the claimant must have worked at least 365 days in the 18 months prior to becoming unemployed.

The gross base amount of unemployment benefit is currently 823.60 PLN=190€ per month for three months, and 646.70 PLN (149€) thereafter. The duration of the unemployment benefit depends on the unemployment rate in the area where the claimant lives, and can be:

- For 6 months in areas with an unemployment rate that is less than 150% of the national average,
- For 12 months in areas with an unemployment rate that is at least 150% of the national average, or in other circumstances (i.e. having worked for a period of 20 years, being over 50 years of age, etc.).

In **Portugal**, an insured employee is entitled to unemployment benefit if he or she has worked at least 360 days in the 24 calendar months immediately prior to the date of becoming unemployed. It is calculated on the basis of the average monthly income received in the 12 months prior to the termination of the employment contract. The duration of the unemployment benefit depends on the age of the insured person and the number of months registered in any compulsory social security scheme immediately prior to becoming unemployed.

Secondly, there is unemployment assistance which, among other persons, is paid to persons who have accumulated 180 days of work as employees in the 12 calendar months immediately prior to becoming unemployed. Lastly, there is the partial unemployment benefit which, in the legally established cases, is paid as a supplement to unemployment benefit and part-time employment.

The requirements for entitlement to unemployment benefit in **Romania** do not differ much from those in the other EU-28 countries (residence in the country, aged between 16 and the retirement age, actively looking for job, etc.). The duration of the right depends on the contribution period: 6 months if the contribution period is between one and five years, 9 months if the contribution period is between five and ten years, and 12 months if the contribution period

is ten years or more.

The amount of the unemployment benefit is determined by the social indicator used as a reference (level of earnings) and the length of the contribution period (75% of the earnings used a reference for a contribution period of one year or more, 50% for graduates). For a contribution period of three years or more, other supplementary percentages are applied and added to the basic amount.

In **Slovenia**, employees and self-employed workers are entitled to claim unemployment benefit. Among other usual requirements, the claimant must have been in employment during at least 9 of the previous 24 months. Unemployment benefit is calculated on the basis of the average monthly income received in the previous 12 months (in the first three months, 80% of the income used a reference, which is then reduced to 60% and 50%). The amount paid may not be less than 350€ or more than 892.50€.

The duration of the unemployment benefit ranges from 3 to 25 months according to the contribution period and the age of the claimant. An insurance period of at least 6 months in the previous 24 months entitles jobseekers under 30 years of age to two months of unemployment benefit.

Unemployed people in **Slovakia** can receive unemployment benefit if they have paid contributions during at least two of the three years immediately prior to registration as jobseekers. Unemployment benefit is paid for a maximum of six months. Provided that all the eligibility requirements are met, the claimant shall be entitled to receive an allowance of 50% of the daily amount used as a reference.

The basic unemployment allowances in **Finland** are paid to unemployed persons between the ages of 17 and 64 who are looking for work and have worked a total of 34 weeks in the 28 months prior to becoming unemployed.

Unemployment insurance in **Sweden** consists of two parts: a voluntary insurance to compensate loss of income (*inkomstbortfallsförsäkring*), financed from employers' and employees' contributions; and a basic insurance (*grundförsäkring*), financed from employers' contributions and covering people not voluntarily insured under the previously-mentioned scheme to provide a flat-rate benefit. To be entitled to the earnings-related unemployment benefit, the claimant must have paid contributions to an unemployment insurance fund for at least 12 months and have worked a minimum of six months uninterruptedly or at least 480 hours during an uninterrupted period of six months.

To receive unemployment benefit in the **United Kingdom**, the claimant must have paid insurance contributions during the two years that are used as a reference to calculate the amount of the benefit. For purposes of unemployment benefit, only insurance contributions paid by employees, and not by self-employed workers, are taken into account.

Unemployment benefit is paid every two weeks for a maximum period of 182 days. In respect of the maximum weekly amounts, if the claimant is aged between 16 and 24, the ceiling is 56.80 GBP (66 €), and if the claimant is over 25 years of age, the ceiling is 71.70 GBP (84 €).

SICKNESS AND SICKNESS BENEFITS

Benefits for temporary incapacity in **Spain** are paid after a waiting period of three days. The employer pays the sickness benefit from the 4th to the 15th day of sick leave and then it is paid by the social security system. The benefit is paid for a maximum of 365 days, and may be extended 180 days if the physician certifies that recovery is likely in the additional period. The amount of the sickness pay ranges from 60% to 75% of the amount used as a reference.

In **Austria**, there is a compulsory insurance for employees, apprentices, unemployed persons receiving unemployment benefit and persons on guaranteed income. There is a grace or waiting period of three days from the beginning of the incapacity, and the duration of the benefit is generally up to 52 weeks per year.

The health insurance system in **Belgium** cover employees and self-employed workers who are registered with a health insurance fund and have worked 120 days in the six calendar months prior to being certified ill (grace period).

During the initial period, the sickness pay is paid by the employer and thereafter by the insurance fund. White-collar workers receive 100% of their earnings for one month, whilst blue-collar workers receive 100% (during the first seven days of incapacity) and 60% (from the 8th to the 14th day of incapacity).

In **Bulgaria**, the daily benefit for temporary incapacity to work due to illness is calculated at the rate of 80-90% of the earnings used as a reference. The employer pays the sickness benefit amounting to 70% of the employee's average gross salary for the first three days of the temporary incapacity. Afterwards, the benefit is 80% of the contributory income and is paid by the National Social Security Institute of Bulgaria.

Sickness benefit in the **Czech Republic** is paid to employees from the 22nd calendar day of illness. From the 4th to the 21st day, the benefit is paid by the employer. To be entitled to the benefit, self-employed workers must participate in a voluntary self-employed workers' sickness insurance scheme.

In **Denmark**, employees are entitled to claim sickness benefit from their employer from the first day of illness, subject to certain conditions, and during the first 30 days of the period of sickness. If the incapacity to work continues for more than 30 days, the employee can claim sickness benefit from the local authority. The benefit is calculated on the basis of the hourly earnings to which the employee would have been entitled if he or she had not fallen ill, and there is a ceiling of 4,005 DKK (505€) per week.

Employees who become unfit for work due to illness in **Germany** are entitled to continue to receive their salary during the first six weeks of incapacity, regardless of how long the employee has been working. If the employee is still unfit for work after six weeks, he or she may only receive sickness benefit (*Entgeltfortzahlung*) if the employment relationship has lasted four weeks without interruptions.

Sickness benefit is paid by the social security fund, and it amounts to 70% and 90% of the employee's salary. However, in the event of a same illness, the benefit cannot be claimed for more than 78 weeks within a period of three years. At the end of those three years, and in certain conditions, the right to the benefit may be extended for an additional maximum period of three years.

Sickness benefit in **Estonia** begins to be paid the day after the issue date of the sick leave certificate (grace period of 3 days), at a rate of 70-100% of the worker's salary and subject to certain requirements established in the law.

From the 4th to the 8th day of the insured person's illness, the sickness benefit is paid by the employer at a rate of 70% of the employee's average wage. Afterwards, the sickness benefit is paid by the Health Insurance Fund.

The sickness benefit in **Ireland** is paid weekly and amounts to 188€ per week.

In **Greece**, the legislation is long-winded in establishing the contribution requirements for entitlement to sickness benefit, which is paid after three days of absence from work. The basic benefit amounts to 50-70% of the worker's salary used as reference, depending on family circumstances.

In **France**, a daily allowance for temporary incapacity for work due to illness is paid from the 4th day of absence from work. The daily amount is a percentage that ranges from 50% to 66.66% of the employee's salary.

Sickness benefit in **Croatia** is paid in cases of absence from work due to illness or injury, and also –among other instances- in cases of absence from work due to a medical check-up, isolation on doctor's orders or complications during pregnancy.

The sickness benefit is paid by the employer in the first 42 days (or seven days for employees with a disability). The amount depends on the collective agreements, but it may not fall below a legal minimum. As of the 43rd day, or the 8th day for persons with a disability, the sickness benefit is paid by the Croatian **Health Insurance Fund**.

Sickness benefits in **Italy** are paid from the 4th day of illness and up to a maximum of 180 days per calendar year. During the first 20 days of illness, the benefit generally amounts to 50% of the worker's salary, rising to 66.66% thereafter.

Employees and self-employed workers in **Latvia** are insured against sickness. Sickness benefit (*slimības pabalsts*) is paid from the 11th day of incapacity for work and until the capacity for work is recovered. The employer pays from the 2nd to the 10th day of the incapacity.

The minimum insurance contribution period in **Lithuania** is 3 months in the previous 12 months or at least 6 months in the previous 24 months. Insured persons are entitled to sickness benefit from the first day of illness. In the first two days the employer pays at least 80% of the employee's compensatory wage (*Kompensuojamasis uždarbis*) and afterwards 40%. After the seventh day, the regional office of the State Board of the Social Insurance Fund, attached to the Ministry of Social Security and Employment, pays 80% of the average monthly compensatory wage.

In **Luxembourg**, employees and self-employed workers are entitled to cash benefits in the event of incapacity for work due illness or an accident (non-occupation), for which there is no minimum qualification period.

In the event of incapacity for work, the employer continues to pay the employee's salary until the end of the legally established period and, thereafter, the National Health Fund (*Caisse nationale de santé*) pays the employee a cash sickness benefit (*indemnité pécuniaire de maladie*) amounting to the sum of the employee's salary for a maximum of 52 weeks within a baseline period of 104 weeks.

In **Hungary**, all workers are entitled to sickness benefit, which is divided into two parts:

- the absence benefit (*Távolléti díj, betegszabadság*), amounting to 70% of the gross salary corresponding to the days of absence;
- the sickness benefit (*Táppénz*), granted for a maximum of one year.

The benefit is paid by the employer for a maximum of 15 working days per year. The amount is 60% of the average gross daily salary, provided that the amount does not exceed twice the minimum gross salary (156,000 HUF=531€).

Sickness benefit in **Malta** is paid to employees and self-employed workers. To be entitled to sickness benefit, an insured person is required to have been in the insurance for at least 50 weeks and have paid contributions for at least 20 weeks in the previous two contribution years. The benefit is paid from the fourth day of incapacity for work and up to 156 days per year, or up to a maximum of 312 days per year in very serious cases.

According to Civil Code, employers in the **Netherlands** are required to continue paying sick employees at least 70% of their salary during the first two years of illness, but never for longer than the duration of the employment contract. This percentage can be increased through a collective agreement.

In **Poland**, the sickness benefit (*Zasiłek chorobowy*) begins to be paid on the 34th day of illness (or the 15th day if the worker is aged 50 or over). There are certain collectives entitled to receive the benefit from the first day. During the first 33 days employees continue to be paid by their employer.

To qualify for sickness benefit in **Portugal**, the claimant must be in remunerated employment for a total of six calendar months. These six calendar months do not have to be consecutive, but they must include 12 days of paid work in the four months immediately prior to the incapacity for work. There is a grace period of three days and the amount of the sickness benefit varies according to the length and nature of the illness (between 55 and 75% of the average daily wage, depending on the case). The benefit is paid for a maximum period of three years (1095 days).

To receive sickness benefit in **Romania**, the insured person must substantiate at least six months of contributions in the 12 calendar months immediately prior to illness. The amount is established at between 75 and 100% of the salary, depending on the case. Sickness benefit is paid for a maximum period of 183 days per year for each illness.

Sickness benefit in **Slovenia** is paid by the employer during the first 30 days of the employee's absence. There are no prior insurance requirements, and the amount of the benefit is subject to several requirements established in the legislation. From the 31st day of absence, the sickness benefit is paid by the Slovenian Health Insurance, and is normally received for a maximum period of one year and, in exceptional cases, for longer. The amount of the benefit ranges from 70 to 100% of the amount used as a reference (salary or contributions, depending on whether the claimant is an employee or a self-employed worker).

The right to receive sickness benefit in **Slovakia** covers employees and self-employed workers, and is paid from the 11th day of the temporary incapacity for work. The amount is 55% of the worker's salary, and is paid for a maximum period of 52 weeks.

All residents in **Finland** are entitled to receive sickness benefit after nine working days of becoming ill. The employer pays the employee's full salary for the first nine days if the length of the

labour relationship is at least one month. If the length of the labour relationship is less than one month, the employer pays 50% of the salary. Under collective agreements, most employers pay the employee's full salary during the first two months of the employee's absence due temporary incapacity for work.

In **Sweden**, sickness benefits (*sjukpenning y suklön*) are paid to employees and self-employed workers. The employer pays the benefit from the 2nd to the 14th day of the employee's absence. From the 15th day the benefit is paid by the Swedish Social Security Agency. There are no minimum contribution requirements for entitlement to sickness benefit, and the amount of the benefit is calculated on the basis of the salary that the employee would have received (at least 80% of the employee's salary).

The **United Kingdom** entitles workers to receive sickness benefit if the sickness lasts at least four consecutive days. The employer pays the benefit for a maximum of 28 weeks and, afterwards, if the employee is unable to return to work, he or she must claim the benefit from the Department of Work and Pensions.

4.6 HEALTH AND SAFETY

Occupational health is recognised worldwide. Both the International Labour Organisation (ILO) and the World Health Organisation (WHO) consider that "*the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations*" must be a fundamental objective for social development. At EU level, the first reference to take into account is one of the declarations contained in the Community Charter of the Fundamental Rights of Workers, which says: "*every worker must enjoy satisfactory health and safety conditions in his working environment*" therefore "*appropriate measures must be taken in order to achieve further harmonisation of conditions in this area*"[166].

According to **article 153, points 1 and 2, of the Treaty on the Functioning of the European Union**, the EU, the Parliament and the Council shall support and complement the activities of the Member States and adopt the necessary measures to, among others, establish minimum standards required in the work environment conducive to protecting the health and safety of workers. **Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work**, is the most relevant regulation because it encourages improvements in health and safety at work in all activity sectors, promotes the rights of workers, and seeks to give them adequate protection to ensure that they return home at the end of the working day in a good state of health. In short, the Directive establishes basic measures and a prevention approach to protect health and safety at work.

According to the Directive, the obligations of employers, which shall take into account the nature of the activities of the enterprise or establishment and the capabilities of the workers, are:

- **to ensure the health and safety of** workers in every aspect related to work, including if an employer enlists competent external services or persons. Member States may provide for the exclusion or the limitation of employers' responsibility where occurrences are due to unusual and unforeseeable circumstances beyond the employers' control.
- to establish means and measures, in other words, **prevention, information and training activities** for workers particularly aimed at preventing or managing risks, giving

[166] Art. 19 Health protection and safety at the workplace, *Community Charter of the Fundamental Social Rights of Workers* (Strasbourg , 1989)

adequate instructions to workers and encouraging collective protection measures, and adapting the working conditions, work equipment and methods to technical progress.
• **To consult** workers and their representatives on all issues affecting health and safety at work.

Workers shall also ensure their health and safety, as well as the health and safety of other persons affected by their acts or omissions at work. Their obligations are:

• to make correct use of equipment, tools and substances related to their activity;
• to make correct use of the personal protective equipment;
• to refrain from disconnecting, changing or removing arbitrarily safety devices;
• to immediately inform of any work situation that represents a serious and immediate danger to safety and health.

The European Commission, together with other bodies like the European Agency for Safety and Health at Work and the European Foundation for the Improvement of Living and Working Conditions, works towards the constant improvement of health and safety in the European Union. An illustration of this statement is the European Union Occupational Safety and Health Strategy 2007-2012, whose objective was to achieve a 25% reduction in the total incidence rate of accidents at work by 2012, by improving the health and protecting the safety of workers. In June 2014, the Commission published the new EU Occupational Safety and Health Strategic Framework for the period 2014-2020, whose strategic objectives are[167]:

1. Further consolidate national health and safety strategies through, for example, policy **coordination** and mutual learning.
2. Provide **practical support to small and micro enterprises** to help them to better comply with health and safety rules. Businesses would benefit from technical assistance and practical tools, such as the Online Interactive Risk Assessment (OiRA), a web platform providing sectoral risk assessment tools.
3. Improve enforcement by Member States, for example, by **evaluating the performance of national labour inspectorates**.
4. Simplify existing legislation where appropriate to **eliminate unnecessary administrative burdens**, while preserving a high level of protection of workers' health and safety.
5. Address the **ageing** of the European workforce and improving prevention of work-related diseases to tackle existing and new risks such as **nanomaterials, green technology and biotechnologies**.
6. Improve **statistical data collection** to have better evidence and developing monitoring tools.
7. Reinforce coordination with international organisations (such as the International Labour Organisation (ILO), the World Health Organisation (WHO) and the Organisation for Economic Co-operation and Development (OECD) and partners to contribute to **reducing work accidents and occupational diseases** and to improving working conditions worldwide.

In the majority of the EU countries close cooperation between employers and workers has been achieved through the trade unions to ensure the correct implementation of the measures on the basis that the health benefits for workers leads to increased productivity and quality for employers. There are certain differences in the obligations assumed by each government, which

[167] *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions on an EU Strategic Framework on Health and Safety at Work* 2014-2020, COM(2014) 332 final (Brussels, 6/6/2014).

explains why the total cost to society of work-related health problems and accidents varies from 2.6% to 3.8% of the GDP among the EU Member States.

Ultimately each Member State has the capacity to lay down the rules imposed at EU and international levels, either through legislative action or prevention and awareness-raising programmes and initiatives. According to the compilation work by the European Foundation for the Improvement of Living and Working Conditions (Eurofound), in 2012, approximately half of the countries reported that they were applying prevention policies, programmes or initiatives.

Apart from the risks to personal losses and damage, an analysis of the risk of accidents in the specific sector of road transport requires us to consider other risks that are very present in the day-to-day of road transport workers that can seriously affect their health. In this respect, in terms of risks to the sector, and in particular to truck and coach drivers, the European Agency for Health and Safety at Work explains the impact of practices like ***just-in-time*** **management leading to high work pressure, client pressures or the increasing use of remote monitoring and complex technology**[168].

Of the different legislative measures, initiatives, policies and actions in the area of prevention and awareness-raising that have been taken by the Member States, we will set out the most salient in the past few years. Of all the countries, only a few affirmed that they dedicate specific funds and efforts to the transport sector.

Starting the country by country analysis with **Spain**, the Constitution recognises the right to work in a safe environment and, consequently, employers shall fulfil the general obligations to:

- Protect workers against safety risks in the workplace (and prevent such risks to the extent possible)
- Assess any unavoidable safety risk.
- Give priority to group safety measures over individual safety measures.
- Keep workers informed at all times on health and safety issues.

In terms of the specific obligations, the employer is required to draw up a risk prevention plan, establishing the organisation structures, procedures and resources necessary to prevent safety risks in the workplace.

Austria has a free advisory service as a result of the *Fit2work* programme introduced under the framework of the Law on Work and Safety, for workers who are in danger of losing their jobs because of health problems or for persons who are finding it difficult to get a job due to a health condition. The objective of the programme is to prevent early abandonment of the labour market and guarantee employability or capacity to be hired again.

In **Belgium**, the Safe Work Information Centre expanded its activities to collective and individual protection equipment. The objective is to develop a database of best practices.

The General Labour Inspectorate in **Bulgaria** took part in the European inspection campaign "Psychosocial Risk Assessments", with nearly 570 inspections in sectors like the carriage of goods by road. After the assessments, some Bulgarian employers adopted prevention, correction and mitigation measures to address and reduce the negative impact of psychological tension and stress at work. Through support systems, such as 'health awareness campaigns, they seek to draw public attention to prevention of accidents at work and the application of health

[168] *OSH in figures: occupational safety and health in the transport sector – An overview* (European Agency for Safety and Health at Work, 2011).

and safety standards. According to Eurofound data, in 2012, the number of infringements related to health and safety fell as a result of stricter control by the General Labour Inspectorate and joint inspections with the social partners and other control institutions. However, there was an increase in the number of accidents at work.

In the **Czech Republic**, an amendment to the Labour Code introduced a list of fundamental values related to safety at work, which are essential to the interpretation of the right.

In **Germany**, the public is very concerned about work stress. In 2012 and 2013 there was much debate about the suitability of the provisions of the Law on Health and Safety at Work for combating mental stress.

The National Labour Inspectorate in **Estonia** has begun an initiative to inform new businesspersons of different health and safety issues by sending electronic bulletins with useful information on the subject.

The new developments in **Ireland** involve the regulations introduced by the government on hours worked by the mobile transport workers. Small enterprises receive support to manage their health and safety measures through the Citizen Business Plan offered by the Irish Health and Safety Authority. As part of the Plan, an online risk assessment tool called BeSMART.ie has been developed.

In **Greece**, Directive 2007/30 resulted in the simplification and rationalisation of the conclusions obtained from the reports on the practical implementation of the directives on minimum occupational health and safety standards.

The most recent labour-law reform in **France** came into force in 2012. In the area of health and safety, Decree 2012/639 of 4 May 2012 increased the protection of workers against risks related to exposure to certain substances in the workplace. With regard to penalties, together with Romania, France is among the strictest countries in the application of health and safety legislation. On another front, the National Research and Safety Institute for the Prevention of Occupational Accidents and Diseases has developed a software application for road hauliers to assess occupational risks and, together with the Atomic Energy and Alternative Energies Commission and the National Institute for Industrial Environment and Risks, has published a methodological guide to identify occupational exposure to nanoparticles.

Furthermore, we know that France has introduced certain measures specifically aimed at the sector that concerns us here. It has implemented specific directives/regulations on the improvement of the quality of work and employment in the road transport sector. In 1994, employers and workers reached an agreement, *Contrat du Progrès*, which led to a profound improvement in working conditions in the carriage of goods by road sector. The *Contrat du Progrès* was gradually implemented starting in 1995 and some of the measures (such as the maximum number of working hours) were incorporated into French legislation and even collective agreements. The main characteristics of the *Contrat du Progrès* are the following: 1) the gradual reduction of working time: 1994 (280-320 hours/month), 1995 (240 hours/month), 1996, 1997 and 2002 (230 hours/month); 2) the opening, recognition and payment of all hours worked. Since 1997, the recognition of all hours during which workers are available to the employer (for example, waiting time, loading and unloading time); 3) increase in financial compensation (for work and rest periods); 4) compulsory initial and ongoing training, and; 5) the retirement system for drivers.

Some of the latest amendments to the Law on Protection at Work in **Croatia** have served to transpose Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

On another front, for information purposes, Croatia has begun to align its legislation on the requirements for tyres, weights and sizes of vehicles, roadworthiness tests and safety belts. As regards roadworthiness tests, Directive 96/96/EC and the subsequent adaptations to technical progress (Directives 1999/52/EC, 2001/9/EC, 2001/11/EC and 2003/27/EC) have been incorporated into the Law on Road Safety and into a number of municipal regulations, such as those on roadworthiness tests for motor vehicles. In terms of the tests to be carried out on commercial vehicles, in particular to control emissions of exhaust gases, Croatia has not yet taken action, therefore impeding the correct implementation of Directive 2000/30/EC adapted to technical progress by Directive 2003/26/EC. Croatian legislation is only partially aligned in the area of speed control devices and the necessary technical data for the registration documents. As regards initial qualification and ongoing training of drivers pursuant to Directive 2003/59/EC, so far there is no periodic training for professionals in Croatia. The safety requirements for tunnels established in Directive 2004/54/EC have not yet been incorporated into national legislation.

Italy has a number of standardised risk assessment procedures for enterprises with less than 10 workers, which are also applicable to companies with between 10 and 49 workers pursuant to a Ministry of Labour decree. Although not legally binding, the central government and regional governments have adopted some useful guidelines in areas like for example the training of workers' and employers' health and safety representatives. In this respect, the National Institute for Insurance against Accidents at Work has significantly increased (up to 205M €) the resources to co-finance projects presented by employers to promote certification in the area of health and safety, and to support their investments in occupational health and safety. A total of 4,000 projects have been financed, 90% of which in companies with less than 50 workers. The Ministry of Labour launched a campaign to combat occupational diseased with particular focus on muscle and bone disorders and respiratory diseases suffered by agricultural, mass distribution and transport workers.

Latvia pays close attention to regulating the risk caused by noise in the work environment. In this country, occupational health and safety requirements have been eased for enterprises with less than 10 workers operating in hazardous sectors.

Considerable changes have been introduced into the Labour Code of **Lithuania**, in an effort to improve the management of occupational health and safety in enterprises. The occupational health and safety card has been abolished and general duties of workers have been established so that, together with their employers, they make themselves responsible for ensuring health and safety in accordance with labour legislation. The Action Plan for Health and Safety at Work for the period 2011-2012, as the legal framework for occupational health and safety, has led to improvements in research, education, training, certification and the safety of workers in precarious jobs.

In **Luxembourg**, the Ministry of Labour has recently stepped up the fight against moral and mental harassment by approving the legal mechanisms to reinforce the protection of workers in the private sector.

Malta has amended its existing regulations to revise chemical exposure limits and to regulate fire drills and the responsibilities of employers with regard to the protection of pregnant wor-

kers. With regard to the application of health and safety legislation, the Occupational Health and Safety Regulations standardise the penalties for infringements of the Law on Occupational Health and Safety.

With **Portugal**, we should highlight its recent Law-Decree 24/2012, which consolidates the minimum requirements for protection of workers against health risks and safety due to exposure to chemical agents at work, which transposes Directive 2009/161/EU to national legislation. Portugal is currently concerned about the impact of the economic recession on health and safety at work.

In **Romania**, the Labour Inspectorate Office's functions have been increased and it is now also responsible for ensuring that enterprises comply with the occupational health and safety regulations. The penalty system has been toughened, and the penalties and fines to employers have been drastically increased, in particular for refusing access to information and documentation during inspections. Romania also has the Tripartite Advisory Council, which is an extension of the Labour Inspectorate Office.

Slovenia is the second country, only behind the United Kingdom, that has relaxed the EU's legal framework the most, given that it has not extended the scope of the European Union legislation on health and safety in the workplace.

In **Slovakia**, the obligation of employers to carry out joint annual controls of jobs was abolished. Employers were released of the obligation to provide occupational health services to employees performing jobs with lower occupational risks. Slovakia also modified the right of employees in certain occupations to prevention recycling services. For example, the required minimum participation of employees in prevention services was reduced from two weeks to seven days.

In **Finland**, the Ministry of Social Affairs and Health published a guide on suitable and hazardous jobs for young people between 14 and 18 years of age.

The **United Kingdom** is the least demanding EU Member State in occupational health and safety. In September 2012, the coalition government announced that inspections in this area would be confined to enterprises operating in high-risk sectors like construction, and to those with a history of poor results, reported incidents or employee complaints. By reducing the number of inspections by more than 10,000 per year, the government seeks to reduce the regulatory burdens on employers.

5. EMPLOYMENT CONTRACTS

The employment contract is the **central institution in labour law** and is defined as "*that through which a natural person, the employee, voluntarily undertakes to provide his or her paid services on an employee basis within the organisation and management realm of another person, called employer or businessperson*[169]**"**. In Spain, there is autonomy of will of the parties to establish a labour relationship. However, it is subject and required to observe the legal and regulatory provisions of the State and the collective agreements[170]. Therefore, the will of the parties manifested in an employment contract cannot establish terms and conditions that are less favourable or contrary to the legal provisions and collective agreements to the detriment of the employee. However, the will of the parties can improve these terms and conditions to the advantage of the employee and can also regulate aspects of the relationship that are not regulated in the legal provisions and collective agreements. Moreover, the employee is not allowed to waive his or her legally recognised rights in the framework of a contractual relationship[171]. Lastly, it is worth remembering that the principle of respecting the most advantageous condition acquired by the employee affects the relationship between private autonomy and general regulation in labour matters. Thus, an employee who enjoys certain working conditions stemming from an individual agreement between the parties or from a unilateral concession by the employer, and those conditions are subsequently regulated in less favourable terms, has an acquired right with supremacy and maintains the previous conditions.

Depending on their duration, employment contracts can be **permanent** or they can also be temporary or **fixed-term**. It is worth highlighting that the Workers' Statute provides that employees hired on a temporary basis under two or more employment contracts for a period of more than 24 months within 30 months acquire the status of permanent employees[172]. Of these temporary employment contracts, we can distinguish the following types: contracts for specific works or services; contracts to deal with possible or conjunctural contingencies caused by market circumstances; contracts due to an accumulation of tasks or an increase in orders; and contracts to fill temporary vacancies due to temporary leave or absences by employees who preserve their right to return to work under a law, a collective agreement or an individual agreement. Unless otherwise agreed, an employment contract is considered to be indefinite and on a full-time basis. In fact, the parties are allowed to agree to fewer working hours than the standard in the activity or the legal maximum (such as in the case of the standard part-time employment contract, but also in the situations provided for in the Workers' Statute relating to semi-retirement by an employee and to the relief contract to replace semi-retired employees after reaching the established age).

Furthermore, the object of employment contracts can also be **training**. In this case, a distinction should be drawn between work-experience contracts, apprenticeship contracts, and especially regulated training contracts. Apart from these, there are contracts for permanent discontinuous jobs which, although permanent, are performed on a periodic and discontinued basis with interruptions of varying lengths and are governed by specific regulations, as well as other

[169] Antonio Martín Valverde, Fermín Rodríguez Sañudo Gutiérrez and Joaquín García Murcia, *Derecho del Trabajo*, Tecnos Publishing House (2013) 22nd edition, pages 502-503.
[170] Article 3.1 of the Workers' Statute.
[171] Article 3.5 of the Workers' Statute. However, although the Workers' Statute allows collective bargaining to determine aspects of the legal framework of the different employment contracts, this seldom happens in road transport collective agreements. The General Agreement on the Carriage of Goods by Road does not refer to specific types of contracts. National Advisory Committee on Collective Agreements, *La negociación colectiva en el sector del transporte por carretera* (2005), page 23.
[172] Article 15.5 of the Workers' Statute.

types of contracts like the telework contract and the group contract.

The Spanish legal system is characterised by freedom of form of employment contracts. Unless the law or the parties require at any given time that it be established in writing, in principle the parties may enter into the employment contract in writing or verbally[173]. Employment contracts that must be entered into in writing include fixed-term contracts with a term of more than four weeks, work-experience contracts, apprenticeship contracts, training contracts, part-time contracts, permanent discontinuous contracts, relief contracts, contracts for specific works or services, contracts for telework workers and contracts for workers hired in Spain at the service of Spanish companies abroad[174]. Furthermore, the employer is required to supply the workers' legal representatives with a basic copy of all the contracts that must be entered into in writing[175]. **Directive 91/533/EEC establishes the employer's obligation to inform employees in writing of the conditions applicable to the contract or employment relationship.** This Directive was transposed to the Spanish legal system. The above-mentioned obligation is established in article 8.5 of the Workers' Statute and its implementation regulations are laid down in Royal Decree 1659/1998 of 24 July, although its effects are confined to contracts with a term of more than four weeks (an exception allowed under the Directive). From the start date of the labour relationship, the employer has up to two months to supply the employee, by means of the written employment contract, a letter of employment, or one or several written documents, with an assortment of essential information[176].

The Spanish legal system leaves to the discretion of the parties the possibility of including a **trial period** in the initial stage of the employment relationship. If they decide to do so, the agreement must be established in writing[177]. The duration limits of the trial period are normally specified in the applicable collective agreement, otherwise the general rule is that it should not exceed six months for qualified technical staff or two months for other staff[178]. During the trial period, either party may terminate the employment relationship by simply communicating the decision to the other party. Other agreements that may be included in an employment contract are: full dedication during the employment relationship[179], post-contract non-competition[180]

[173] Article 8.1 of the Workers' Statute.

[174] Article 8.2 of the Workers' Statute.

[175] Article 8.3 of the Workers' Statute. Before, some collective agreements applicable to the carriage of goods by road established that employment contracts should be entered into in writing, but it seems that such provisions have now disappeared. Such was the case in the collective agreements applicable to the carriage of goods signed in Guadalajara, Cuenca and Ciudad Real. But generally collective agreements applicable road transport, of both goods and passengers, don't regulate the form. In passenger transport, the norm is to refer to that established in the applicable legislation. In haulage, the norm is to find referrals to that established both in the Workers' Statute and in the General Agreement on the Carriage of Goods by Road, requiring the contract to be in writing when so established in the law or requested by either party to the contract. National Advisory Committee on Collective Agreements, *La negociación colectiva en el sector del transporte por carretera* (2005), pages 23 and 178.

[176] These are: the identity of the parties; the place of work; the title, grade, nature or category of the work, a brief specification or description of the work; the date of commencement of the employment contract; in the case of a temporary employment contract or relationship, the expected duration thereof; the amount of paid leave to which the employee is entitled or the procedures for allocating and determining such leave; the length of periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or, otherwise, the method for determining such periods of notice; the basic salary amount, the other component elements and the frequency of payment of the remuneration to which the employee is entitled; the length of the employee's normal working day or week, and; where appropriate, the collective agreements governing the employee's conditions of work.

[177] Article 14.1 of the Workers' Statute.

[178] Article 14.1 of the Workers' Statute.

[179] i.e. that the employee shall only work for the employer with whom he or she has signed the contract.

[180] Article 21.2 of the Workers' Statute confines the temporal effects of this agreement to two years for technical personnel and six months for other personnel. Also, the validity of this agreement is subject to two requirements: industrial or commercial interest by the employer and that the employee receives adequate financial compensation.

and the employee's continuation in the enterprise after receiving specialised professional training, for a period not exceeding two years.

In Spain, the minimum working age is 16, though parental authorisation is required for workers under the age of 18 who are not yet emancipated. Nevertheless, the main human capital of a road transport enterprise is its drivers (for example, in Italy, 72% of road haulage workers are drivers, whilst in France the percentage is 69% and in the United Kingdom 64%)[181]. In this respect, a driver must be in possession of the necessary driving licence to perform his activity. The minimum ages for obtaining the necessary licence are established in Royal Decree 818/2009 on the General Regulations on Drivers, **with the minimum being 18**. Directive 2012/36/EU on driving licences has introduced changes in the minimum ages for obtaining certain licences, although they can be reduced for some licences if the individual is in possession of the certificate of professional competence (CPC) established in Directive 2003/59/EC, transposed to our legal system by Royal Decree 1302/2007 of 20 July.

Table 15 – Types of driving licences and minimum ages

Type of licence	Description	Minimum age
C1	Haulage vehicles between 3,500 and 7,500 kg	18
C1+E	Haulage vehicles in category C1 where the combined weight of the vehicle and the trailer with full load does not exceed 12,000 kg. Vehicles in category V with trailer of more than 3,500 kg and where the combined weight of the vehicle and trailer with full load does not exceed 12,000 kg.	18
D1	Passenger vehicles with seats for between 8 and 16 persons	21
D1+E	Passenger vehicles in category D1 with a trailer	21
C	Haulage vehicles of more than 3,500 kg	21 (18 if holding the CPC)
C+E	Haulage vehicles in category C with trailer (includes articulated lorries)	21 (18 if holding the CPC)
D	Passenger vehicles with seats for more than 8 persons	24 (21 if holding the CPC)
D+E	Passenger vehicles in category D with a trailer	24 (21 if holding the CPC)

Source: prepared by the authors

As mentioned above, the road transport sector is characterised by its high percentage of self-employed workers. In principle, this category of workers is not bound by a labour relationship with the employer; otherwise they would be Economically Dependent Self-employed Workers, whose numbers are estimated to be as high as 50% of the self-employed drivers in the EU-28[182]. Consequently, they are governed by a provision of services relationship. Given that this part of the study focuses on the employment of workers on an employee-basis, self-employed workers are excluded here.

We will now explain the main aspects of employment under the labour laws of the other EU countries, with particular reference to the sector analysed in this study. The types of employment contracts used in the EU Member States are very similar to those of Spain, with hardly any

[181] European Parliament, *Shortage of qualified personnel in road freight transport* (European Union, 2009), page 45.
[182] European Parliament, *Social protection rights of economically dependent self-employed workers* (European Union, 2013), page 59.

differences. Furthermore, given the above-mentioned Directives 2003/59/EC and 2012/36/EU, the above table showing the types of driving licences and the minimum driving ages would also be applicable to the other Member States. The following table summarises the situation in the EU-28, showing whether or not there is freedom of contract form in each country, the minimum duration of the trial period and the minimum age for entering into a contractual relationship.

Table 16 – System of employment in the EU-28

Country	Form	Trial period	Minimum age*
AT	Unrestricted (apprenticeship contracts in written form)	≤ 1 month	15
BE	Unrestricted (except certain specific contracts)	-	18 (unless with parental authorisation)
BG	Written	≤6 months	16
CZ	Written	≤3 months	15
DK	Unrestricted	-	18 (unless with parental authorisation)
DE	Unrestricted (fixed-term contracts in written form or they will be considered permanent)	≤6 months	18
EE	Unrestricted	≤4 months (no trial period if not established in the contract)	18 (conditions and formalities for minors)
IE	Unrestricted	As per that established in the contract	16
EL	Unrestricted (except part-time contracts for the trial period)	-	16
ES	Unrestricted (unless the form is imposed by law or the parties)	The will of the parties, but without exceeding two months (for technical staff) or six months (for other staff). No prior notice is required.	16
FR	Unrestricted, but non-written contracts are considered permanent and full time.	-	16
HR	Written	≤6 months	15
IT	Unrestricted (although certain contracts must be in writing for purposes of the trial period)	Different according to level: senior level 1 staff (6 months), level 1 staff (4 months), level 2 staff (3 months), drivers (2-3 months, depending on category of vehicle) and other staff (10 days)	16
CY	Unrestricted	≤26 weeks, extendable to 101 weeks by written agreement.	15
LV	Written	≤3 months (no trial period if not established in the contract)	15
LT	Written	≤3 months	14
LU	Unrestricted	2 weeks-6 months	18
HU	Written	In principle ≤30 days but the parties may extend it to 3 months and collective agreements to 6 months	16
MT	Unrestricted	≤6 months	16
NL	Unrestricted	≤2 months	16 (although with restrictions on working hours and types of jobs)
PL	Written	No trial periods (in practice, contracts are signed for just three months)	18 (although there are ways of hiring minors between 16 and 18 years of age)
PT	Unrestricted (except certain contracts that must be in writing)	60 days (or 90 days in enterprises with less than 20 workers, 180 days for technical staff and 240 days for management and senior staff	16
RO	Written (otherwise it is considered permanent)	30-90 days	16
SI	Written	≤6 months	15
SK	Written	≤ 3 months	15
FI	Unrestricted	≤ 4 months	15
SE	Unrestricted	≤ 6 months	15
UK	Unrestricted	≤3 months	14 (although only light jobs until the age of 16)

*For the job of driver, according to that established for each licence, but generally ranging from 18 to 24 years of age, although the minimum age for certain licences may be reduced if the person holds the CPC.

Source: prepared by the authors

The minimum working age in **Austria** is 15, although there are special laws protecting minors under the age of 18. Austria has the same types of contracts as Spain, but the most common is the permanent contract and, incidentally, it also has minimum employment contracts (called *geringfügig Beschäftigte*, where the monthly salary cannot exceed 395.31€ in 2014). The general rule is that the trial period shall not exceed one month. If the parties agree to establish a longer trial period, the following may take place: the first month shall be the trial period and the remaining term of the contract shall be considered fixed term, if the parties decide that the contract can be terminated at any given time during the agreed long trial period; if the right to terminate the contract during the trial period is excluded, it shall be understood that the contract is for a fixed term; and if the employee was hired on a trial basis without specifying the duration, it shall be understood that the first month is the trial period and thereafter the employee acquires the status of permanent employee.

In **Belgium**, people under 18 years of age may only work with parental authorisation. A distinction used to be made between manual and administrative workers, but that was abolished in July 2013. The types of contracts do not differ from those in Spain. **In the specific case of road freight transport, the open-ended or permanent contract is the benchmark**[183]. Depending on the region where they are entered into, employment contracts shall be written in the appropriate language (Flemish, German or French)[184].

Contracts may be written or verbal. However, some contracts must be in writing: fixed term, telework or with students. Some terms and conditions must be established in writing to be valid (non-competition clauses and prior notice periods). In Belgium, most of the compulsory employment conditions are established by law and collective agreements (termination of the contract, working time, minimum salary, etc.). Furthermore, minimum salary conditions are also established by collective agreement. In this respect, the collective labour agreement of 27 January 2005, ratified by Royal Decree of 10 August 2005, establishes the working conditions and the salaries of mobile road workers[185]. The Joint Committee for Transport (CP No. 140), made up of an equal number of 32 road transport workers' representatives and employers is in charge of administering the collective agreement. Since January 2014, there are no trial periods for contracts signed in Belgium after that date.

In **Bulgaria**, employment contracts must be established in writing prior to the employment start date[186], and must specify the place of work, the type of job and the remuneration[187]. The other terms and conditions of the contract can be negotiated in writing. Before the employment start date, the parties must have a signed copy of the contract and of a certificate confirming that the contract has been registered with the national fiscal department[188]. The types of contracts are similar to those in Spain, and the most common one is the open-ended or permanent contract. If the parties do not agree the term of the contract, it is understood that the contract is open-ended or permanent and cannot be turned into a fixed-term contract unless the employee agrees to this in writing. The term of fixed-term contracts may not exceed three years, and they become permanent or open-ended if the employee continues in the job at least five more days after the expiry date of the contract and the employer does not object. If contracts include a trial period, the length of the trial period may not exceed 6 months.

[183] Comité National Routier, *Le transport routier de marchandises belge* (2013), page 40.
[184] For example, in the specific case of the Brussels region, the employer must provide a copy of the contract in the employee's mother tongue (French, Flemish or German).
[185] Ibid, page 42.
[186] Article 62.1 of the Labour Code.
[187] Article 66 of the Labour Code.
[188] Article 62.3 of the Labour Code.

In the **Czech Republic, employment contracts must be in writing otherwise the Czech administration may impose a fine of approximately 400,000€**. The norm is for contracts to be open-ended or permanent, but temporary contracts are proliferating (without exceeding two years and with a space of six months between the end of a contract and the start of a new one). The contract must specify the type of job, the place of work and the start date. Furthermore, the employee must be informed in writing of the conditions established in Directive 91/533/EEC within one month of the start of the employment relationship. Contracts may not contravene that established in the Labour Code with regard to minimum salary, periods of annual leave and minimum salary for extra hours.

In fact, there is also a minimum salary established by ministerial decree which employer must observe. Furthermore, employers must adhere to that established in the collective agreements given that they tend to establish the salary increase after a certain period of service, the reduction of working hours without a salary cut, the increase in certain bonuses (for night work, extra hours, weekend work, etc.) or the increase in the number of days of leave per year. If the contract includes a trial period, it shall not exceed three months. The Labour Code establishes that the labour relationship shall unfold observing the confidentiality of the enterprise and that the employee shall not work for the competition simultaneously. With certain exceptions, contracts may include a clause impeding the employee from performing tasks for a competitor within a maximum of twelve months after the termination of the labour relationship.

In **Denmark** there is freedom of contract form, though a written contract or other means of proof is required for jobs lasting more than one month and with working hours of more than eight hours per week. In any case, in Denmark practically all aspects of employment contracts are covered by collective agreements. Therefore, **contracts must make reference to the working conditions already established in each collective agreement**. Employers are required to inform the employee of these conditions in writing. Because everything is covered by collective agreements, contracts must provide the reference of the collective agreement and the parties have little autonomy to negotiate. To be able to employ people, enterprises must be registered in the country's Companies' Register, and there is a special register for foreign companies. There is no general rule on the trial period, but the maximum duration is three months with a prior notice period of 14 days.

The most common type of employment contract in **Germany** is the open-ended or permanent full-time contract, although the number of fixed-term or temporary and part-time contracts has increased in recent years. If the contract is not established in writing, the Law on Notification of Conditions governing an Employment Relationship (*Nachweisgesetz*) requires the employer to supply the employee with a written and signed document advising him or her of the main employment conditions within one month of the agreed employment start date. When entering into employment contracts one should bear in mind the large number of employment protection regulations establishing the minimum holiday period (20 days or four five-day weeks), working hours (eight hours/day), notice periods (which increase according to the years of service) and paid leave (six weeks).

In **Estonia**, the mere fact that a person is working for another in exchange of pay automatically means that there is a contract, and the terms and conditions established in the country's law on employment contracts **(Eesti Vabariigi töölepingu seadus)** are applicable.

The minimum working age in **Ireland** is 16, but 18 year olds may not work more than 40 hours per week or more than eight hours a day, except in emergency situations. More than in other

EU countries, in Ireland there is a clear distinction between employees and self-employed workers. Nevertheless, it is normal practice for the employer to offer both options to the worker. Besides the types of contracts mentioned above, there are also contracts for casual workers (Irish labour law does not define this type of workers, but they work without fixed hours or attendance arrangements). Irish law considers that anyone who works for another in exchange of a regular and periodic wage has an employment contract. However, the employer must supply the employee with a written certificate specifying the basic employment conditions within a period of two months of the employment start date[189]. Contracts may not contravene the country's regulations on minimum wages, prior notice periods (which vary according to the employee's length of service: the longer the length of service, the longer the notice period), daily and weekly rest periods and periods of paid leave. Contracts may establish a trial period, which may be renewed.

People under 15 years of age are not allowed to work in industrial plants in **Greece**, unless they have parental authorisation or the employer guarantees safe working conditions. Therefore, people who join enterprises are normally over 16 years old with practical training. Open-ended or permanent full-time contracts are the most frequent, whilst part-time contracts are not as common. Fixed-term contracts must establish the duration. Other types of contracts in Greece include: the contract for specific works, the contract for provision of independent services (where the worker is not subject to control by the employer), the association contract, and the representation contract. The trial period in open-ended or permanent contracts may not exceed 12 months[190]. Fixed-term contracts may be renewed up to three times, but their duration may not exceed two consecutive years otherwise they become open-ended contracts[191]. All private-sector employers must hire workers through the State Employment Agency (OAED), unless the employer communicates the recruitment to the agency. There is also freedom of contract form, although part-time contracts must be entered into in writing for proof purposes. Presidential Decree 156/1994[192] requires employers to inform employees (either by means of the written contract or another document, otherwise the employer may be fined), within two months of the employment start date, of the conditions provided for in Directive 91/533/EEC. Employees are required to observe the confidential nature of the enterprise's information, and a non-competition clause may be included in the contract, impeding the employee from performing tasks for a competitor during a reasonable period following the termination of the labour relationship.

The minimum working age in **France** is 16, although people under 16 are allowed to work in certain instances (family businesses, during the school holidays or under apprenticeship contracts). The most frequent contracts in France are open-ended and fixed-term contracts. The latter are used to substitute absent employees, cover changes in the activities of an enterprise and in seasonal jobs. Their maximum duration is 18 months, but employers have to an extra 10% of the ordinary salary as a bonus for job insecurity. Other existing contracts are apprenticeship contracts, temporary contracts, intermittent contracts (in sectors where commercial activity fluctuates over the year) and there is also a special limited duration contract for people over the age of 57 who need to work the time necessary to be able to claim the retirement pension for people who have worked full time.

[189] See the laws on information of employment conditions of 1994 and 2001, where it says that such conditions shall include pay, hours, holidays, periods of paid leave and notice period.
[190] Article 74(2)(A) of Law 3863/2010.
[191] Article 5 of Presidential Decree 81/2003.
[192] Transposition of Directive 91/533.

In **Croatia**, the norm is for contracts to be open-ended or permanent, but the law justifies exceptions for fixed-term contracts. The employer is required to advise a national body of the contract, and to supply a copy of the report to the employee within 15 days of the date of the employment contract. In compliance with Directive 91/533/EEC, Croatian labour law provides that the elements contained therein must be specified in the contract. Although the parties can negotiate many aspects of the contract, certain conditions are obligatory: minimum working age of 15, employees between 15 and 18 years of age are not allowed to work extra hours, women are not allowed to work night shifts, minimum annual holidays of four weeks, employees who work more than six hours a day must have a daily rest period of at least 30 minutes, etc. There are specific regulations for employees posted to other workplaces or abroad. The trial period is agreed by the parties, but may not exceed six months. The prior notice period for dismissal during the trial period is seven days.

The general framework of employment in **Italy** is regulated by Law No. 30 of 14 February 2003 (subsequently amended by Law No. 247 of 24 December 2007), as well as the Constitution, the Civil Code, the Labour Code and various laws and decrees. Temporary contracts are established in writing, cannot exceed 36 months and can only be renewed once. The **use of new contingent contracts in the Italian transport sector has recently become widespread**[193]. On the one hand, there is the shared contract, which must be in writing and under which two or more employees share the same function in an enterprise. And on the other, there is the demand contract, which is of an intermittent, fixed-term or open-ended nature and must also be in writing. However, this contract is only for people under 25 or over 45 years of age. Furthermore, 20% of the basic salary is determined by the collective agreement. Other contracts whose use has become widespread in recent years are the labour-market integration contract, the part-time contract and the multiple-task contract (under which one or more employees are assigned different functions to those established in the original contract, provided that the workplace is not located further than 50 kilometres from the original workplace).

In **Cyprus**, the open-ended or permanent contract is the most frequent. With fixed-term contracts, the law establishes that if an employee works for the same employer for 30 weeks, the contract automatically becomes open-ended or permanent unless the employer can justify that the contract should continue to be for a fixed term. There is also a law that regulates the posting of workers in the context of the provision of services, which establishes that the employment conditions of workers posted to Cyprus by enterprises with head office in the EU must be the same as those applied in the country. Contracts in Cyprus do not have to be in writing, but the employer is required to supply certain information to the employee in writing (even if the contract is verbal)[194]. Notice periods, right to annual leave, all the emoluments to which the employee is entitled and the timeframes for paying them are minimum employment conditions to be observed by employers when entering into employment contracts.

It is important to highlight that, although not obligatory, in **Latvia**, the law on the official language of 21 December 1999 recommends that contracts are written in Latvian or that a Latvian copy is available. The general rule is that contracts shall be open-ended or permanent, unless the country's labour law allows entering into fixed-term contracts, which in any case may not exceed three years (including extensions). All new employment contracts with the same employer are considered extensions if an interruption of 30 consecutive days has not taken place between the start of the previous contract and the start of the new one[195]. It is worth noting

[193] Comité National Routier, *Le transport routier de marchandises italien* (2010), page 40 and following.
[194] Basically, those established in Directive 91/533.
[195] Article 45 of the labour law of 20 June 2001.

that if neither party to a fixed-term employment contract requests the termination of the contract and the labour relationship continues, the contract automatically becomes open-ended or permanent. The trial period may not exceed three months, but it must be established in the contract otherwise it shall be understood that there is no trial period. Contracts with people under 18 years of age may not include trial periods. An employer may dismiss an employee during a trial period without giving a reason, but the employee may take the employer to court if he or she feels that the employer has treated him or her unfairly, in which case the burden of proof lies with the employer.

In **Lithuania**, open-ended or permanent contracts are the most common. The maximum duration of fixed-term contracts is five years, whilst temporary contracts cannot exceed two months. The trial period is agreed by the parties, but cannot exceed three months. There is also a multiple-job contract, under which an employee has a labour relationship with several employers. An employer may dismiss an employee at no cost before the last three days of the trial period (which cannot exceed three months) by giving written notice. The minimum working age is 14, but people between the ages of 14 and 18 cannot perform jobs classed as risky or hazardous.

In **Luxembourg** there is freedom of contract form, but certain basic elements of the contractual relationship must be established in writing, [196]such as the trial period and non-competition clauses. In any case, the norm is for contracts to be in writing, given that with a verbal temporary or fixed-term contract, an employee could allege that it is open-ended or permanent. Open-ended or permanent contracts are the most frequent. Contracts tend to concluded before the employee starts working or, at the latest, on the first day of work. Contracts are signed in duplicate, with one copy for each party. Depending on whether the contract is part-time or fixed-term, it may be necessary to add other elements in the written contract (duration, name of the employee being replaced, length of the trial period, possible renewal, etc.). Fixed-term contracts may not exceed 24 months (including renewals, which there can only be two and provided that the contract provides for them). The trial period is agreed by the parties, but cannot be shorter than two weeks or longer than six months. In accordance with the law, the Employment Agency (ADEM) shall be informed of all recruitments and involved in the recruitment processes. However, in practice this rarely happens. The Labour Code[197] establishes certain obligatory aspects whose minimum conditions cannot be reduced: salary, paid holidays, public holidays, working hours, rest periods and maternity leave. The minimum working age is 18, although there are certain requirements for allowing people under the age of 18 to work.

The labour law in **Hungary** provides for three types of contracts applied to the road transport sector: open-ended or permanent, fixed-term and temporary[198]. The term of fixed-term contracts may not exceed five years (including extensions and new contracts between the parties within the first six months of the initial contract). However, official approval may be applied for to extend the term beyond five years. During the aforementioned five-year period, the contract may be automatically renewed in writing, unless the renewal undermines the interests of the employee. In such a case, the courts may classify the contract as open-ended or permanent. Unless otherwise established in the contract, the trial period may not exceed 30 days. In any case, the parties may reduce the trial period or extend it to a maximum of three months. However, the trial period may be extended from three months to a maximum of six months under a collective agreement. The trial period must be established when the contract is signed and cannot be subsequently changed.

[196] Basically, those provided for in Directive 91/533.
[197] Article L-010-1.
[198] Comité National Routier, *Le transport routier de marchandises hongrois* (2013), page 35.

The labour law in **Malta** establishes that if the work period exceeds one month and the working hours exceed eight hours per week, the employer is required to supply the employee, within a period of eight working days after the employment start date, with: (i) a written employment contract, or (ii) a written declaration of the minimum conditions offered to the employee. Such information is expected to include basic elements such as: salary rates, extra hours, working hours, place of work and the right to take leave. Employment contracts can be fixed-term or open-ended. A fixed-term contract may be successively renewed up to a maximum duration of four years, and thereafter the contract shall be considered open-ended or permanent. An exception to this is when the employer has sufficient reasons to keep the employee on under a fixed-term contract. An employee whose fixed-term contract has expired and continues working is also regarded as having an open-ended contract if the employer does not offer the employee a new contract within 12 days of the expiry date of the previous contract. The trial period is six months, unless the parties agree a shorter period. With jobs requiring more qualifications, the trial period is one year. If the job has lasted more than one month, the contractual relationship may be terminated by either party during the trial period by giving one week's prior notice.

In the **Netherlands**, the most frequent contracts are open-ended or fixed-term. It is quite common to start with a six-month or one-year contract, although they can be extended under certain conditions. Contracts may be written or verbal, though it is recommended that certain conditions appear in writing, whist others must obligatorily be put in writing. It is understood that employer and employee shall carry out their functions in a respectful manner. Employees are entitled to a minimum salary and to a minimum holiday period (20 days/year for full-time employees working 40 hours per week). It is worth highlighting that, within a period of three years, an employer can enter into up to three fixed-term contracts with the same employee. If more than three contracts are entered into by the same parties with interruptions not exceeding three months or if the term of the contract exceeds three years, the employee shall be regarded as having an open-ended or permanent contract. The trial period is agreed by the parties, but may not exceed two months.

In **Poland**, the most common contracts are open-ended or permanent. For example, in Poland it is rare to find international freight transport drivers without an open-ended or permanent contract[199]. There is no trial period, and therefore contracts not exceeding three months are an option. In this sector, fixed-term contracts are used as a trial period and thus new drivers are initially employed for a period of two to three years. Fixed-term contracts are frequent but the Labour Code does not establish a maximum term for them. In any case, it is worth knowing that three consecutive fixed-term contracts without interruption turn the worker into a permanent employee. If there is a space of 30 days between each contract, the contract may be renewed. Other existing variations of this type of fixed-term contract under Polish labour law are the substitution contract and the execution of a specific task contract.

The hiring of road transport workers in **Portugal** does not differ from that established in the country's Labour Code[200]. However, there are a number of specific requirements to join this sector. The vast majority of collective agreements establish that workers must have reached the minimum legal age to work (16) according to the category, have the minimum qualifications and the professional card (where necessary),[201] as well as meet the requirements to work in the sector[202]. Most contracts do not have to be in writing, but certain contracts must be in writing and

[199] Comité National Routier, *Le TRM Polonais* (2012), page 47.
[200] See articles 139 and following of the Portuguese Labour Code.
[201] i.e. certificate of professional competence to be a driver.
[202] i.e. the collective agreement between the employers' association ANTRAM and the trade union SITRA mentions the possibility of admission exams: http://www.sitra.pt/assets/themes/default/files/CCT_ANTRAM_SITRA.pdf

have the signature and identification details of the parties[203]. Furthermore, the Labour Code establishes requirements with regard to minimum salary, minimum employment conditions, holidays, duration of the employment, termination, etc. Collective agreements are very present in Portuguese labour law, and their provisions may be excluded from an employment contract establishing more advantageous conditions for the employee. Although collective agreements and employment contracts can reduce them, Portuguese legislation establishes the trial periods for fixed-term and open-ended contracts. Thus, Decree-law No. 403 of 16 October 1991 establishes that the trial period shall be 60 days (or 90 days for enterprises with less than 20 employees), 180 days for very technical jobs and 240 days for managerial and top-level jobs.

The minimum working age in **Romania** is 16; though people aged 15 can work with parental authorisation in jobs suitable for minors. The minimum age for difficult or hazardous jobs or those exposed to risks is 18. Contracts are established in writing before the employment start date, and must be registered in the General Register of Workers' Data, which is responsible for sending the details of the contracts to the respective territorial Labour Inspectorate[204]. The Labour Code defines the minimum employment conditions, and no others may be established unless they are more advantageous for the employee. The employer must inform the employee before the employment start date of certain working conditions established in Directive 91/533/EEC. The most common contracts are open-ended or permanent. There are also fixed-term contracts with a maximum term of two years, which can be renewed up to three times within that period. Thereafter, the parties may only conclude an open-ended or permanent contract. Depending on the job, the trial period ranges from 30 to 90 days (the latter for managerial jobs, whilst the former is applicable to more general jobs). However, there are restrictions on fixed-term contracts, such as that the trial period for three-month fixed-term contracts may not exceed five days.

The 42/2002 Law on Labour Relations of **Slovenia** regulates employment. Contracts shall be registered with the social security office within eight days of signing them. The trial period is agreed by the parties, but may not exceed six months and the prior notice period is seven days.

In **Slovakia**, employment is governed by the 2001 Labour Code and Law 5/2004 on Employment Services of 4 December 2003. The Labour Code establishes minimum conditions, but individual employment contracts can establish more advantageous conditions for the employee. Contracts must be concluded no later than the first day of work or they shall be void. The term of the employment contract is determined by the parties, but if the term is not specified, the contract shall be considered to be an open-ended or permanent contract. In any event, the term of fixed-term or temporary contracts may not exceed three years. The general rule is that fixed-term contracts can be renewed once in that three-year period, but with a space of six months between the previous contract and the new one. However, there are rules in the Labour Code allowing two-year renewals in special instances (enterprises with less than 20 employees, temporary substitutions or specific categories of workers). If an employee ends his three-year contractual relationship and continues working, it shall be understood that his or her contract is open-ended or permanent. The trial period is not obligatory and left to the discretion of the parties, though it may not exceed three months.

In **Finland**, employment contracts are generally open-ended or permanent. Part-time contracts are not frequent. Employment contracts must be concluded at the start of the contractual relationship. Although the Law on Employment Contracts allows freedom of contract form, it is

[203] i.e. contracts entered into with foreigners, part-time, fixed-term or pre-retirement contracts, among others.
[204] See Resolution 500/2011 on the General Register of Workers' Data.

recommended that contracts are concluded in writing for proof purposes. If the contract is not concluded in writing, the employer must supply the employee with the terms and conditions of employment in writing. These terms and conditions must adhere to that established in the Law on Employment Contracts, the Law on Working Hours, the Law on Annual Leave and the respective collective agreements (which contain numerous provisions on these aspects). The parties may establish a trial period, though it may not exceed four months. If training is given during a trial period, the length of the trial period may be longer but never more than six months.

In **Sweden**, a trial period of up to six months may be established, after which the contract becomes open-ended or permanent. There is freedom of contract form and, in fact, the vast majority of contracts are verbal. The employer must inform the employee of the employment conditions within the first month of employment and in writing.

In the **United Kingdom** people under the age of 14 may not be employed[205], but people between the ages of 14 and 16 are allowed to work in light jobs[206]. As well as the normal types of contracts, in the UK there are contracts like the zero-hours contract (where the number of working hours is not specified, and they are common among shop workers who are called to work as and when they are needed) and the key-time contract (used to employ people to work non-regular hours). Contracts do not have to be in writing, but the employer is required to supply the employee with a written certificate containing the information required under Directive 91/533/EEC within two months of the employment start date. Contracts must observe the established minimum salaries, as well as the maximum number of working hours and the daily and weekly rest periods. Trial periods are left to the discretion of the parties. If a trial period is included in the contract, the length is normally less than three months.

[205] Incidentally, as an exception to this rule, which is not very relevant to this study, is that children under fourteen years of age may be employed to work in farms with the supervision of their parents.

[206] There are also certain jobs that involve handling dangerous machines or selling products consumed by adults that are prohibited.

6. CHANGES IN THE TERMS OF EMPLOYMENT CONTRACTS

Whilst in force, the terms of employment contracts are subject to changes introduced by legal provisions, collective agreements or agreements of the parties[207]. However, such changes are sometimes brought about by unilateral decision of the employer as a result of his or her powers to organise and manage the work. In **Spain**, these changes may be of an individual or collective nature (when affecting at least ten employees in enterprises with less than 100 employees, ten percent of the employees in enterprises with between 100 and 300 employees, or to 30 employees in enterprises with more than 300 employees).

Article 41 of the Spanish Workers' Statute allows enterprises to agree to make substantial changes in the terms of employment contracts for economic, technical, organisation or production reasons. **The collective agreements applicable to the carriage of goods and passengers by road barely regulate this aspect (with the exception of the number of days' notice) and refer directly to that established in the Workers' Statute**[208]. A substantial change is considered to be a change that affects the working hours, time schedule, shift system, remuneration system, salary amount, work and performance system and job functions. Nevertheless, changes in the aforementioned areas do not always necessarily have to be substantial. The explanation for this lies in the unanimous judicial criterion that article 41 of the Workers' Statute refers to the fact that such changes need to be substantial and not that they are intrinsically substantial.

When an employee is advised of a decision to change any of the aspects listed above, he or she may:

- Accept the decision for the substantial change and adapt to the change.
- Challenge the decision for the substantial change in a labour court. In such a case, the judgement may hold that the change is justified or unjustified and, in the latter case, the judgement will recognise the employee's right to be reinstated under his or her previous terms of employment.
- Terminate the contract and receive compensation of 20 days' pay per year of service, up to a maximum of nine months' pay, if the employee was harmed by the substantial change.
- Request the termination of the contract in a labour court, if the substantial change was made without observing that established in the Workers' Statute and undermines the employee's dignity.

We will now briefly describe the ways in which the terms and conditions of individual employment contracts can be substantially changed unilaterally in the different EU countries.

Changes in the terms of employment of employees in **Austria** cannot be less advantageous than those established in the law, collective agreements and other types of professional agreements. All illegal or disadvantageous changes can be reported to the works council, the Chamber of Labour or the trade unions. If the employer unilaterally decides to change the employee's terms of employment for economic reasons (i.e. layoffs) or for reasons concerning the individual employee[209], the employer must provide the employee with a dismissal proposal for variation of the contract. The objective is not to terminate the employment relationship, but to change

[207] Antonio Martín Valverde, Fermín Rodríguez Sañudo Gutiérrez and Joaquín García Murcia, Derecho del Trabajo, Tecnos Publishing House (2013) 22nd edition, page 738.
[208] National Advisory Committee on Collective Agreements, La negociación colectiva en el sector del transporte por carretera (2005), pages 125 and 339.
[209] In which case, it must be demonstrated that the employee is detrimental to the enterprise's interests.

its terms and conditions. The dismissal proposal is regarded as a termination notice and, at the same time, an offer to change the content of the contract. If the employee accepts it, the employment relationship shall continue but subject to the new changes, whereas if the employee does not accept it, the employment relationship shall end. In both cases, the employee may take the employer to court, and the employer shall be required to justify the changes.

Belgium does not allow employers to unilaterally make substantial changes in the terms of employment[210]. Furthermore, clauses in employment contracts allowing employers to unilaterally make such changes are void[211]. In fact, Belgian case law points out that changes in the terms of employment mean an illegal termination of the contract when such changes are unilateral, final and not only affect substantial conditions, but also expressly agreed terms of employment[212]. Nevertheless, in some specific cases the courts have also accepted changes in terms of employment made unilaterally by employers when the changes were justified by economic reasons (i.e. a company reorganisation, provided that the changes do not go directly against a specific employee)[213].

In **Bulgaria**, the terms of employment contracts can be changed through a written agreement of the parties. Although the general rule is that substantial changes cannot be made unilaterally by the employer, there are some exceptions to the rule. Consequently, the employer may decide to increase the employee's salary or change the nature or the place of work for specific reasons[214]. But these exceptions do not affect basic terms like salary. On a temporary and exceptional basis, the working hours of all employees can be increased or reduced[215]. In situations of need due to unsurmountable problems, which Bulgarian case law regards as cases of force majeure, the employer may assign the employee functions that have nothing to do with the employee's qualifications. It is worth highlighting that the Bulgarian Labour Code does not regard as a change in the terms of an employment contract, instances where an employee is posted to another workplace of the same enterprise without changing the employee's functions, job or salary[216].

The **Czech Republic** allows changes in the terms of employment contracts when agreed by the parties. Changes in the type or place of work can only be made subject to the conditions established in the Labour Code[217]. Any changes in the details of the rights and obligations arising from an employment relationship shall be communicated by the employer to the employee at least one month in advance[218]. The employer shall discuss the reason for the transfer to another post with the employee in advance as well as the duration of the transfer, and where the employee's transfer is not in keeping with the terms of his or her employment contract, the employer shall provide the employee with a written statement of the reason for the transfer and its duration. The employer shall transfer an employee to another post in the enterprise for

[210] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2012), Belgium chapter.

[211] Article 25 of the Belgian Law on Contracts of 3 July 1978 (revised on 22 November 2011).

[212] Law Europe International, Employment Law Practice Group, *Belgium*.

[213] Ibid.

[214] Article 120 of Bulgaria's Labour Code allows an employer to temporarily assign to an employee, without requiring the employee's consent, a different job in the same enterprise or another, always within the same city or region, for a maximum period of 45 days in a same year (in the event of production needs) or during the length of a collective suspension of the labour activity by employees, but always in line with the employee's qualifications/training and health conditions.

[215] Articles 136.a and 137 of the Labour Code.

[216] Article 118.2.

[217] See articles 37 and 40-47 of the Czech Republic's Labour Code.

[218] These changes refer to details of the employer, type or place of work, duration of annual leave and the way it is determined, termination of the contract notice periods, salary and remuneration, collective agreements governing the labour relationship or posting to another country.

medical reasons (i.e. based on a medical certificate certifying that the employee cannot do night work), pregnancy or a judicial or administrative decision. The employer may transfer an employee to another post in the enterprise if the employee has temporarily lost the prerequisites for performance of the job, if the employee has been given notice of termination on one of the grounds laid down in the Labour Code or if criminal proceedings have been instituted against the employee in connection with his or her job. The employee's transfer to another workplace for a limited period is allowed. However, a permanent transfer to another workplace in the same enterprise requires the employee's consent, unless the transfer is justified by operational requirements of the enterprise. Nevertheless, the employee must return to his or her previous post and/or workplace when such reasons can no longer be justified or when the agreed period has expired, unless the parties decide to amend the employment contract. If the employee asks for a transfer to another post or workplace for justified medical reasons, the employer is required to agree to the transfer. Unless the transfer is for less than 21 working days, the employer is required to consult the trade union if the new post to which the employee is transferred is not in keeping with the employee's contract and the employee objects to the transfer.

In **Denmark**, the changes that employers are allowed to make in the terms of employment contracts are defined in the collective agreements and employment contracts, and any other change must be communicated to the employee within the period established for this purpose in the employment contract. In the specific case of working hours, the notice period may be shorter. In exceptional circumstances and for reasons of the enterprise's needs, an employee may be forced to accept temporary changes in his or her terms of employment, provided that the rules established in the legislation and the applicable collective agreement are observed. Given that collective agreements establish minimum salaries, unilateral changes in salaries by employers are very restricted. Salaries cannot be changed in piecework contracts. It is also difficult to change the salary conditions of employees paid on a commission basis, and prior notice is required. Changes in the type of work are also restricted, with employers not being allowed to make an employee's work more burdensome, change the nature of the work or undermine the employee's social image, as this would entitle the employee to terminate the employment contract and claim compensation from the employer. Transfers of employees to another workplace must be communicated to the employee in advance; otherwise the employee shall be entitled to leave his or her job without prior notice and claim compensation.

In **Germany**, the general rule for making substantial changes in the terms of employment is that the changes are agreed by the parties. If there is no agreement, the employer may use the so-called dismissal with the option of altered terms of employment ("*Änderungskündigung*"), i.e. a termination of the contract that includes an offer to continue working but under different terms of employment. The employee can either accept the offer, reject it, or –what tends to happen- accept it, and in the meantime submit the dispute to the courts so that they can assess if the changes are justified. If the change refers to the salary of one or several employees, German case law is very strict on this and only allows salary cuts in cases of company insolvency. In fact, according to German case law, it is easier to terminate an employment contract than to reduce an employee's salary[219]. Albeit in very few cases, employers are allowed to reserve the right to unilaterally change the terms of employment (very important in matters related to the different benefits and supplements paid to employees). However, it is very difficult to determine the validity of such clauses under German law. As a general rule, it could be said that the unilateral right to change the terms of employment cannot exceed 25% of an employee's remuneration.

[219] Jens Kirchner, Pascal R. Kremp and Michael Magotsch, *Key Aspects of German Employment and Labour Law* (Springer, 2010), page 149.

In **Estonia**, the terms of an employment contract may only be changed by agreement of the parties[220]. In any case, such changes must be in writing and attached to the original contract.

With the exception of changes required by law, changes in the terms of employment contracts in **Ireland** can only be made with the agreement of the parties or if the employment contract provides for them. If the parties agree, the changes must be communicated to the employee at least one month before the changes enter into force. However, Irish labour law makes a distinction between the terms of a contract and work practices. Changing the former requires the agreement of the parties and they refer to salary, working hours, sick leave or pension system; whilst the latter (for example, rest periods) can be changed unilaterally by the employer without the employee's consent, as it is considered reasonable for an employer to change such practices with a view to cutting costs or increasing the efficiency of the company. When for economic reasons an employer threatens an employee with dismissal if the employee does not accept a reduction in salary or working hours, the employee may give up his or her job and demand constructive dismissal[221]. However, in practice, constructive dismissal is always difficult to prove.

In **Greece**, changing substantial terms of an employment contract requires the employee's express or tacit agreement. If the employer unilaterally decides to make changes that harm the employee, under the Greek civil code[222] the employee can end the employment relationship and claim compensation.

Substantial changes in the terms of employment in **France** require a written agreement of the parties. Under the French Labour Code, the employer is required to follow a procedure consisting in sending to the employee a written formal offer of changes in substantial terms of employment (geographic move, salary, working hours), and the employee must be given one month to decide whether or not to accept the offer. The employee's failure to reply to the offer shall be understood as a tacit consent. If the employee rejects the offer, the employer may keep the employee on or dismiss the employee for the reasons specified in the formal offer, but never because of the employee's refusal to accept the substantial change in the terms of employment. However, an exception to this would be if the employee had previously given his or her consent (i.e. if the employment contract contained a clause on the posting of the employee).

In **Croatia**, employment contracts can only be changed in writing and with agreement of the parties. However, if the employment contract makes referrals to other sources to determine the contractual relationship (law, collective agreement, the enterprise's internal rules of procedure), any change carried out in accordance with such source shall be valid and binding on the parties. If the change is made in any other fashion, it shall neither be valid nor binding on the parties. Furthermore, an employee who considers that his or her rights have been violated may claim the compensation sums established in the event of termination of the contract.

Substantial changes in the terms of employment contracts in **Italy** are possible but in very limited cases. If the changes are established by law or collective agreement, they may only be for the better. However, if there is agreement of the parties, the changes can be for better or worse. Such changes may involve pay, the job (only for the better), the functions (only for the

[220] Article 12 of the Estonian Law on Employment Contracts (Töölepingu seadus) of 17 December 2008.

[221] This is a very typical mechanism in British labour law where an employee alleges that the behaviour of his or her employer forces him or her to resign (for example, if the employer stops paying the employee, demotes the employee, forces the employee to accept unreasonable changes in his or her work or allows harassment in the workplace).

[222] International Business Publications USA, *Business in Greece for Everyone: Practical Information and Contacts for Success* (International Business Publications, 2013), page 150.

better), the working hours, the place of work, the transfer of the job or the sale of the enterprise. For example, both parties may agree to turn a part-time contract into a full-time one, but the employer may not decide this unilaterally. Although not normally used, there is also the mechanism of the Solidarity Contract (introduced by Law No. 863 of 19 December 1984), under which an employer facing very serious economic problems can negotiate and agree a reduction in salaries and/or working hours with the trade unions.

In **Cyprus**, employers are required to inform employees of any changes in the terms of employment contracts within a period of one month. Such changes must be discussed and agreed by the parties before carrying them out. If the change gives rise to worse employment conditions, the employee may take the employer to court and allege that he or she was forced to resign from the job.

In **Latvia**, substantial changes in the terms of employment contracts can be made with the agreement of the parties. If the employee does not wish to continue the employment relationship due to such changes, the employer may give the employee written notice of the termination of the contract at least one month in advance. With pregnant women and based on a medical certificate, employers are required to ensure that the employee's working conditions and working hours shall not pose any risk to her, and the employee's salary may not fall below the employee's previous average salary.

In **Lithuania**, changes in the terms of employment contracts can only be made with the agreement of the parties, although temporary changes are allowed in exceptional and critical circumstances. Any change in the terms of employment unilaterally decided by an employer without the employee's written agreement must be justified by legislative changes or changes derived from collective agreements.

The legislation in **Luxembourg** is clear and allows substantial changes in the terms of employment contracts if there is an agreement of the parties. If there is no agreement, the employer is allowed to make unilaterally changes by following a specific procedure that requires the employer to communicate and justify the reasons to the employee within certain pre-established periods[223].

Hungary also only allows changes in the terms of employment if there is an agreement of the parties. If an employee goes back to work after doing military or civil service or after taking unpaid leave to look after a family member, the employer is required to make the employee a proposal to change the terms of the contract by observing the average salary increase for employees in the same category or, if there are no such employees, the employer's average salary increase. Furthermore, employees who return to work after a period of paternity/maternity leave may ask to have their working hours reduced by half until their children reach the age of three. In this case, the employer is obliged to amend the employment contract.

In **Malta**, new terms can be added to existing employment contracts. These new terms must relate to working hours, employee conduct, bonuses or internal regulations of the enterprise. Some enterprises do not make changes, but others include clauses in employment contracts under which the employer reserves much flexibility for making this type of changes. These changes are sometimes obligatory due to legislative changes (i.e. in health and safety at work).

The 431 Legal Notice of 2002 establishes that if there is no written contract, if the written contract does not provide all the information that the employer is required to supply the em-

[223] Article L.121-7 of Luxembourg's Labour Code.

ployee, or if the employee is posted abroad for more than one month, the employer is required to communicate the changes to the employee in a letter or a signed declaration at least eight working days before the changes enter into force. With non-written contracts or contracts not providing all the necessary information, the changes shall refer to aspects like the name, registration number and registered office of the enterprise[224], the employment start date, the trial period, the hourly pay, the pay per extra hour, the working hours, the frequency with which the salary is paid, holiday pay, leave pay, the duration of the job (if a fixed-term contract), the instances where the employee may be fined, the title, rank, nature or category of the job, the notice periods and the applicable collective agreement.

With posted workers, the changes would refer to the duration of the job abroad, the currency in which the job is paid, the salary allowances, and even the terms of repatriation. However, there is no obligation to communicate changes to the employee if such changes are motivated by legislative changes or the collective agreement.

Changes in employment conditions in the **Netherlands** are allowed if there is an agreement of the parties. In exceptional cases, unilateral changes by an employer are allowed when for good reasons. Whilst a reorganisation of the company to cut costs is not considered a sufficiently good reason, the employer is allowed to unilaterally decide to reorganise the company because of financial difficulties.

In **Poland**, all changes in the terms of employment contracts which have not been agreed by the parties in writing and/or by means of a notice of termination of the employment contract within a specific period amending the terms and conditions of employment and salary are void. In the latter case, the employee can provide the employer with a declaration accepting the new terms (and the new terms shall be applied to the employee when the period specified in the notice expires) or provide the employer with a declaration stating that he or she does not accept the new terms (and the contract shall be terminated when the period specified in the notice from the employer expires). However, we should stress that this declaration of non-acceptance from the employee must be made within the first half of the period specified in the notice. If the employee fails to make a declaration, it shall be understood that he or she accepts the new terms.

Portugal does not have special legislation governing substantial changes in the terms of employment contracts. It all depends on the specific term to be changed, i.e. reductions in working hours and salaries are only allowed in situations of economic crisis in the enterprise (due to market, structural or technological reasons, in the event of a catastrophe or other situations that have seriously affected the enterprise's normal activity), and only if such changes are the final solution to ensure the viability of the enterprise and the survival of jobs[225]. Another good example are changes in working hours, where the agreement of the employee is required if the previous working hours were agreed with the employee on an individual basis[226]. Downgrading the employee to a lower category requires the agreement of both parties and must be justified by an immediate need of the enterprise or the employee[227]. If the downgrading includes a wage reduction, the reduction must be analysed by the Ministry of Labour's Inspection Service (ACT-*Autoridade para as Condições do Trabalho*). However, all of this can be defined in more

[224] If there is no fixed address, it must be specified that the employee shall perform his or her activity in several places but the enterprise's registered office shall always be provided. If the enterprise does not have a registered office, the employer's address shall be provided.
[225] Article 298 and following of Portugal's Labour Code.
[226] Article 217 of Portugal's Labour Code.
[227] Article 119 of Portugal's Labour Code.

detail in the applicable collective agreement, which may establish other rules benefiting the employee.

In **Romania**, substantial changes in the terms of employment contracts are governed by the regulations: *Hotararea Guvernului* 38/2008 and *Ordonanta* 37/2007. The employer is required to communicate the changes in the employment relationship to the employee, and to the Labour Inspectorate, in writing within a period of five days.

It is interesting to note that in **Slovenia** any changes in the job title, the details of the type of job, the place of work, the term of the contract or the working hours (part-time or full-time), require the employer to cancel the contract and offer the employee a new contract for signing.

Slovakia only allows substantial changes in the terms of employment contracts if there is an agreement of the parties[228]. Nevertheless, an employee may be transferred to another post or workplace for medical reasons or due to pregnancy or a judicial or administrative decision[229]. The employee's consent is required if the employer intends to post the employee to another town/city away from his or her normal place of work or address[230].

In **Finland**, an employer is allowed to make changes –without agreement of the employee- such as turn a full-time employee into a part-time one, by justifying a possible dismissal, provided that the employer gives due prior notice to the employee. If the employee does not accept the employer's decision, the employment relationship shall end after the notice period.

Sweden allows employers to inform employees of certain changes in the terms of employment established in their employment contracts with a minimum notice period of one month. Such changes are allowed in the following: details of the employer, the employee and the place of work, duties and job, type of employment (fixed-term or open-ended), notice period or expiry date of the contract, salary and remuneration, working hours and holidays, applicable collective agreements and working conditions, if the employer decides to post the employee abroad for more than one month.

In the **United Kingdom**, the terms of employment contracts can be changed when required by law or case law, and as a consequence of negotiations between the enterprise and the employee representatives, provided that the regulations are observed. They can also be changed under an agreement between the employer and the employee. If an employer unilaterally decides to change an employee's employment contract, the employee may refuse to work under the new terms, complain and interpret the change as a termination of the contract, resign from the job and allege constructive dismissal[231] or submit the dispute to the courts. However, the employee must explicitly manifest his or her objection otherwise the employer may understand that the employee accepts the changes.

[228] Article 54 of Slovakia's Labour Code.
[229] Articles 55 and 56 of Slovakia's Labour Code.
[230] Article 57 of Slovakia's Labour Code.
[231] See the section on Ireland.

7. TERMINATION OF EMPLOYMENT CONTRACTS

In **Spain**[232], an employment contract may be terminated by agreement of the parties, a unilateral decision of one of the parties or due to circumstances that inevitably lead to the termination of the contract or make the termination advisable. This classification determines the rules to be followed, but this chapter gives more priority to employment contracts terminated by employers, i.e. dismissals of employees for reasons ascribable to them (disciplinary dismissal), on objective grounds (objective dismissal), for force majeure or extinction of the legal status of the employer. Some legal systems allow the suspension of employment contracts from the date the employer gives notice of the dismissal to the employee to the date the dismissal becomes effective. This is generally known as 'garden leave' and is not envisaged in Spain's legal system. However, an employment contract may be suspended if the employer has reasonable grounds to initiate an inquiry for breach of contract.

With individual dismissals employers are required to give the employee prior notice (as a general rule, 15 days)[233]. However, with **collective dismissals**[234] Spanish legislation establishes a special procedure. In general, the approval of a third party is not required to dismiss an employee, but with collective dismissals the employer can either reach an agreement with the works council or the restructuring would need to be approved by the labour authority. In Spain, there are certain categories of employees with special protection against dismissal[235]. Employees may only be dismissed for fair reasons. If an employee considers that his or her dismissal is void or unfair, he or she may submit the dispute to the labour courts. If the court upholds the employee's appeal and declares the disciplinary dismissal unfair, the employer may either reinstate the employee or pay the employee forty-five days' pay per year worked before 11 February 2012, and thirty-three days' pay per year worked after 12 February 2012, up to a ceiling of twenty-four months' pay. However, this ceiling is raised to forty-two months' pay if the employee was hired before 12 February 1996.

With objective dismissals, the employee is entitled to compensation. In particular, the employer is required to compensate the employee with twenty days' pay per year worked, with a ceiling of twelve months' pay[236]. If an objective dismissal is held to be unfair, the employer shall be re-

[232] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2014), Spain chapter; Antonio Martín Valverde, Fermín Rodríguez Sañudo Gutiérrez and Joaquín García Murcia, *Derecho del Trabajo*, (Tecnos Publishing House, 2013), 22nd edition, pages 778-840.

[233] As established in the Workers' Statute. The minimum prior notice period is established in the legislation. There are a few collective agreements in the carriage of goods by road that improve the notice periods and a few others in the carriage of passengers that regulate the notice periods, although always in the employer's favour. National Advisory Committee on Collective Agreements, *La negociación colectiva en el sector del transporte por carretera* (2005), pages 129 and 345.

[234] A collective dismissal is one that affects more than ten employees in enterprises with a workforce of less than one hundred employees; more than ten percent of the employees in enterprises with a workforce of between one hundred and three hundred employees; and thirty employees in enterprises with a workforce of at least three hundred employees. Another instance of collective dismissal is when more than five employees are dismissed due to cessation of activities.

[235] In particular, the dismissal of pregnant employees, employees on maternity, employees on leave to look after a family member and any other discriminatory dismissal shall be considered null and void. In cases of restructuring, the representatives of the employees have more protection than other employees, in particular they are given preference to stay on in the enterprise. It is interesting to note that, in Spain, victims of domestic violence also have special protection.

[236] Some collective agreements in freight road transport improve the compensation established in the Workers' Statute, whilst a few collective agreements in passenger road transport address this point and always with regard to compensation for termination of temporary contracts and/or contracts for specific works or services. National Advisory Committee on Collective Agreements, *La negociación colectiva en el sector del transporte por carretera* (2005), pages 129 and 344.

quired to compensate the employee with forty-five days' pay per year worked before February 2012, with a ceiling of twenty-four months' pay. If the employee was hired before 12 February 1996, the maximum compensation shall be forty-two months' pay. Nevertheless, before taking legal action against the employer, a conciliation meeting shall be held between the parties to try to reach a settlement and, if the dispute is settled, the employee shall not proceed with legal action.

As mentioned above, **there is a special procedure if an employer dismisses several employees at the same time.** The procedure followed in these cases requires the approval of the labour authorities to commence a period of consultations with the works council, which shall last a maximum of thirty days for enterprises with more than fifty employees, or a maximum of fifteen days for enterprises with less than fifty employees. Lastly, it is worth highlighting that if an employer carries out successive dismissals to avoid the collective dismissal procedure, such dismissals shall be void.

In **Austria**[237], temporary or fixed-term employment contracts expire on the date agreed and, unless otherwise established in the agreement, no prior notice is required. With open-ended or permanent contracts, the employee shall be given prior notice unless the termination is for a good reason, in which case the contract may be terminated immediately. **The peculiarity in Austria in this aspect is that the notice to the employee does not have to be in writing; it can be verbal, and may even be inferred by the employer's behaviour. The length of the notice period given to employees depends on the employee's length of service in the enterprise, and ranges from six weeks to five months**. As in Spain, employees who are not in agreement with the dismissal may submit the dispute to the competent courts. If the appeal is upheld, the termination of the contract shall be void and the employer shall be required to pay salary arrears. There is also the mechanism of 'garden leave', during which the employee is entitled to pay even if he or she does not go to work. And, like in Spain, there are categories of employees with special protection[238].

With ordinary terminations of employment contracts, the employer is not required to give a reason for the termination. If the employee challenges the decision, the employer shall be required to justify the termination of the employment contract on personal or business grounds. It is worth highlighting that if the dismissal is lawful, the employee shall not be entitled to compensation, unless the employer has failed to give due notice of the dismissal to the employee or there are no justified reasons for the dismissal. With individual dismissals in enterprises with a works council, the employer is required to inform the works council of the dismissal, otherwise the dismissal shall be void. **Collective dismissals must be communicated to the local Labour Market Service office thirty days in advance**. During that thirty-day period, the employer shall refrain from terminating the contracts otherwise the termination shall be void.

In **Belgium**[239], open-ended or permanent employment contracts are terminated by the employer by giving due notice or paying compensation to the employee. The length of the prior notice periods for contracts concluded before 1 January 2014 depends on whether the employee is a blue-collar or white-collar worker. Following a judgement of the Belgian Constitutional Court,

[237] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2012), Austria chapter.

[238] For example, members of the works council, employees on maternity or paternity leave and employees with a disability may be dismissed when authorised by a court or the committee for disabled persons. Other categories of employees with special protection in this country are pregnant employees and employees doing military service or alternative community work.

[239] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2014), Belgium.

the regulations that drew a distinction between both categories of workers were subject to a profound reform that led to the harmonisation of the notice periods for both types of workers. In general, **apart from the rules governing the prior notice periods, the Belgian legal system provides no rules protecting employees from dismissal**, and neither does it require dismissals to be approved by a third party, except dismissals of members of works councils. This special category of employees can only be dismissed for technical or economic reasons and with the prior approval of the joint committee, or on serious grounds following a court judgement. **Employers are not required to justify dismissals unless the dismissal is for a serious reason or involves an employee in a special category**[240]. With regard to the consequences of unfair dismissals, Belgium continues to draw a distinction between blue-collar and white-collar workers. With blue-collar workers, the employer is required to compensate the employee with six months' pay for unfair dismissal if the employer cannot substantiate that the dismissal was for economic reasons or the incompetence by the employee. White-collar workers are entitled to receive more compensation if they can prove that the employer abused the right to dismiss. **With individual dismissals, Belgian law requires the employer to give prior notice to the employee in writing, by registered mail or a judicial order**. Consequently, the dismissed employee can ask for compensation instead of prior notice.

With collective dismissals, the employer is required to inform and consult the works council in order to discuss alternatives to the dismissal. The employer is also required to inform other authorities, and a redundancy plan is normally formulated. Lastly, with this type of dismissals, employees enjoy more rights than with individual dismissals. If the employer has failed to fulfil the obligation to inform and consult the works council, the employee representatives may raise an objection. Also, breach of the collective dismissal procedure can entail civil and criminal consequences for the employer. On their side, employees tend to take trade union action, and negotiations on the redundancy plan can commence after the information and consultation procedure.

In **Bulgaria**[241], the prior notice period for dismissals depends on the type of employment contract being terminated. With open-ended or permanent employment contracts, the prior notice period is thirty days, unless otherwise agreed by the parties, and with **temporary employment contracts, the prior notice period is three months**. However, **it is possible to terminate an employment contract without giving prior notice if the employee is paid compensation**. Furthermore, **an employment contract can be terminated without breaching any of the legally established rules and without compensation if a mutual agreement is reached or the employee is paid four months' salary**.

The compensation amounts for dismissal depend on the grounds for the dismissal, on whether the employer gave due notice to the employee and on the employee's length of service in the enterprise. In general, **the compensation is between one and six months' pay and normally includes pay for annual leave not taken by the employee**. The employer is required to justify and give written notice of the dismissal to the employee otherwise the employee may allege that the dismissal was unfair. If the employee's claim is upheld, the employer shall be required to reinstate the employee and pay the employee compensation for the time he or she was out of work. Furthermore, employers who breach the aforementioned requirements may be fined by the labour inspectorate, when informed of the breach by the employee. There are also special

[240] For example, members of the works council, trade union delegates, pregnant employees, employees on leave or employees who have filed a claim against their employer for harassment.
[241] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2011), Bulgaria chapter.

categories of employees with greater protection against dismissal[242].

Objective dismissals in Bulgaria take place when an enterprise, or part of it, closes down, when there are layoffs, when there is a drop in an enterprise's volume of work, or when an employer's activity is suspended for more than fifteen days. The rules for disciplinary dismissals and objective dismissals in Bulgaria are the same. However, **with collective dismissals employers are required to consult the employee representatives**.

In the **Czech Republic**[243], giving prior notice of dismissal is recommended only in certain cases[244]. **The minimum prior notice period is two months and does not depend on the employee's length of service, although it may be extended by agreement of the parties**, in which case the length of the notice period shall be the same for both parties. The suspension of an employment contract in the Czech Republic is possible, but it is known as impediment to work by the employee. During the suspension, the employee continues to be employed but without performing his or her functions and receives 100% of his or her salary. The Czech legal system offers protection against individual dismissals carried out for reasons not established in the Labour Code and lays down certain requirements to be observed. Furthermore, employees may claim in court that the dismissal is void. On another front, employers are required to consult the trade union before carrying out the dismissal, even though breaching this requirement does not entail that the dismissal is void. Trade union authorisation is only required in dismissals of trade union members. Employees on protected leave cannot be dismissed[245]. Compensation for individual dismissals is only paid in cases of work injuries or work-related illnesses. In these cases, the minimum amount shall be twelve months' pay. With objective dismissals, the employee is entitled to compensation of at least one, two or three months' pay, depending on the employee's length of service.

The dismissal procedure varies according to the type of dismissal. For example, if an employee committed a serious breach, the employer is required to inform the employee of his or her inadequate behaviour before the dismissal, and in situations where the results of an employee's work are unsatisfactory, the employer is required to give the employee a reasonable amount of time to improve his or her performance. If a judge upholds a claim by an employee for unfair dismissal and the employee wishes to stay on in the job, the employment relationship shall continue and the employee shall receive compensation for the length of the dismissal. If that period is more than six months, the judge may reduce the compensation to be satisfied by the employer.

There are special rules for collective dismissals. In particular, the employer is required to inform the Labour Office and consult the employee representatives at least thirty days before giving notice of the termination of the contracts. When the consultations have ended and the

[242] In Bulgaria, the dismissal of mothers with children under the age of three, employees reassigned to the job for medical reasons, employees with certain illnesses, employees on leave, employees designated employee representatives, employees who are also members of special negotiating bodies or of European works councils, requires approval from the labour inspectorate when the dismissal is due to certain reasons. Furthermore, the dismissal of employees in certain categories requires going through specific formalities.

[243] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2013), Czech Republic chapter.

[244] These are: full or partial closure of the enterprise, objective dismissal, health reasons (with a medical certificate) that impede the employee from doing his or her job, breach by the employee of the legal conditions or the employer's requirements for doing the job, breach by the employer of the obligations of the job and breach by the employee during a period of incapacity to work.

[245] This situation arises in the event of sickness, injury or medical treatment; military service; leave to occupy a public office; pregnancy and maternity or paternity leave.

final decision on the dismissals has been adopted, the employer is required to submit a final report to the Labour Office. Individual dismissals within a collective dismissal are valid, even if the employer has breached his or her information or consultation obligations. Consequently, this type of dismissals cannot be challenged. However, an employer in breach of these obligations may be fined by the Labour Inspectorate. The contract of an employee subject to collective dismissal cannot be terminated until thirty days after the date the report was sent to the Labour Office, and if the employer fails to meet this requirement, the employment relationship with the dismissed employees may be prolonged.

In **Denmark**[246] the rules on termination of employment contracts are flexible and straightforward. The notice period can be established in the individual employment contract, collective agreements or the law on employees, if applicable. Normally, the notice period established in collective agreements is shorter than the one established in the law. Notice of a dismissal shall be given between one and six month in advance, depending on the employee's length of service. The parties may also agree a longer notice period.

In **Germany**[247], employers are required to give at least four weeks' notice of dismissal to employees with open-ended or permanent contracts. **The rules on termination of employment contracts in Germany are very strict**, particularly in cases where the Law on Unfair Dismissals is applicable. As in Spain, there are certain categories of workers with special protection against dismissal[248].

Ordinary dismissals shall only be valid for reasons based on the employee's conduct, the employee's person or urgent business requirements. It is worth mentioning that if the Law on Unfair Dismissals is not applicable, an employer can dismiss an employee without restrictions. In such cases, the employer is not required to pay compensation to the employee, although the usual thing is to reach a compensation agreement in a labour court. To carry out an individual dismissal, there are two procedures to be followed. First of all, if the dismissal is based on valid personal reasons, the employer is required to invite the employee, by registered mail, to a meeting, and the employer may not send the letter of dismissal to the employee until the meeting has been held. Secondly, if involving an objective dismissal, the employer shall select the employees to be dismissed by taking into account the employees' family situations, length of service, difficulties to find a new job and professional skills. The employer is also required to find out if there are other vacancies available in the enterprise to relocate the employees that he or she intends to dismiss.

An employee who is in disagreement with his or her dismissal can submit the dispute to the courts and claim more compensation. The minimum compensation is six months' pay when involving employees with a length of service in the enterprise of more than two years. The employer shall only be able to contest the employee's allegations by arguing that the reasons for the dismissal are real and serious and, in cases of objective dismissal, the employee shall need to justify that he or she followed all the necessary criteria.

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[246] Price Waterhouse Coopers, *Labour law in Denmark* (2009), and; Angloinfo, Working in Denmark - Ending Employment <http://denmark.angloinfo.com/working/eu-factsheets-working/end-of-employment-eu/>

[247] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2014), Germany chapter.

[248] In particular, in principle, dismissing an employee in Germany during a pregnancy or the initial months of maternity is prohibited. On another front, to dismiss an employee on paternity leave requires approval by the pertinent authority, as do dismissals of employees with a disability and members of the works council or other representative bodies. The reasons for such dismissals must be sufficiently justified and be authorised by the works council or a judicial decision. Lastly, employees on leave to look after family members are also especially protected.

Collective dismissals are subject to a special procedure. If more than two employees are dismissed within a period of thirty days, the employer is required to inform and consult the employee representatives and inform the pertinent labour authority. If more than nine employees are dismissed within the same period, the employer is required to draw up an employment protection plan and inform and consult the employee representatives. The labour inspector shall verify that the consultation procedure is adequate. The employees shall be able to negotiate higher compensation through their representatives. If the employer fails to fulfil his or her obligations, the employee may claim compensation for direct and indirect damage. If the employment protection plan is held to be insufficient by the court, the dismissed employee shall be able to claim compensation or ask to be reinstated in the enterprise.

In **Estonia**, employment contracts are terminated in accordance with that established in the Law on Employment Contracts and only for the reasons established therein. **With individual dismissals, the employer is required to give prior notice of between fifteen and ninety days, although this will depend of the employee's length of service in the enterprise and the reasons for the decision**. However, no prior notice is required when there are solid reasons for the dismissal. The employee shall receive compensation of at least one month's salary if the dismissal is due to the liquidation or insolvency of the enterprise or if the dismissal is for objective reasons. If the employment contract is terminated by the employee as a result of a breach by the employer, the employee shall be entitled to compensation of three months' pay. This amount may be increased if so established in an individual agreement, the collective agreement or the law.

In **Ireland**[249], all employers are required to give prior notice of dismissal to employees, except when involving a dismissal with immediate effects. **The period of prior notice of dismissal for employees with a length of service in the enterprise of between thirteen weeks and two years is one week; for employees with a length of service in the enterprise of between two and five years, two weeks; for employees with a length of service in the enterprise of between five and ten years, four weeks; for employees with a length of service in the enterprise of between ten and fifteen years, six weeks; and lastly, for employees with a length of service in the enterprise of more than fifteen years, eight weeks**. However, longer periods are normally established in employment contracts.

When an employee has worked in an enterprise for more than one year, he or she shall be entitled to file a claim for unfair dismissal, in which case the employer shall have to prove that there were sufficient grounds to dismiss the employee and that the appropriate procedures were followed. Some dismissals shall automatically be void, such as those for reasons based on pregnancy, religion or political opinions, membership of a trade union, race, age, sexual orientation, defending a right or when the employee in question is in a criminal process against the employer. With dismissals for pregnancy or membership of a trade union, the employee need not have been in the enterprise for more than one year to file a claim. An employee may also challenge the dismissal if the employer failed to give due notice of the dismissal or if the employer breached any of the terms of the employment contract. In any case, the approval of a third party is not required to carry out a dismissal.

Employers may dismiss employees for disciplinary or objective reasons, provided that such reasons are fair and the dismissals are carried out in accordance with the procedures established for this purpose. The reasons considered to be fair are established in the law on unfair dis-

[249] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2011), Ireland chapter.

missals (1977 and 2007) and are based on the capability, competence or qualifications of the employee, the conduct of the employee, the redundancy of the employee or other substantial grounds. In the event of redundancy, employees are entitled to compensation of two weeks' salary per year of service, with a ceiling of 600€ per week plus an extra weekly bonus, also with a ceiling of 600€. If the dismissal was for another reason, employees are not entitled to receive the aforementioned amounts. However, they shall receive the amount established by law or in the employment contract, and shall be compensated if the dismissal is declared unfair by a court, with a ceiling of two years' salary.

With regard to individual dismissals, employers shall follow fair procedures to avoid any liability or incorrect dismissals. The procedure includes a notice period to give the employee the opportunity to respond. The dismissal shall be proportionate to the breach committed by the employee and, when due to poor performance, the employee shall be given the opportunity to improve. In cases of lack of capability for the job, the employer shall only be able to dismiss the employee if he or she has a medical report justifying the employee's lack of capability for the job. Employees may challenge dismissals before the courts within six months of the date of the dismissal, with some exceptions, and may be reinstated or compensated with two years' gross salary, which is the maximum compensation.

Collective dismissals must comply with several special rules. First of all, the employer is required to consult the employee representatives. These consultations must begin at least thirty days before the first communication of the dismissal, and the Ministry of Commerce, Enterprise and Innovation must be informed in writing. There are several very exceptional cases where a collective dismissal must be referred to a panel, and a trial may need to be held in an industrial tribunal to determine whether the circumstances constitute an exceptional collective dismissal. If the employer breaches the obligation to inform and consult the employee representatives, the employees shall be entitled to compensation of four weeks' gross salary. The employer may also be forced to pay 5,000€ by summary conviction for breach of the consultation and information obligation or, if found guilty, and the dismissals are carried out before the end of the consultation period, the employer may be ordered to pay a maximum fine of 250,000€.

In **Greece**[250], employers are required to communicate an individual dismissal to the employee in question and to the public employment service. **The notice period given to the employee will depend on whether he or she is a blue-collar or a white-collar worker**. No prior notice is required for blue-collar workers, whilst for white-collar workers the notice period is left to the employer's discretion. However, compensation shall be higher if the employer decides not to give prior notice of the dismissal. In Greece, the difference between blue-collar and white-collar workers not only affects the employer's obligation to give prior notice of the dismissal, but also compensation, which is much higher for office workers.

Furthermore, the dismissal is considered a unilateral act, with some legal exceptions such as the dismissal of employee representatives, workers who have recently given birth, pregnant employees or discriminatory dismissals. When a case of dismissal is brought before an industrial tribunal and it is held to be unfair, the employee shall be entitled to compensation plus his or her salary from the date of the dismissal to the date the dispute was settled. On another front, any dismissal not justified by the well-meant interests of the employer is considered void and, consequently, the labour relationship shall be considered uninterrupted and the employer shall be required to pay the salary that the employee should have received during the time that he

[250] OECD Greece 2013 <http://www.oecd.org/els/emp/Greece.pdf>

or she was dismissed, as well as compensation for damage. As in Spain, another solution to redress an unfair dismissal is to reinstate the employee, although this is incompatible with the payment of compensation.

There is a special procedure for collective dismissals. The employer is required to inform the employee representatives, the Prefect and the Labour Inspectorate. If the enterprise has branches in different regions, the Ministry of Labour, Social Security and Welfare must also be informed. Furthermore, before carrying out a collective dismissal, negotiations must be held with the representatives of the employees to be dismissed. There is no legal requirement for a social plan, but implementing it shall reduce the risk of a court subsequently considering the dismissal unfair or abusive. There are no special rules for compensation in collective dismissals.

In **France**[251], the termination of an employment contract by an employer may be due to dismissal, retirement or a mutual agreement. **Prior notice of the dismissal is required unless the termination of the employment contract is by mutual agreement or is motivated by the employee's conduct. The notice periods are established in the law, but may also be established in collective agreements and employment contracts**. An employee may also terminate the employment contract if the employer has breached the contract, in which case the courts shall decide whether it is a mere resignation or an unfair dismissal. In the latter case, the employee shall be entitled to severance pay and compensation for damage.

Dismissals shall adhere to the legally established procedure, and there is a special procedure for collective dismissals. Disciplinary dismissals require the employer and the employee to hold a meeting before the letter of dismissal is sent to the employee. Objective dismissals require the employer to conduct a selection process to decide which employees are to be dismissed, an offer of other jobs in the enterprise, holding a meeting, and redeployment leave. If the employee is in disagreement, he or she may submit the dispute to the courts and, if the dismissal is held to be unfair, the employee shall be entitled to compensation for damage.

Collective dismissals must be communicated and consulted with the works council and, sometimes, the Health and Safety Committee. If an employer intends to dismiss more than ten employees in one month, an employment plan must be elaborated. Once the dismissal has been communicated, the employees may submit the dispute to the courts, which, depending on the grounds for the dismissal, shall be an administrative or a labour court. If the dismissal is held to be clearly unfair, the employees shall receive the applicable compensation.

No authorisation from any authority is generally required for dismissals. However, certain categories of employees are protected against dismissal. The grounds for disciplinary and objective dismissals are established in the law. To be able to carry out an objective dismissal, three requirements must be met. Compensation is the equivalent of 1/15 of the employee's monthly salary for the first ten years of service in the enterprise and 1/3 of the employee's monthly salary for each year of service above the first ten years.

In **Croatia, individual employment contracts can only be terminated on the legally established grounds, and always observing the prior notice period established in the contract**[252]. **Collective dismissals must comply with a special procedure**. In particular, a Dismissals Plan must be

[251] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2014), France chapter.

[252] Examples of grounds for terminating an employment contract in Croatia include inappropriate conduct; inability by the employee to perform his or her job tasks; changes in technology, organisation structure or economic reasons of the enterprise.

drawn up within ninety days of the dismissals. Furthermore, the employer is required to work together with regional Employment Council and the works council to implement the Plan.

In **Italy**[253], **the prior notice period for dismissal is established in the law or collective agreements, and depends on the duration of the service, the years of service and the classification and level of the job**. If the dismissal is on grounds of a serious breach by the employee, no prior notice to the employee or compensation for not giving prior notice is required. There are no rules for the suspension of employment contracts, and no approval of third parties is required for dismissals. As in the majority of the countries, certain categories of employees enjoy special protection against dismissal[254]. With objective dismissals, employees are entitled to compensation and to other amounts for accumulated benefits, and the employer is required to give prior notice of the dismissal.

Individual dismissals must always be communicated in writing. If on grounds of breach of contract by the employee, the employer is required make the breach known to the employee in a letter and wait five days for a reply. If the justifications given by the employee are not acceptable, the employer shall send the letter of dismissal explaining to the employee why the justifications are inacceptable. If the dismissal is on objective grounds and the enterprise has more than fifteen employees, the intention to dismiss must be communicated to the local employment office, which shall call a meeting within seven days. If the meeting is not called or no agreement is reached in the meeting, the dismissal may go ahead.

Before filing a claim for unfair dismissal, the employee is required to challenge the decision in writing. If the court holds that the dismissal is unfair, it may order the employer to reinstate and compensate the employee for damage with an amount equivalent to the salary that the employee would have earned over the length of the dismissal. This compensation may be as high as twelve months' salary when, apart from there being no grounds or reasons to justify the dismissal, the employer has more than fifteen employees in the premises or the municipality in question, or sixty employees in Italy. As an alternative to reinstatement, the employer may compensate the employee with fifteen months' salary. If the unfair dismissal is based on other reasons, the dismissal shall remain in force but the employer shall be required to compensate the employee with between twelve and twenty-four months' salary. If the employer has less than fifteen employees in the premises or the same municipality or sixty or less employees in Italy, the employer shall be required to hire the employee again or compensate the employee with between two and a half months and six months' salary. The burden of proof always lies with the employer. Lastly, if a dismissal is held to be discriminatory, the employee shall be reinstated and compensated for the time he or she was dismissed. Alternatively, the employer may pay the employee fifteen months' salary.

Collective dismissals must adhere to a special information and consultation procedure with the trade unions or works councils. Italian laws establish a number of factors to be taken into account when selecting the employees to be dismissed (length of service, family circumstances, technical, production or organisation needs, etc.), unless other factors are agreed with the trade unions. After this procedure, the enterprise may carry out the dismissals by giving prior notice and communicating them to the pertinent authorities. If the dismissals are not communicated in writing, the employees shall be reinstated and compensated for damage. In particular, if the information and consultation procedure is not observed, the enterprise shall

[253] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2014), Italy chapter.
[254] These are employees on maternity or paternity leave, employees with a disability, and members of the works council. In Italy, this special protection also covers women who have been married for less than one year.

compensate the employees for damage with between twelve and twenty-four months' salary. It the selection criteria are not observed, the employees shall be reinstated and compensated with up to twelve months' salary.

In **Cyprus**[255], dismissals are subject to the obligation to give prior notice, and the rules for doing so are established in Law 24/67 on termination of employment contracts. In particular, **prior notice periods increase in line with the employee's length of service in the enterprise**. The grounds for dismissal are perfectly defined in the legislation and, if an employee's dismissal is not based on one of those grounds, the employee shall be entitled to file a claim with a labour tribunal[256]. It is important to note that dismissals in Cyprus do not require authorisation from any official body.

Apart from pregnant employees and employees on sick leave, in Cyprus employees participating in trade union activities are also protected against dismissal. Individual dismissals require prior notice to the employee. With disciplinary dismissals the employer is required to give the employee an opportunity to improve his or her performance before dismissing him or her. If an employee considers that he or she has been unfairly dismissed, the employee may take the employer to the labour tribunals. **Collective dismissals must be communicated before the employer makes the final decision so that efforts can be made to reach an agreement with the employees. Also, the employer is required to inform the Ministry of Labour and Social Security of the situation one month in advance**.

In **Latvia, employees are entitled to receive one months' prior written notice of dismissal, unless a shorter period is established in the employment contract or the collective agreement**. The legal grounds for dismissal are the following: the employee breached the employment contract or the pertinent regulations; the employee acted in an inappropriate manner therefore losing the employer's trust; the employee acted against good customs and the labour relationship can therefore not continue; the employee was drunk or under the effects of narcotic drugs or other toxic substances on the job; the employee seriously violated the occupational protection rules, putting the health and safety of other persons at risk; the employee did not have sufficient abilities to perform the job; the employee is unable to perform the job for health reasons pursuant to a medical certificate; the employee who used to perform that job has been reinstated in the post; the number of employees has been reduced or the enterprise is in liquidation. Any employee dismissed on grounds not mentioned in the previous list may file a claim for termination of the employment contract. The employer and the employee may terminate the employment relationship by mutual agreement in writing. The burden of proof of having communicated the dismissal to the employee lies with the employer, as well as demonstrating that the required procedure was followed.

In **Lithuania**, employees may only be dismissed on the grounds established in the Labour Code. The prior notice period shall be two months, and four months for employees who are five years away from the retirement age, employees under the age of eighteen, employees with a disability or employees with children under the age of fourteen. These periods may be reduced by collective agreement. Employees shall be entitled to compensation if the dismissal was for no fault of their own. The compensation shall amount to between one and six months' salary, de-

[255] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2012), Cyprus chapter.

[256] The grounds are unsatisfactory performance by the employee; objective dismissal; force majeure, war, civil unrest or acts of God; termination of the term established in the contract; summary dismissal or conduct demonstrating that the labour relationship cannot continue, serious or criminal offences, indecent behaviour or continuous ignorance of the work rules.

pending on the employee's length of service in the enterprise, and may be increased or reduced by collective agreement.

In **Luxembourg**[257], employers are required to give prior notice of dismissal in the event of a serious breach by an employee. **If the dismissal is due to particularly serious reasons, the employer is required to give two months' prior notice if the employee has been in the enterprise for more than five years; four months' prior notice if the employee has been in the enterprise between five and ten years; and six months' prior notice if the employee has been in the enterprise ten years or more**. Employment contracts can be suspended without affecting the employee's remuneration.

Any employee who considers that he or she has been incorrectly or unfairly dismissed can challenge the grounds for the dismissal and claim compensation for material or moral damage. It is interesting to note that an employee's resignation is considered a dismissal when the reason for the termination is a substantial change in the terms and conditions of the employment contract without the employee's consent. In principle, there is a prohibition to dismiss pregnant employees, employees on maternity or paternity leave, employee representatives, employees in the process of reclassification and victims or witnesses of sexual abuse. In Luxembourg, the approval or authorisation of dismissals by other institutions or bodies is not required, with some exceptions[258].

Any employer can dismiss an employee for objective, real and serious reasons associated with the capabilities or conduct of an employee or for operational reasons. With the exception of employees dismissed for serious breaches, employees shall be entitled to receive compensation if they have worked for the enterprise for at least five years, and the compensation shall range from one to twelve months' salary. To carry out individual dismissals, an employer with more than 150 employees is required to hold an interview with the employee in question before making a final decision. If after the interview the employer decides to go ahead with the dismissal, the employer must communicate the dismissal to the employee within one to eight days of the interview. These procedures do not apply to enterprises with less than 150 employees.

The letter of dismissal shall specify the length and the start date of the notice period, but the reasons for the dismissal need not be given. However, the employee may request that information and the employer shall be required to supply it otherwise the dismissal shall be considered abusive. If the dismissal is objective and the enterprise has more than 150 employees, the employer is required to inform a committee set up for this purpose. If the dismissal is due to a serious breach, the employer is required to inform the employee in a letter sent by registered mail or hand delivered with confirmation of receipt. In this case, the letter shall specify the reasons for the dismissal.

Collective dismissals require the prior elaboration of a social plan signed by the parties or accepted by the National Conciliation Office. Furthermore, the employer is required to send individual letters of dismissal to the employees in question in accordance with the normal procedure. The prior notice period is 75 days. Employers with at least 15 employees are required to communicate the decision to the committee mentioned in the previous paragraph no later than the moment the employer communicates the dismissals to the employees, otherwise the

[257] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2014), Luxembourg chapter.

[258] In particular, authorisation from an industrial tribunal is required to dismiss staff delegates and employees who are pregnant or on maternity leave, who may only be dismissed if they have committed serious infringements. In the case of members of the works council, authorisation from the council or, otherwise, an industrial tribunal is also required.

dismissals shall be void and the dismissed employees may demand to be reinstated.

In **Hungary**[259], the general rule is that employees may be dismissed for justified reasons, provided that the dismissal is communicated through the legally established channels. **The prior notice period is 30 days, and increases in line with the employee's length of service in the enterprise**. The parties may agree a longer notice period. On another front, with disciplinary dismissals due to serious breach of the employment contract, the employer may dismiss the employee without prior notice. The grounds for the dismissal must be clearly established, and be true and reasonable, and the burden of proof lies with the employer. An employee may only be dismissed if he or she has been given written notice of the dismissal, establishing the date of the dismissal and the grounds. The approval or authorisation of third parties is not required, except in exceptional cases like a dismissal of a trade union leader.

Employers may not dismiss employees who are pregnant, on maternity leave, child-care leave or military service leave, or employees who are in the first six months of a reproduction treatment. On another front, there are also employees whose dismissal must be based on special reasons for the dismissal to be authorised[260]. No prior notice is required when an employee is dismissed for inappropriate conduct, but it is required when the dismissal is based on the employee's abilities, conduct or the working methods of the employer. Dismissals requiring prior notice entitle dismissed employees who have been in the enterprise for at least three years to receive compensation of one month's salary, which can rise to a maximum of six months based on the number of years in the enterprise. Compensation is not applicable if the employee retires immediately after the dismissal or if the dismissal is related to the employee's professional abilities or conduct. Nevertheless, employees close to the age of retirement are entitled to additional compensation of a maximum of three months' salary.

With individual dismissals, the employer and the employee shall settle any salary amounts due, including for holidays not taken, and the employer shall hand to the employee a certificate of employment in the enterprise. Employees in disagreement with the termination of their employment contract may challenge the decision in the courts and, if the claim is upheld, the employee shall be entitled to compensation for damage and, sometimes, may even demand to be reinstated.

Collective dismissals shall adhere to a special procedure. The employer is required to negotiate with the works council before making the final decision. Employers are recommended to negotiate with the trade unions and/or employees if there is no works council. The decision must be communicated to the works council and the employees in question one month in advance. It is also necessary to inform the labour authorities of the planned dismissals, as well as of any agreement reached with the works council and the final decision on the dismissals. Lastly, collective dismissals must comply with that established in the collective agreement. If the employer breaches these communication and prior notice obligations the dismissal shall be considered unfair.

In **Malta**, open-ended or permanent employment contracts may be terminated by mutual agreement or upon the decision of one of the parties. If an employee decides to terminate the

[259] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2014), Hungary chapter.

[260] In particular, employees close to the age of retirement, employees with very young children and employees with a disability must have committed a serious breach of the contract to be dismissed, and if the reason for the dismissal is a change in the operations of the employer, they may only be dismissed if there is no other job available for them in the enterprise.

employment contract, prior notice shall be given to the employer although the reason for the termination does not have to be given. In this case, the notice period to be given by the employee will depend on his or her length of service in the enterprise. On the other hand, when an employer intends to terminate an employment contract for objective reasons, he or she is required to dismiss the newest employee. If the newest employee is a family relative of the employer, the second newest employee shall be dismissed.

The prior notice rules are the same for both parties. If the employee's length of service in the enterprise is between one and six months, the prior notice period is one week; if between six months and two years, two weeks; if between two and four years, four weeks; if between four and seven years, eight weeks; and if longer, an extra week is added per additional year worked, to a maximum of twelve weeks. It is worth mentioning that these notice periods can be extended in certain jobs, based on the nature or responsibilities of the job.

As an exception to the aforementioned, in cases where the employment contract is terminated for a sufficiently good reason, the employer is not required to give prior notice and/or pay the employee's salary during the notice period or for the remaining term of a temporary employment contract. This is only applicable if the employer alleges a sufficiently good reason for the dismissal. Furthermore, if this type of dismissal is challenged by the employee, the employer would need to justify his or her decision for the dismissal and prove that the employee had been warned about the possibility of dismissal on two occasions.

To terminate an open-ended or permanent employment contract in the **Netherlands**[261], the employer is required to obtain authorisation from the *UWV-Werkbedrijf* (Dutch Public Employment Service), otherwise the dismissal shall be void. An employee wishing to terminate the employment contract is required to give at least one months' notice, unless otherwise established in the contract. **To be precise, one months' notice is required for every five years of service or less, up to a maximum of four months in case of fifteen years of service or more**. The notice period to be given by the employer can be reduced in the collective agreement, provided that it is not shorter than the notice period applicable to the employee. Under the Dutch system, employment contracts can be suspended.

Certain categories of employees, such as members of the works council, can only be dismissed with a court authorisation. Furthermore, employees cannot be dismissed on grounds of marriage, the birth of a child or during pregnancy, maternity leave, military service leave or sick leave, unless the illness has lasted more than two years or the *UWV-Werkbedrijf* has authorised the dismissal.

The employer must always justify the existence of objective reasons for the dismissal. Although Dutch legislation does not establish rules for calculating compensation for dismissal, the Circle of Cantonal Court Judges has issued recommendations for calculating it. Individual dismissals may be carried with authorisation from the *UWV-Werkbedrijf*, by judicial decision or mutual agreement. Also, employment contracts may be terminated during the trial period or immediately based on urgent reasons.

If the employment contract is terminated by the employer with authorisation from the *UWV-Werkbedrijf* and giving prior notice, the employee may take the employer to court and claim compensation by alleging that the dismissal was clearly unfair. This is applicable when the employer has not given a reason for the dismissal or when the financial consequences of

[261] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2011), Netherlands chapter.

the dismissal for the employee are much harsher than the consequences for the employer's interests. Only if the termination is clearly unfair will the judge order more compensation. If the employer asks the court to terminate the employment contract, the employee may allege that there is no solid reason for the decision to terminate the contract and ask the judge to reject the petition from the employer and/or grant him or her compensation as a prerequisite for the termination.

If a collective dismissal affects more than twenty employees within a period of three months, the Law on Information of Collective Dismissals is applied. According to this law, the employer is required to inform the *UWV-Werkbedrijf* of the dismissal and the reasons. The employer is also required to inform the trade unions and obtain the advice of the works council. If the employer fails to fulfil these requirements, the *UWV-Werkbedrijf* shall not give authorisation for the dismissal. Lastly, if the employer does not obtain the advice of the works council, the works council may challenge the decision for the collective dismissal.

In **Poland**, individual dismissals may be carried by mutual agreement and giving prior notice to the other party, or without prior notice. **The prior notice period can be two weeks, one month or three months, depending on the employee's length of service and the type of employment contract**. Dismissals must be justified, though the Labour Code does not lay down general grounds for dismissal, only the grounds for disciplinary dismissals. Employees are entitled to receive compensation only when the dismissal is not due to their conduct, and the amount shall be one, two or three months' salary according to the employee's length of service, with a ceiling of fifteen times the minimum salary.

In **Portugal**[262], **temporary employment contracts end on the expiry date established in the contract,** provided that the other party is given fifteen or eight day's written prior notice. Open-ended or permanent contracts end when the employer manifests his or her will to terminate the employment relationship by giving the employee minimum prior notice of seven, thirty or sixty days, depending on whether the contract was in force for six months, between six months and two years or longer, respectively. If no notice period is established in the contract, the termination of the contract may only take place in the instances expressly established in the law. Portuguese legislation does not provide for the suspension of employment contracts. On another front, employers may only dismiss employees as per that established in the Labour Code[263]. Employees may challenge the dismissal in the courts and, if the courts consider that the dismissal is unfair, the employer shall be required to compensate the employees for all the material and immaterial damage caused, and the employees shall be reinstated. The approval or authorisation of third parties is not required, though the employer is required to communicate the decision to the works council and the respective trade union.

[262] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2014), Portugal chapter.

[263] The grounds for dismissal are: disobedience of orders from senior staff; violation of the rights or guarantees of workers in the enterprise; provocation of conflicts with workers in the enterprise; repeated lack of interest in respect of the fulfilment with due diligence of the obligations inherent in the employee's functions; violation of the fundamental interests of the enterprise; false reasons for absence; unjustified absences causing direct damage to the enterprise or placing the enterprise at serious risk; inobservance of the health and safety at work rules; physical violence, insults or other offences against other members of the staff; offences against the freedom of persons; non-compliance or refusal to comply with an administrative or judicial decision and abnormal drop in the productivity or the quality of the work. Furthermore, dismissal on grounds of unsuitability for the job shall be allowed in certain cases, provided that the necessary information is supplied to the employee, and that the employee is compensated for the dismissal.

As in all the other countries, there are categories of workers with special protection[264]. Employers may also carry out individual or collective objective dismissals in the event of closure of one or more sections or equivalent structures of the enterprise. In such an event, employees shall be entitled to compensation of twelve days' basic salary and seniority bonuses for each year worked, although for the first three years of service the compensation shall be eighteen days' basic salary for each year worked. However, for years of service prior to 31 October 2012, the compensation shall be thirty days' salary per year worked, and for years of service from 1 November 2012 onwards, the compensation shall be twenty days' salary per year worked.

To carry out an individual dismissal for objective reasons, the employer shall initiate a disciplinary procedure by which the employer sends a letter explaining to the employee that he or she has behaved in a way that makes it impossible to continue with the employment relationship. After receiving the letter, the employee is required to reply within ten days. Afterwards, the employer shall make a decision and communicate it to the employee, the works council and the trade union (if the employee is a trade union representative). These letters shall be sent by registered mail with acknowledgement of receipt. If the dismissal is considered unfair, the employee may ask to be reinstated or claim compensation of up to forty-five days' salary per year worked, as well as compensation for damage and the salary that he or she should have received in the course of the judicial proceedings.

Collective dismissals are allowed only when due to the closure of part of the enterprise or for structural or technological reasons. The decision shall be communicated to the employees or the trade union or works council in writing. Five days after the communication, the employer shall initiate an information and negotiation process with the employee representatives in order to reach an agreement on the scope and effects of the measures to be applied, as well as on other measures to reduce the number of employees. Afterwards the employer shall communicate the decision for the dismissal to each employee, providing the reason and the date of the dismissal, as well as the compensation they will receive. This shall be communicated fifteen days in advance to employees who have been in the enterprise for less than one year, thirty days in advance to employees who have been in the enterprise between one and five years; sixty days in advance to employees who have been in the enterprise between five and ten years, and seventy-five days in advance to employees who have been in the enterprise for more than ten years.

Employment contracts in **Romania**[265] may be terminated *de jure*, by mutual agreement or by either party (in the latter, justification is required). An employee may only be dismissed in the following instances: if the employee committed a disciplinary infringement, if the employee is not professional fit for the job, if the employee's job is abolished, if the employee is mentally or physically unfit for the job or if the employee is taken into preventive police custody for more than thirty days. Except in cases of dismissal *de jure*, **the notice period shall be twenty days, although the applicable collective agreement may establish a longer notice period**. To carry out a dismissal, the employer is required to give the reasons and follow a formal procedure established for this purpose. No approval or authorisation from third parties is required although, with disciplinary dismissals, the employer shall establish a committee responsible for proposing the dismissal. Furthermore, the dismissal of mentally or physically unfit employees requires a medical certificate.

[264] For example, employees who are pregnant, breastfeeding or on maternity/paternity leave and employee representatives.

[265] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2011), Romania chapter.

On another front, the dismissal of employees for reasons based on discrimination is prohibited, as is the dismissal of employees during sick leave when the illness is certified in a medical certificate; quarantine leave; pregnancy; maternity leave; leave for looking after a sick child; military service; the exercise of an elected position in a trade union unless the dismissal is for a serious and repeated disciplinary infringement; or annual leave. However, these restrictions are not applicable in cases of dismissal due to the employer's bankruptcy.

Under the Romanian system, disciplinary dismissals, dismissals due to the employee being professionally, physically or mentally unfit for the job, and dismissals due to the employee being taken into police custody for thirty days, are considered dismissals related to the employee's person, whilst dismissals due to the elimination of the employee's job are considered objective dismissals, in which case a distinction should be drawn between individual and collective dismissals. With dismissals on grounds of unfitness or elimination of the job, the employer is required to pay compensation of at least one month's salary, according to the national collective agreement. The procedure to be followed with individual dismissals requires the employer to issue a decision and communicate it to the employee, providing all the legally required information. With disciplinary dismissals, the employer is required to open a disciplinary inquiry and conduct an assessment of the employee. This process is carried out by the committee established by the employer. All employees may challenge their dismissals in court. In the event of judicial proceedings, the employer shall be required to prove the reasons for the dismissal. If the court finds that the dismissal is unfair, the employer may be ordered to reinstate the employee and pay the employee's salary for the time that he or she was dismissed.

Collective dismissals are subject to special procedures. In particular, the employer is required to consult the trade union or the employee representatives and to inform the labour authorities of the decision. If the employer fails to fulfil these obligations, the employees may challenge the decision in court. Furthermore, if the employees have not received the due compensation, they may take the employer to court.

Slovenia[266] has a procedure that requires the employer to send the employee a reminder of his or her obligations before terminating the employment contract. After this procedure, if the employee persists in his or her behaviour, the employer is required to give the employee an opportunity to defend him or herself, unless there are justified reasons for not doing so. Once the employer has made the decision to dismiss the employee, **the employer is required to give the employee prior notice of the dismissal, and the length of the notice period varies according to the reason for the dismissal or the party terminating the contact**. The Slovenian law on labour relations set outs the length of notice periods, but they can be adjusted in the applicable collective agreements, the internal rules of procedure and, as an option, employment contracts. As in the other countries, the Slovenian system provides for certain workers with special protection against dismissal. Certain employees may not be dismissed and others may only be dismissed with authorisation from a given body, such as in the case of trade union representatives or employees with a disability. Furthermore, apart from the employees with special protection against dismissal in other EU countries, such as pregnant employees, Slovenia also protects employees who are breastfeeding and employees over fifty-eight years of age or who are less than five years away from retirement.

In the event of collective dismissals, the employer must follow a special procedure that includes formulating a dismissals programme and informing the trade unions and the Slovenian

[266] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2014), Slovenia chapter.

Employment Service. Before carrying out the dismissals, the employees may exercise their rights through the trade unions, which must be consulted by the employer in order to reach an agreement. Also, the employees may submit the matter to the courts individually once they have received notice of the dismissal. Dismissals held to be unfair automatically give rise to reinstatement and compensation.

The termination of employment contracts in **Slovakia** is governed by the Labour Code and, although some conditions established in collective agreements are allowed, these may not be more restrictive than those established in the law. Dismissals may only be carried on the grounds set out in the Labour Code[267]. **The general rule is that one months' prior notice shall be provided**[268]. The notice shall provide the reasons for the dismissal otherwise the notice shall be void[269]. Compensation for dismissal shall amount to two months' salary. If the dismissal is based on an illness caught by the employee because of his or her job, the compensation shall rise to ten months' salary. These amounts may be increased when higher amounts are established in an individual agreement, the collective agreement or the internal rules of procedure, provided that the principles of non-discrimination are observed.

In **Finland**[270] there is the obligation to give prior written notice of dismissals, unless the dismissal is based on the employee's serious inappropriate conduct. **The length of the notice period may be agreed by the parties; otherwise the legally established periods shall be applied, which range from fourteen days to six months**. In this country there is a great deal of protection against dismissals, given that in order to dismiss an employee a valid and acceptable reason is always required from the employer. A surprising thing about this system is that an employee who files a claim for unfair dismissal may only claim the corresponding compensation. However, the possibility of reinstatement, which exists in other systems like the Spanish one, is not envisaged.

On another front, dismissals are not subject to the approval or authorisation of third parties, except in the case of trade union or employee representatives. Both trade union and employee representatives, together with industrial safety delegates, have special protection against dismissal. Employees on family leave also belong to a special category of employees, given that they may not be dismissed unless the enterprise closes down. The grounds for justifying a dismissal depend on whether the dismissal is individual or collective. For example, it is worth highlighting that to be able to carry out a collective dismissal the employer must ensure that there is not possibility of transferring the employee to another department in the enterprise. **As in the other systems, there is a special procedure for collective dismissals**. Thus, the decision is subject to prior consultation and information, and there is the obligation to communicate the decision to the employee representatives five days in advance. Also, the Labour Authority must be informed of the consultations and of the possible reduction of human capital in the enterprise.

In **Sweden**[271], the termination of an employment contract must be previously communicated to the trade union, if the employee is a trade union member, and a consultation procedure shall take place when required by the trade union. In the event of objective dismissal, the employer

[267] Article 59. 1 of Slovakia's Labour Code, Law 311/2001.
[268] Ibid, article 63.2.
[269] Ibid, article 61.2.
[270] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2013), Finland chapter.
[271] European Labour Law Network, Annual Flash Report Final 2013 (2013), and; OECD Sweden 2013 <http://www.oecd.org/els/emp/Sweden.pdf>

is required to negotiate with the trade union before making the final decision. In the event of disciplinary dismissal, the trade union must be informed fourteen days in advance. If the trade union asks to be consulted, the dismissal may not be carried out until the consultations have ended. In cases of a serious breach by an employee of his or her obligations with the employer, a summary dismissal shall take place and notification of the termination must be given at least seven days before the notice is meant to start. Although other rules may be established in the collective agreement, the prior notice periods are one month for two years of service, two months for four years of service, three months for six years of service, four months for eight years of service, five months for ten years of service, and six months for more than ten years of service. Dismissals for gross misconduct do not require prior notice. Employees are generally not entitled to compensation unless provided for in the collective agreement, though compensation is covered by the insurance.

A dismissal shall be unfair if it lacks objective reasons to justify it. The employee concerned shall be entitled to compensation for financial loss and punitive damage. The compensation for financial loss covers the financial loss suffered by the employee and punitive damage is a kind of penalty for the breach of contract. It is estimated that compensation for this damage can range from 50,000 to 80,000 Swedish Krona (5,531.68 EUR and 8,850.69 EUR, respectively). If after the trial the employer does not recognise the judicially declared invalidity of the termination, the employee shall be entitled to compensation for damage amounting to sixteen months' salary if he or she has worked in the enterprise less than five years, twenty-four months' salary if he or she has worked in the enterprise between five and ten years, and thirty-two months' salary if he or she has worked in the enterprise for ten years or more. Employees may ask to be reinstated in the event of unfair dismissal.

With collective dismissals the employer is required to communicate the decision to the employee representatives and to the Employment Agency. After the communication, there will be a waiting period of between two and six months. The decision may not be communicated to the employees before negotiating with the respective trade union. Furthermore, certain selection criteria shall be applied in deciding which employees shall be laid off, and such criteria are normally based on years of service. There are no particular rules governing compensation for this type of dismissals.

In the **United Kingdom**[272], employees shall be given prior notice of dismissal, unless the dismissal is due to a serious breach by the employee. **The due notice period is one week per year of service, with a ceiling of twelve weeks**. An employment contract may be suspended if provided for in the contract or if the employee manifests that he or she shall not adhere to the obligations of the contract. In the UK, only employees with more than two years of service (one year for employees hired prior to 6 April 2012) are protected against unfair dismissal. Resignation by an employee for a fundamental breach of the employment contract by the employer is also considered a dismissal. No approval or authorisation from third parties is required to dismiss employees. As an interesting fact, so-called 'employee shareholders' can exchange rights, such as protection against unfair dismissal, for shares in the enterprise, but they are not entitled to take legal action for unfair dismissal. Some dismissals are automatically considered unfair when based on reasons like: pregnancy, maternity or family leave, trade union membership, disclosure of information, etc. Employers must always prove that there is an objective reason for the dismissal.

[272] Global Legal Group, *The International Comparative Legal Guide to: Employment & Labour Law* (2014), United Kingdom chapter.

Employees (except 'employee shareholders') are entitled to receive the legally established compensation for objective dismissal. Thus, the compensation shall amount to the weekly salary (maximum 450 Pounds, nearly 570€) for each year of service. The legally established maximum compensation is 13,500 Pounds (just over 17,000€). If the employee is dismissed for any other reason, he or she shall not be entitled to compensation. Any employee with a length of service of more than two years (twelve months if the employee was hired prior to 6 April 2012) can challenge a dismissal in a labour tribunal and, if the claim is upheld, he or she shall be entitled to the aforementioned sums, plus compensation for the financial loss suffered as a result of the dismissal. In this case, the maximum compensation amount shall be 74,200 Pounds (nearly 94,000€) or twelve months' salary if the former amount is lower. Employees may also file a claim for discriminatory dismissal, in which case there is no legal limit on the compensation.

With collective dismissals the employer is required to consult the trade union or the employee representatives before making the final decision. The consultations must last at least thirty days or forty-five days if more than one hundred dismissals are on the table. If an employer fails to inform or consult the trade union or the employee representatives, a claim may be filed with a labour tribunal. If the claim is upheld, the employer shall be required to pay up to ninety days' salary to each employee affected by the collective dismissal.

8. EXECUTIVE SUMMARY: CONCLUSIONS AND RECOMMENDATIONS

Conclusions

INTRODUCTION

Road transport in the EU represents 2% of the GDP and employs nearly five million workers. In 2010, road transport in Spain encompassed roughly **59% of total employment** in the transport sector as a whole. **More than 90% of the enterprises in the transport sector are engaged in road transport**.

The objective of this study is to offer a range of basic information about the legal framework of industrial relations between workers (mainly drivers) and employers in the road transport sector in the 28 countries of the EU (EU-28). The study looks at the main individual and collective rights of workers (sections 3 and 4) and the fundamental aspects of the life of employment contracts from their commencement (section 5) to their termination (section 7) through changes in their terms and conditions (section 6).

Without jumping to conclusions about the outcome of this study, this is the **first study at EU level that makes a comprehensive analysis of the legal framework of industrial relations in road transport**, despite the obstacles encountered:

a. In the first place, the **difficulty in defining what is the legal framework of industrial relations** and the obstacles in the way of establishing the perimeter of the subject area of the study.
b. In second place, the **complexity of regulations**, which makes it difficult to systemise the comparative analysis of the study due to the **different legal nature** of the regulations applicable to road transport, the **diversity of powers** from which they emanate, the **different territorial areas** in which they are applied and, lastly, the **fragmentation of powers** that enact them and ensure their application.
c. In third place, the **difficulty in finding a terminology common to 28 national realities** and **systematising the analysis** based on disjointed and incomplete information that does not answer to criteria common to all the EU countries (for example, in the area of salaries[273]).
d. In fourth place, the **imbalance in the information available on goods v. passenger transport** at the expense of the latter subsector, on which the information is scarce and there is no disaggregated data.
e. In fifth place, the **significant differences found between the legislation and its practical application** in the 28 Member States, which forces us to delve deeper in our analysis and go from the theory to the practical reality in some areas like working time and rest periods[274].
f. In sixth place, the **many types of workers** in the road transport sector, although this study focuses on truck and coach drivers.

The **principle of collective autonomy** (self-regulation, self-defence and fundamental rights) inspires, with more or less intensity, each and every one of the legal frameworks of industrial

[273] See section 4.1.
[274] See section 4.2.

relations in the 28 EU countries. However, this principle is **difficult to transpose to the legal system of the EU**. As some author pointed out "*there is nothing more different in Europe, apart from the languages, than the structuring of trade unions, the representation criteria and the effectiveness of workers in collective bargaining*" [275].

Thus, without denying the constitutional nature of certain fundamental rights of workers at EU level, such as the rights to information, consultation, negotiation, collective action, protection against unfair dismissal, decent working conditions, social security and health[276], the principle of solidarity (the EU shall act only if and in so far as the objectives of the proposed action cannot be achieved by the Member States)[277] and the express exclusion of the policies relating to "*remuneration, right to associate, right to strike and right to impose lockouts*"[278] **leave the bulk of authority in labour law matters in hands of the states**.

The exclusion of rights, such as the right to strike, from the sphere of the EU raises the very important question of leaving in the hands of the Member States the regulation of a right that can affect other EU principles and policies –and even **clash with them**- such the free movement of persons and goods and the transport policy itself (one only recall the disturbances caused to Spanish trucks when there are collective disputes in France).

We are therefore faced with a situation characterised by '**dual competence**' **of the EU and the Member States**, where the EU recognises may of the rights analysed in this study in its Charter of Fundamental Rights, but leaves the regulation of others, such as the right to receive pay, the right to trade union freedom and the right to strike, in the hands of the States. To confirm this 'dual competence' or shared competence situation one only needs to remember that even with rights recognised at EU level, it is the EU Member States who are **responsible for drafting the implementation regulations and ensuring the correct application of those rights**.

In the coming years, the debate in the EU will be steered towards the achievement of more harmonisation of the conditions governing the exercise of road transport activity –including the legal framework of industrial relations- although some countries will make efforts to ensure that competence continues to be in the hands of each country. **Social dumping** will continue to be a recurring concept in the political debate, even though it refers to a blurred and even confusing reality, which internally will bring the most veteran countries (EU-15) into confrontation with the new countries (EU+10). We will need to follow closely initiatives like the new **Directive on the posting of workers, access to the profession of haulier, cabotage, the future Single-Member Private Limited Liability Company and, in general, the case law of the Court of Justice of the European Union** with a direct impact on economic sectors like road transport.

Far from seeking to settle such a complex debate, it is nevertheless relevant for the purposes of this study to confirm the existence of a **duality of social models**. This duality between, on the one hand, the veteran EU Member States, led by Germany and France (EU-15) and, on the other, the countries of central and eastern Europe (EU+10) will become apparent in many of the comparative analyses, tables, etc. in this study.

[275] Antonio Lettieri and Umberto Romagnoli, La contrattazione collettiva in Europa (Roma, 1998), page 14.
[276] Articles 27 and following of the Charter of Fundamental Rights of the European Union.
[277] Article 5.3 of the Treaty on the European Union.
[278] Article 153.5 of the TFEU.

COLLECTIVE RIGHTS OF WORKERS

ASSOCIATION AND TRADE UNION FREEDOM

The right to associate enjoys international recognition in article 20 of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

Going with the international flow, the European Union countries guarantee the **right to associate in both its positive and negative meaning, i.e. the right not to join any association**. This apparently obvious clarification by international and national institutions became necessary as a result of the number of cases where employees were required to be members of a given trade union.

On another front, the organisation of employee representation through the **trade union** is common to all the European countries. There are countries that extend the boundaries of the concept of trade union to include **representation of the interests of employers**, and there are others, such as **Spain**, where to refer to employer representation the term **organisation or association** is used, as the concept of trade union is understood in the strict meaning of the term.

The study addresses this aspect in the different countries of the European Union through trade union representation and/or affiliation figures, as well as the identification of the most relevant trade unions, organisations and confederations in the road transport sector. According to the data obtained, the number of trade unions members has fallen drastically[279].

COLLECTIVE BARGAINING

One of the keys to understanding the legal framework of the industrial relations applicable to the transport sector involves assessing the participation of the social partners, in particular the negotiations between employees and employers.

The paradigm of association and **collective bargaining** is the collective agreement. In the Spanish legal system, collective bargaining embodied in a collective agreement constitutes a **source of law of a legally binding nature**, and therefore applicable to all those who meet the conditions defined in its scope of application. In this respect, after an analysis of the scenario in the EU, **only Ireland and the United Kingdom are the exception**, where collective agreements are essentially voluntary. Even so, an increasing number of labour aspects become binding in Ireland after negotiation, and in the United Kingdom this happens through individual employment contracts between employee and employer, and the incorporation of certain clauses that become legally enforceable.

Apart from the above-mentioned binding nature, the aspects that generally distinguish collective bargaining in the EU countries are the **level of the negotiation** and the extension of its **effects beyond the negotiating and signatory parties**.

As regards the level of collective negotiation, in **Spain**, as in the majority of the European Union countries, there are many collective agreements at **national, sectoral and enterprise** levels. In some countries, collective agreements at national level do not exist or do not predominate

[279] Jeremy Waddington, *Trade union membership in Europe. The extent of the problem and the range of trade union responses* (A background paper for the ETUC/ETUI-REHS top-level summer school, Florence 1-2 July 2005).

(**Austria, the Czech Republic, Germany, Croatia, Cyprus, Hungary, Portugal, Romania, Slovakia and the United Kingdom**), in others there are no collective agreements at enterprise level (**Slovenia**) and others only have enterprise-level agreements (**Malta**).

In terms of the extension of the effects of collective agreements, the differences are more complicated to summarise. There are countries where, after negotiation of an agreement, only those represented by the signatory organisations are bound by them. By contrast, in other countries, such as **Spain, the particular workers' trade union or employers' association (or, where appropriate, trade union) that has signed the agreement is irrelevant** because the scope of application responds to enterprise, sector or type of activity criteria, as well as geographic region.

In a nutshell, the variety of collective agreements with different scopes of application in each country makes it difficult to define the regulation applicable to the worker. Different governments have taken the trouble to establish rules for settling **disputes concerning overlapping or concurring agreements**, but they don't always help to clear doubts in this respect.

COLLECTIVE ACTION (STRIKES)

Although it is true that the right to strike is recognised in all the legal systems of the European Union, the legal instruments employed to regulate it differ from one Member State to another. In **Spain**, as in the majority of the countries, the right to strike is constitutional. However, in **Austria, Germany, Belgium, the Netherlands, Malta and the United Kingdom** the right is regulated by judge-made laws.

On another front, the special nature of strikes, as a right exercised collectively, has led the majority of the Member States to consider that the ownership of the right lies with the trade unions, whilst others, like Spain, France, Italy, Slovenia, Portugal and Romania, have chosen to recognise it as belonging to the workers. Nevertheless, the ownership and the exercise of the right do not always go hand in hand. In countries like Slovenia, Portugal and Romania, although the ownership of the right is of an individual nature, it can only be exercised collectively. Lastly, in Spain and Estonia strikes may be called by both workers and trade unions.

CONCILIATION, MEDIATION AND ARBITRATION

The three extra-judicial options for settling collective disputes are:

a. **conciliation**: the third party or conciliator has no other role than to provide a favourable context without liaising between the parties;
b. **mediation**: the third party or mediator has more possibilities of intervening, gathering the opinions of the parties, mediating in their disputes and proposing non-binding solutions. Conciliation and mediation are increasingly becoming one and the same as a result of experience.
c. **arbitration**: the third party or arbitrator assumes decision-making powers, bringing the dispute to an end and binding the parties, who therefore need to have signed an 'arbitration agreement' beforehand.

In general, in the EU-28 prevails the general principle that the exercise of the collective right to strike shall be **preceded by conciliation and mediation**, with the sole exception of **Belgium**, whose legal framework of industrial relations does not require that strikes be declared after

having exhausted such action.

In the majority of the EU-28, **mediation is the most frequently used and is progressively becoming integrated into conciliation**. Arbitration also exists, but is not as widely used. There are countries where the principle of collective autonomy prevails and the public administration hardly plays a role when it comes to exercising the right to extra-judicial or alternative settlement of disputes (**Germany, Denmark, Sweden, Finland, Cyprus**) and in others, which we could colloquially describe as more *interventionist*, the public authorities play a bigger role (ministries, labour inspectors) such as **Spain, France, Greece, Romania and Poland**.

INFORMATION, CONSULTATION AND PARTICIPATION

The rights to information, consultation and participation are defined as rights of a collective nature which entitle workers to:

a. **Receive qualitative information in good time** concerning issues related to the enterprise they work for that affect their labour activity;
b. **Be consulted by the decision-making and governing bodies** of the enterprise, and the outcome of the consultation shall be binding (right of ***co-decision***) or merely of consultative value;
c. **Participate in the governing and decision-making bodies** (the board of directors, the oversight committee and the general meeting of shareholders). The maximum expression of this right is ***co-management***.

We can affirm that all the labour-law systems of the 28 Member States envisage the rights to information and consultation and, with minor differences, establish mechanisms to guarantee their exercise (active legal standing, representation mechanisms through works councils or staff delegates, voting, binding or non-binding nature of the consultation, instances of compulsory information/consultation, etc.).

Furthermore, albeit with some differences in respect of its compulsory or non-compulsory nature for the employer, we have found that the right of workers to appoint their representatives in the enterprise (works councils, staff delegates) is widespread and, from there, they organise the right to information, consultation and participation in line with the established requirements.

However, **with regard to the right to more active participation and, specifically, the possibility of co-deciding certain matters on an equal footing (co-decision) or participating in the governing bodies of the enterprise (co-management) the reality is more divergent**.

In **Spain**, the legislation confers the right to establish a works council in enterprises with more than 50 workers, and staff delegates in enterprises with less than 50 workers. Apart from the rights to information and consultation, neither co-decision nor co-management is recognised.

According to the Workers' Statute, in Spain, the works council shall be informed every three months on a series of matters, such as the enterprise's performance, changes in the working conditions (i.e. extra hours), occupational safety and environmental actions. With the due frequency, the works council is entitled to have access to information on the balance sheet and the profit and loss account, as well as on other matters like functional mobility, transfers or assignment contracts, which also extends to so-called economically dependent self-employed workers.

In **Germany** the participation of workers reaches its maximum expression (co-management) and in other countries (**Austria**) the rights to information/consultation (very extended in the EU-28) and co-decision (less extended) are coupled with the right to have legal representation in industrial tribunals. Other countries (**Cyprus**) envisage fines if the employer breaches his or her obligation to inform and consult the workers.

INDIVIDUAL RIGHTS OF WORKERS

SALARY

The right to receive pay is a basic individual right of workers and represents the **main operating cost** in transport enterprises. The comparative analysis of the salaries of road transport drivers in the EU-28 and the consequential operating cost for the employer is a complex task for several reasons.

Apart from basic methodological difficulties, such as the **different salary levels in the carriage of goods and passengers subsectors and the partial reliability of the information** offered by existing studies in this field, the authors of this study came up against additional obstacles like the **extraordinary complexity of the salary structure** in the road transport sector and the **different regulatory instruments** that come into play in the determination of the salary.

Accepting these limitations, this study nevertheless highlights **important differences** between the EU-28 Member States in the remuneration of their road transport workers. In some cases, these important differences are found in specific geographical areas or zones of the same country (in this respect, the case of **Germany** is a meaningful example).

This issue becomes particularly important in a sector characterised by being **mobile** in a region like the European Union, where the free movement of persons, goods, services and capital is a fundamental right.

WORKING TIME AND REST PERIODS

The working time and rest periods for mobile workers in the road transport sector are regulated at EU level in several Directives and Regulations: **Regulation (EC) No. 561/2006**, which is the axis of the EU regulations and provides a common set of rules for maximum driving times, breaks and rest periods, **Directive 2002/15/EC**, also known as the 'directive on working time in road transport', which supplements Regulation (EC) No. 561/2006 by establishing minimum daily and weekly rest periods and adequate breaks. **Directive 2006/22/EC**, constitutes the centre piece which enables fulfilment of the provisions established in Regulation (EC) No. 561/2006 with the aim of **promoting a common approach to the implementation and interpretation** of the legislation.

These three legislative acts are complemented by **Regulation (EEC) No. 3821/1985** (on recording equipment in road transport) and **Directive 2003/59/EC** (on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods and passengers). Furthermore, this EU framework is juxtaposed with a series of laws approved at national level.

The Member States are responsible for guaranteeing compliance and observance of EU legislation over the length and breadth of their territories. The significant discrepancies in the transposition of the directive by different Member States call for greater harmonisation, in particular in the **definition of the infringements and the penalties** to be adopted.

From the point of view of the implementation of European legislation, the level of compliance with the European Union's social legislation by the different Member States can be measured using different indicators. In the case of freight transport, one of the indicators is the **number of checks** based on the number of days worked by mobile workers. In the period 2009-2010, **the**

vast majority of checks were carried out at the roadside (89%), whilst checks in premises remained at a timid 11%, far below the minimum threshold of 50% set by European legislation. Another current limitation found is the disparity in criteria with regard to the checks to national and foreign drivers.

The **total number of infringements** detected in the period 2007-2008 was just under 3.2 million, and the biggest numbers were detected by **Germany** (nearly one million), followed by **France** (approximately 290,000) and **Poland** (just over 240,000). **In the period 2009-2010, half of the checks in the EU as a whole were carried out by Germany and France alone**.

Furthermore, the **rate of infringements** detected is systematically higher in freight transport: in the period 2007-2008, approximately **10 infringements per 100 checks were detected** in freight transport, and 2.2 in passenger transport.

In practice, there are **six different categories of infringements** related to driving times: tachograph records (i), breaks (ii), rest periods (iii), incorrect functioning (iv) and use of the tachograph (v) and the maintenance of tachograph records (vi). There are very **different patterns between countries**. As an EU average, non-compliance with breaks was the cause of the highest number of infringements (in the region of 30%), closely followed by infringements of rest periods (around one quarter of the total).

The **types of penalties** imposed in the Member States include ***financial penalties***, with fines that differ substantially from country to country (from a **minimum of 58.23€ in Malta to a maximum of 5,000€ in Austria**), ***immobilisation of the vehicle*** (a penalty established in the legal systems of 15 Member States), ***withdrawal of the driving licence*** (established in five Member States) and ***prison*** (applied in seven Member States).

Other divergences refer to areas like the treatment given to repeat offenders, the characterisation of the infringements and the different treatment given to national and foreign drivers.

With regard to the application of the regulations on passenger transport, whose main regulatory framework is **Regulation (EC) No. 1073/2009** (which amends Regulation (EC) No. 561/2006), we can conclude that both in relation to 1) the rate of infringements based on the number of checks, and 2) the rate of infringements based on the percentage of worked days checked, in general, **the freight transport sector shows higher rates than the passenger transport sector**.

NON-DISCRIMINATION

Combating discrimination is one of the fundamental values of the Union and, at the same time, a challenge. The **Racial Equality Directive (Directive 2000/43/EC) and Directive 2000/78/EC on equal treatment in employment and occupation** are the two benchmark laws on non-discrimination in the labour-law system applicable to workers in the EU, including road transport workers.

Lastly, transport is one of the sectors where **gender inequality** has been part of the sector's discussions. One of the main explanations for inequality in the sector is that **road transport has traditionally been considered a "workplace for men"** because it is not adapted to women's needs and the working conditions are difficult to combine with family life.

SOCIAL SECURITY: STATUS OF EMPLOYEES v. SELF-EMPLOYED WORKERS

In the EU-28 there is a coexistence of different types of social security systems that represent the welfare state in Europe as a paradigm of citizens' social security rights. In these systems, workers are covered in different ways. Furthermore, the legislation in these countries tends to include different specific provisions for self-employed workers with the aim of increasing their social protection. It is important to know the different levels of social protection for workers in the EU-28 based on whether they work on an employee or self-employed basis, particularly in a sector where **road transport drivers are the bulk of the labour force**. It is estimated that **69% of the drivers are employees and 31% are self-employed**.

On one front, there are the systems in place in **Ireland** and the **United Kingdom** that cover a limited number of risks and exclude self-employed workers. Consequently, self-employed workers in Ireland are not entitled to unemployment, invalidity or disability benefits, and self-employed workers in the United Kingdom are not entitled to benefits under the same terms as employees.

On another front, there are the systems in countries like **Austria, Belgium, France, Germany, Italy, the Netherlands and Spain** that normally have several compulsory schemes for different types of workers (based on the worker's category, profession or activity sector) and where different programmes for self-employed workers in a specific occupation group (i.e. agricultural workers or liberal professions) emerge. Nevertheless, there are also many differences within this group of countries. And on another front, there are the systems in place in Nordic countries that tend to provide universal coverage for a wide range of social risks, such as in the case of **Denmark, Finland and Sweden**, where employees and self-employed workers are given the same status. However, no matter how universal or broad they seek to be, there are also differences between the systems of each of the countries with this model.

Lastly, there are the systems in the **former Eastern Bloc countries** with a series of common features. In these countries there are large differences between the social security schemes and benefits available to employees and self-employed workers. The main differences are the compulsory or voluntary nature of the insurance schemes and the contribution amounts. Consequently, employees have more protection because they are compulsorily included in more insurance schemes and enjoy much more generous benefits.

RETIREMENT, UNEMPLOYMENT AND SICKNESS

In the area of the system of social benefits like pensions and allowances, **the EU Member States have the power to legislate**, although the European Union promotes the convergence of the different national policies through its coordination Regulations.

One of the problems facing the labour market today is the **age** of the population. As a result of factors like the unsustainability of some pension systems and the increasing life-expectancy rate, the majority of the countries have introduced labour reforms such as **the gradual increase in the age of retirement**.

It is also interesting to see what part of these reforms have been used to **match the retirement age for men and women**, given that in the majority of the countries women have been subject to more advantages requirements.

In the areas of retirement, unemployment and healthcare, the study makes a comparative tour across the EU-28 and looks at aspects like the **requirements for access to benefits, the type of instruments, the beneficiaries and the obligation of employers** to fill out the social security papers (i.e. in the first days of absence due to illness).

HEALTH AND SAFETY

Occupational health is an issue of particular concern on a global scale. The Community Charter of the Fundamental Social Rights of Workers (Strasbourg, 1989) states: *«Every worker must enjoy satisfactory health and safety conditions in his working environment»* therefore *«appropriate measures must be taken in order to achieve further harmonisation of conditions in this area while maintaining the improvements made»*.

Following the trend established by the ILO and the WHO, health and safety is one of the most important and advanced policy areas in the European Union. According to article 153 points 1 and 2, of the Treaty on the Functioning of the European Union, the EU, the Parliament and the Council shall support and complement the activities of the Member States and adopt the necessary measures to, among others, establish minimum standards required in the work environment conducive to protecting the health and safety of workers. A wide variety of EU measures in the area of health and safety at work have been adopted on the basis of the aforementioned article (former article 137 TEC).

Several Directives have been drafted by the EU's legislative bodies and, therefore, the Member States adopt rules derived from the higher level, **and the differences that we can find between countries are not significant**.

In the framework of the **hazards and risks** faced by truck and coach drivers, we find **the increasing use of complex remote control and monitoring technology, the design of the workplace, access to facilities (hygiene, eating and health), infectious diseases, violence and robbery**[280].

We should not ignore other potential risks highlighted by the European Commission, such as the possible **undesired effects of a strict application of the current legislation on working time and rest periods due to added pressure on truck and coach drivers**.

There is no doubt that to know the evolution of aspects related to health and safety, one need only turn to that established by the European Union, given that, with the exception of very specific aspects, the level of EU regulation is broad and complete. What we wanted to emphasise at national level in our work, over and above the legislative measures, are the set of prevention and awareness-raising initiatives.

[280] *OSH in figures: occupational safety and health in the transport sector – An overview* (European Agency for Safety and Hygiene, 2011).

EMPLOYMENT CONTRACTS

The employment of road transport employees in the EU-28 has common and distinct features. The types of employment contracts are practically the same in the 28 Member States. Leaving economic trends and realities aside, **the main difference lies in the number of renewals and maximum duration periods of fixed-term employment contracts**, which vary according to the country.

An important difference resides in the **form of employment contracts**. There is no unanimity in the EU-28, where legal systems that allow **freedom of form** of employment contracts (except for certain types of contracts that must be in writing, and sometimes written contracts are required for proof purposes) coexist with others that require that all employment contracts must be in writing. In principle, the application of the principle of freedom of contract form is the norm (18 countries versus 10). Although with exceptions (**Estonia, Cyprus and Malta**), we can conclude that the **EU+12 countries and Croatia** impose the written form of employment contract. On the other hand, the principle of freedom of form prevails in the **EU-15**, though the written form is sometimes required for proof purposes or because it is required by law for certain types of contracts.

The **length of the trial period** varies from country to country and no general conclusions can be drawn, beyond pointing out that there are countries that establish the length of the trial period by law or another regulation, whilst others leave it to the discretion of the parties, though the length of a trial period may not exceed the limits established in the regulations.

The minimum working age also varies and not always coincides with the age of majority in the different countries, nor enables young people to perform any job in exchange of pay. In this respect, although workers can be hired at a certain age, the types of jobs they are allowed to perform and the terms of employment are regulated until they reach another specific age. In any case, **16 is the most common minimum age** (11 countries), although 15 and 18 are also usual (8 and 6 countries, respectively) whilst the minimum age of 14 is only in place in two countries.

Nevertheless, one should bear in mind the singularity of the road transport sector, where the driver of vehicle is the main human capital of an enterprise. Thus, **for a worker to be hired as a driver he or she must hold the necessary driving licence and have reached the legal minimum age, which in road transport ranges from 18 to 24 years**, depending on the type of licence. Therefore, the job of driver is subject to age, authorisation and training requirements that impede employers from hiring any individual, even if they have reached the minimum age to work in his or her country.

Lastly, as mentioned above, the road transport sector in the EU-28 is characterised by its **large share of self-employed workers**. However, this study has focused on employment contracts of workers hired on an employee basis. In principle, self-employed workers do not have a labour relationship with their employer or client - theirs is a provision of services relationship. If there was a labour relationship, we would refer to them as economically dependent self-employed workers. In this respect, we should highlight that this study has gathered that **50% of the road transport drivers in the EU-28 who work as self-employed workers are workers economically dependent on the company they provide services to.**

CHANGES IN THE TERMS OF EMPLOYMENT CONTRACTS

A substantial change in the terms of an employment contract refers to any change affecting the **working hours, time schedule, shift system, remuneration system and salary amount, work system, performance and functions of the job**. There is no general rule in the EU-28 for allowing or not allowing unilateral changes in the working conditions by the employer.

There are several countries that do not allow this, unless there is a written agreement of the parties and/or under specific exceptional circumstances. Countries like **Portugal** do not regulate this question, whilst others establish requirements for doing so, i.e. when certain procedural criteria are observed (prior notice periods, means of communication) and when a serious economic problem occurs in an enterprise.

The example of **Bulgaria** is surprising because the Labour Code does not regard as a change in the terms of an employment contract, instances where an employee is posted to another workplace of the same enterprise without changing his or her functions, job or salary. Another particular example is **Malta**, where changes in the terms of employment contracts involving working time, the conduct of employees, bonuses or internal regulations of the enterprise, are allowed.

In **Germany** there is the concept of dismissal due to changes, and employees actually accept the changes whilst they submit the dispute to the courts. In countries like the **United Kingdom** and **Finland**, employees are entitled to end the employment relationship if the employer unilaterally changes the substantial terms of their employment contract.

TERMINATION OF EMPLOYMENT CONTRACTS

Despite the fact that the regulation of the termination of employment contracts has certain features common to all the EU Member States, there are **large disparities in the rules governing** each of the aspects unchained by the termination of an employment relationship.

Although **prior notice of dismissal is required in the majority of the States** before the dismissal is carried out, with the exception of instances of disciplinary dismissal, the period for fulfilling the obligation of prior notice differs according to the State. Whilst in **Spain** the prior notice period is fifteen days and in **Germany** four weeks, in other countries like **Ireland, Italy** and **Hungary** the notice period increases according to the employee's length of service. Even in countries like Greece and Belgium (for employment contracts concluded before 1 February 2014 in Belgium) the prior notice period depends on the category of worker. Furthermore, the legally accepted means of giving notice also vary. In general, written notice is required, although there are countries like **Austria** where verbal notice, and even notice implicitly inferred from the employer's behaviour, are accepted as valid.

With regard to the need to obtain authorisation from third parties to enable an employer to dismiss an employee, in the majority of the countries no authorisation is required for dismissals that do not raise any particular problems. An exception to this rule is the **Netherlands**, where employers are required to obtain authorisation from the *UWV-Werkbedrijf* (Public Employment Service) even for individual dismissals. Nevertheless, when involving dismissals of employees in special categories or collective dismissals, the majority of the States establish additional requirements. In relation to the special categories of employees, the legislation of the 28 Member States is similar.

Compensation is generally paid in objective and unfair dismissals. The rules on this question call for a detailed analysis, since it is difficult to find general patterns. In the **Netherlands** there are no legal rules for compensation for dismissals, but there are judge-made standards that can be applied in the absence of clauses in the collective agreement specifying the compensation amounts. In **Belgium** and **Greece**, compensation amounts vary according to the employee's category, as in the prior notice period. On the other hand, in countries like **Italy and Portugal**, a declaration of unfair dismissal entitles the employee to be reinstated and paid for the length of the dismissal. In **Ireland**, unfair dismissal leads to reinstatement, as in **Greece**. In the **United Kingdom**, employees are entitled to compensation for unfair dismissal, except the special category of employees called 'employee shareholders', who exchange the rights they would be entitled to in the event of unfair dismissal for shares in the enterprise.

Lastly, we can highlight that the suspension of employment contracts or 'garden leave' shows little uniformity in the Member States. Some countries, such as **Spain**, do not contemplate it in their legislation, whilst others, like **Romania**, allow it if the employee accepts. In **Austria**, the suspension of employment contracts is recognised, though employees are not entitled to pay during the suspension period.

RECOMMENDATIONS

Future lines of research, quality of the available data

The legal framework of industrial relations in the carriage of goods and passengers by road is a decisive factor at both political (accomplishment of a single transport space in the EU) and business levels (business or investment decisions). The volume, fragmentation and disparity of the data at EU-28 level **recommend maximising the utility of tools which, like this study, can offer simple, reliable, up-to-date and immediately comparable information on the European countries**.

Apart from being scarce (in comparison with freight transport), there is no disaggregated data for passenger transport. Many statistics include all means of surface transport (train, bus/coach and taxi) and fail to draw a distinction between private and public ownership of enterprises (for example, in urban transport) or individualise unscheduled and scheduled transport. **It is essential to conduct monographic studies on passenger road transport (legal framework of industrial relations and other aspects) to be able to have tools of analysis that will allow making adequate decisions at political and business levels**.

Collective agreements are indispensable reference documents to known in full detail the legal framework of industrial relations in road transport and be able to conclude a solid and reliable comparative analysis of the EU-28. Given their multiplicity and volatility (frequent renewal), **it is advisable to build a database at EU-28 level to have up-to-date information**.

Changes in the policies and the legislative framework: necessary harmonisation.

The **disparity** in the definition of the infringements, in the amounts and types of penalties and in the number of checks carried out based on the legislation on working time and rest periods is **extremely wide between the EU-28 countries**. The harmonisation of criteria, cooperation between the state bodies in charge of its implementation and the convergence of penalties and fines are desirable objectives that **call for the creation of a specialised body (European agency for the road) with authority to make periodic assessments of the implementation of the regulations in each Member State, conduct research and studies, exchange information and put forward proposals**.

We therefore recommend that the public authorities, with the support of the sector, conduct studies and analyses of the real extent of the current disparities in the legal frameworks of industrial relations highlighted in this study, with the objective of adopting the pertinent measures at political and legislative levels in the EU.

To avoid increasing the Member States' margin for discretion in their interpretation, implementation and application of EU law, **we recommend that, in the future, the social legislation applicable to road transport holds the legal status of Regulation** which, unlike Directives, does not require national implementation laws (immediate applicability) and has direct effects (direct access by individuals to the courts to claim their rights).

Relaxation of the regulations to make the profession of driver attractive.

The differences in the legal frameworks of industrial relations in the EU-28, and not just salary differences, can cause distortions in the road transport market in the EU and give rise to phenomena like social dumping. The different social standards between the EU-15 and the other EU+12 countries do nothing to help make the profession of driver more attractive. What is more, as highlighted in the Report of the High Level Group on the Development of the EU Road Haulage Market (2012), an *"increase in wages alone is not seen as sufficient to attract adequate numbers of recruits to the profession"*.

To make the profession of driver more attractive and attract more young people (in particular women) **it is necessary to steer future EU legislation towards improving the quality of the profession, in particular the working conditions** (working hours, ergonomics, safety, training, driver exchange points, load exchanges, parking facilities, etc.) and **access to the profession**, without ignoring the **undesirable effects on drivers of a strict application of the current legislation on working time and rest periods**, which can cause added stress.

The public authorities must take into consideration the **peripheral situation** of EU Member States that, like Spain, suffer certain **imbalances in their markets** which are not ascribable to the actual business activity. In this respect, the long geographical distances covered by drivers from these countries call for social legislation adapted to their unique situation.

ANNEXES

ANNEX I. ACRONYMS

ACRONYMS USED IN THE STUDY

3F Federación Unida de Trabajadores Daneses
ACAS Advisory, Conciliation and Arbitration Service (UK)
ACV-TRANSCOM Sindicato para Transporte y Comunicaciones (Bélgica)
ADEDY Confederación de Funcionarios Públicos (Grecia)
ADR Acuerdo Internacional sobre el Transporte de Mercancías Peligrosas por Carretera
ADU Unión de Empleados del Transporte de Autobús y Viajeros (Hungría)
AECAF Asociación Empresarial Española de Carga Fraccionada
AETR Acuerdo europeo sobre el trabajo del personal de los vehículos que se dedican al transporte internacional por carretera
AGCI Asociación General de Cooperativas Italianas
AGTM Acuerdo General de Transporte de Mercancías por Carretera (España)
AKAVA Confederación de Sindicatos de Profesionales Académicos (Finlandia)
AKT Asociación de Empresarios del Transporte Público (Dinamarca)
AKT Unión de Trabajadores del Transporte (Finlandia)
ALT Confederación de Empleadores en Transporte por Carretera (Finlandia)
ANATRANS Federación Nacional de Agencias de Transportes Operadores de Transporte (España)
ANITA Asociación Nacional de Empresas de Transporte en Automóvil (Italia)
ANTRAM Asociación Nacional de Transporte Público de Tren Mercancías (Rumanía)
ANTROP Asociación Nacional de Transportistas de Viajeros por Carretera (Rumanía)
ASAC Acuerdo de Solución Autónoma de Conflictos (España)
ASEC Acuerdo sobre Solución Extrajudicial de Conflictos Laborales (España)
ASEC-EX Acuerdo sobre Solución Extrajudicial de Conflictos Laborales (Extremadura, España)
ASINTRA Federación Española Empresarial de Transporte de Viajeros
ASO CR Asociación de Sindicatos Independientes (Republica Checa)
ASPI Prestación Social por Desempleo (Italia)
ASTIC Asociación del Transporte Internacional por Carretera (España)
ATD Asociación de Empleadores Propietarios de Taxis (Dinamarca)
ATL Asociación de Empresarios del Transporte y la Logística (Dinamarca)
ATP Seguro de Pensión Complementaria (Dinamarca)
ATP Asociación de Transporte Público (Malta)
AVK Asociación de Empleadores Municipales (Alemania)
BA Asociación Sueca de Trabajadores de Transporte por Carretera
BDO Federación de Emprendedores Alemanes en Transporte de Autobús
BGL Federación de Transporte de Mercancías por Carretera y Logística (Alemania)
BIA Asociación Industrial de Bulgaria
BCCI Cámara Búlgara de Comercio e Industria
BDA Confederación Alemana de Asociaciones de Empleadores
BICA Asociación Búlgara Capital Industrial
BTB Sindicato de Transporte Belga
CCOO Federación de Servicios a la Ciudadanía (España)
CE Comisión Europea
CE Constitución Española
CEIBG Confederación de Empleadores e Industriales de Bulgaria
CES Confederación Europea de Sindicatos

CETM Confederación Española de Transporte de Mercancías
CFDT Confederación Democrática Francesa del Trabajo
CGB Federación de Comercio Cristiano de Alemania
CGIL Confederación General Italiana del Trabajo
CGSLB/ACLVB Federación de Comercio Liberal Sindicatos de Bélgica
CGT Confederación General del Trabajo (Francia)
CGTP-IN Confederación General de Trabajadores de Portugal
CISL Confederación General Italiana del Trabajo
CITUB Confederación de Sindicatos Independientes (Bulgaria)
CLC Unión Servicio, Comercio y Transporte (Luxemburgo)
ČMKOS Confederación Checo-Morava de Sindicatos (República Checa)
CMR Acuerdo sobre Contrato Internacional de Transporte de Mercancías por Carretera
CNTDS Consejo Nacional Tripartito de Diálogo Social (Rumanía)
CNV Federación Nacional de Sindicatos Cristianos de los Países Bajos
CONFETRA Confederación General de Transporte y Logística (Italia)
CONFTRASPORTO Confederación de Transporte y Logística (Italia)
CORTE Confederación de Organizaciones para la Aplicación Normativa en el Transporte por carretera
CSC/ACV Confederación de Sindicatos (Bélgica)
CSE Carta Social Europea
CPC Certificado Profesional de Competencia
CSI Confederación Sindical Internacional
CWU Sindicato de Comunicación (Reino Unido)
DA Confederación de Empleadores de Dinamarca
DBB Asociación de Servicio Civil Alemán
DGB Confederación de Sindicatos Alemanes
DG EMPL Comisión Europea – Dirección General de Empleo, Asuntos sociales e Inclusión
DG MOVE Comisión Europea – Dirección General de Movilidad (exDG TREN – Dirección General de Transporte y Energía)
DLRT Decreto-Ley de Relaciones Laborales
EAKL Confederación de Sindicatos de Estonia
ECR Euro Controle Route
EC European Commission (Comisión Europea)
ECJ European Court of Justice (Tribunal de Justicia de la UE)
ECMT European Conference of Ministers of Transport (Conferencia Europea de Ministros de Transportes)
EEE Espacio Económico Europeo
EP European Parliament (Parlamento Europeo)
ERAA Asociación de Transportistas Internacionales de Estonia
ETF European Transport Workers Federation (Federación Europea de Trabajadores del Transporte)
ETTA Sindicato Estonio de Trabajadores del Transporte y Carretera
ETTK Confederación de Empleadores de Estonia
ETUI European Trade Union Institute
EU European Union
EUROFUND European Foundation for the Improvement of Living and Working Conditions (Fundación Europea para la Mejora de las Condiciones de Vida y del Trabajo)
Eurostat Oficina Estadística de la UE
EVG Sindicato de Transporte y Tren (Alemania)

EWCS European Working Conditions Surveys
FAST Federación Independiente de Sindicatos de Transporte de Mercancías y Logística (Italia)
FAU Organización Federal de Autobuses y Operadores de Autocares (Austria)
FCT Federación de Trabajadores de Comunicación y Transporte (CCOO, España)
FEBETRA Empleadores del Transporte por Carretera (Bélgica)
FEB/VBO Federación Belga de Empleadores
FEDERTRASPORTO Sindicato de Empresarios de Transporte (Italia)
FENEBUS Federación Nacional Empresarial de Transporte de Autobús (España)
FESTRU Federación de Sindicatos de Trabajadores del Transporte Vial y Urbano (Portugal)
FGG Organización Federal de Transporte por Carretera de Mercancías (Austria)
FGTB/ABVV Federación General del Trabajo Belga
FIAP-Italia Federación Italiana de Profesionales del Flete
FGTE Federación General del Transporte y el Equipamiento (Francia)
FILT-CGIL Federazione Italiana Lavoratori Trasporti-Confederazione Generale (Federación Italiana de Trabajadores del Transporte)
FITA CNA Unión Nacional de Empresas de transporte (Italia)
FIT-CISL Federación Italiana del Transporte – Confederación Italiana de Sindicatos
FNCR Federación Nacional de Conductores de Transporte por Carretera (Francia)
FNCTTFEL Sindicato de Trabajadores del Transporte
FNSSR Federación Nacional de Sindicatos de Conductores (Rumanía)
FNTR Federación Nacional de Transporte por Carretera (Francia)
FNV Federatie Nederlandse Vakbeweging (Federación Holandesa de Trabajadores del Transporte)
FO Confederación General del Trabajo - Fuerza Obrera
FSP Organización Federal de los Transportistas (Austria)
FTA Asociación de Transporte Mercancías (Reino Unido)
FUVOSZ Federación Nacional de Emprendedores en Transporte (Hungría)
GdED Unión de Transporte, Servicio y Redes (Alemania)
GDG Sindicato de Empleados del Estado (Austria)
GÖD Sindicato de Servicios Públicos y Probados (Alemania)
GPA-DJP Sindicato de Empleados Asalariados, Trabajadores Gráficos y Periodistas (Austria)
GSEE Confederación General de Trabajadores Griegos
GWU Unión General de Trabajadores (Malta)
HGVs Heavy Goods Vehicles (Vehículos pesados de transporte de mercancías)
HK Unión de Empleados Comerciales y Administrativos en Dinamarca
HTS Confederación de Dinamarca de Transporte Comercial y Servicio de Industrias
IKA-ETAM Caja General del Seguro de los Trabajadores por Cuenta Ajena (Grecia)
ICTU Congreso de Sindicatos de Irlanda
IRHA Asociación de Transporte por Carretera de Irlanda
IRU International Road Transport Union
ITF International Transport Forum
KADPSF Federación Lituana de Sindicatos para Trabajadores de Carretera y Transporte
KFG Sindicato de Conductores Cristianos (Alemania)
KKSC Sindicato de Transporte Público por Carretera (Hungría)
KKVSZ Federación de Empresas de Transporte por Carretera (Hungría)
KMSZ Federación del Consejo de trabajadores en Transporte (Hungría)
KOZ SR Confederación de Sindicatos de la República Eslovaca
KZPS ČR Confederación de Empleadores y Empresarios Asociaciones de la República Checa
LAKRS Sindicato Letón de Servicios Públicos

LAPP Asociación de Letonia de los Transportistas de Viajeros
LAUTO Asociación de Transporte por Carretera (Letonia)
LBAS Sindicato Libre Letón (Letonia)
LCCB Confederación de Sindicatos Cristianos de Luxemburgo
LDF Federación Lituana del Trabajo
LINAVA Asociación de conductores por Carretera Nacional de Lituania
LO Confederación Danesa de Sindicatos (Dinamarca)
LPSK Confederación de Sindicatos de Lituania
LTF Federación Lituana de Transporte
MHP Federación de Sindicatos del Personal de Gestión y Profesionales (Países Bajos)
MKDSZ Servicio de Mediación y Arbitraje Laboral (Hungría)
MKFE Asociación Húngara de Transporte por carretera
Move AGV Asociación de Empleadores Proveedores de Servicio de Movilidad y Transporte (Alemania)
NACE Nomenclatura Estadística de Actividades Económicas en la UE
NBRU Unión Nacional de Bus y Tren (Irlanda)
NeHGOSZ Unión Nacional de Conductores Profesionales en un Ámbito Internacional (Hungría)
NHS Servicio Nacional de Salud (Reino Unido)
NIS Sistema Nacional de Seguros (Reino Unido)
NIT Hungary Federación de Transportistas Internacionales Privados (Hungría)
NSZZ Unión Sindical Independiente y Autónoma (Polonia)
NVA Oficina de desempleo (Letonia)
ÖGB Federación de Sindicatos (Austria)
OGB-L Confederación de Sindicatos Independientes de Comercio (Luxemburgo)
OIRA Evaluación de riesgos interactiva (online)
OIT Organización Internacional del Trabajo
OAED Oficina Nacional de Empleo (Grecia)
OMED Servicio de Mediación y Arbitraje (Grecia)
OPZZ Alianza de Sindicatos de Polonia
OSD Sindicato de Transportes (Republica Checa)
OS DOIA Sindicato de Trabajadores de Transporte, Carretera y Servicios de reparación de Coches Bohemia y Moravia (República Checa)
OSME Federación de Sindicatos del Transporte de Grecia
OSPEA Sindicato de Trabajadores del Tranvía Eléctrico y Autobús (República Checa)
OZPTD Unión de Todos los Empleadores de Transporte por Carretera en Polonia
OZPTS Unión de Todos los Empleadores de Transporte por Carretera de Vehículos en Polonia
PEO Federación Panchipriota del Trabajo (Chipre)
PRSI Pagos del Seguro Social (Irlanda)
RHSD CR Consejo de Acuerdo Social y Económico de la República Checa
RTA Asociación de Transporte por Carretera (Reino Unido)
RHA Asociación de Cargamento por Carretera (Reino Unido)
SACO Confederación Sueca de la Asociaciones Profesionales
SAK Organización Central de Sindicatos (Países Bajos)
SAV Asociación Profesional de los Transportistas de Mercancías por Carretera en la Región Flamenca y la Región de Bruselas Capital

SD CR Unión de Transporte de República Checa
SDP CR Asociación de Empresas de Tránsito de la República Checa
SDPZ Sindicato de Trabajadores en Transporte y Telecomunicaciones (Eslovenia)
SEK Confederación de Trabajadores de Chipre
SERCLA Servicio de Conciliación Laboral Andalucía (España)
SIMA Servicio Interconfederal de Mediación y Arbitraje (España)
SITRA Unión de Trabajadores del Transporte (Portugal)
SITUP Unión de Servicios, Industria, Profesionales y Técnicos (Irlanda)
SMI Salario Mínimo Interprofesional
SPEE Servicio Público Estatal de Empleo (España)
SMC-UGT Federación de Servicios para la Movilidad y el Consumo (España)
SNA-Casartigiani Unión Nacional de los Transportistas por carretera de Casartigiani (Italia)
SNM Unión Nacional de Chóferes (Portugal)
STTK Confederación Finlandesa de Trabajadores Asalariados
STRUP Sindicato de Trabajadores de la carretera y del transporte público (Portugal)
SVAPS Sindicato de Conductores de Autobús de Eslovenia
TA Asociación de Empleadores de Turismo Propietarios de Autobuses (Dinamarca)
TALO Confederación de los sindicatos de empleados de Estonia
TC Tribunal Constitucional, España
TCM Federación de Transportes, Comunicaciones y Mar (UGT, España)
TCO Confederación Sueca de Empleados Profesionales
TDF Federación de Empleados del Transporte (Lituania)
TESZ Sindicato Europeo de Transportistas de Mercancías (Hungría)
TFUE Tratado de Funcionamiento de la UE
TISPOL Red Europea de Policía de Tráfico
TLF Federación de Empresas de Transporte y Logística de Francia
TLN Asociación de Empleadores de Transporte Público, Transporte en Bus, Transporte y Logística en Países Bajos
TRAN Committee Comisión de Transporte y Turismo del Parlamento Europeo
TRANSPORTKOMERC Asociación Croata de Transporte en Camión
TSSA Asociación de Asalariados del Transporte (Reino Unido)
TUC Confederación de Sindicatos (Reino Unido)
TULRCA Ley de Sindicatos y Relaciones Laborales de 1992 (UK)
UBOT-FGTB Union Belge des Ouvriers du Transport / Fédération Générale du Travail de Belgique (Sindicato de Trabajadores del Transporte de Bélgica)
UBS Servicio Limitado No Programado de Bus (Malta)
UE Unión Europea
UE+10 Chipre, Eslovaquia, Eslovenia, Estonia, Hungría, Letonia, Lituania, Malta, Polonia y República Checa
UE+12 UE+10 + Bulgaria y Rumanía
UE-15 La Unión Europea antes de la ampliación de 2004
UE-27 La Unión Europea sin incluir a Croacia cuya adhesión fue en 2013
UE-28 La actual UE con sus 28 países: Alemania, Austria, Bélgica, Bulgaria, Chipre, Croacia, Dinamarca, Estonia, Eslovenia, Eslovaquia, España, Finlandia, Francia, Grecia, Hungría, Irlanda, Italia, Letonia, Lituania, Luxemburgo, Malta, Países Bajos, Portugal, Polonia, República Checa, Rumanía, Suecia y el Reino Unido
UFT Unión de Federaciones de Transporte (Francia)
UGL AF Federación Nacional de trabajadores Ferroviarios (Italia)
UHM Unión General de Trabajadores de Malta

UICR Union Internationale des Chauffeurs Routiers (Unión Internacional de Conductores de Transporte por carretera)
UILT Confederación Sindical Italiana de Transporte
UILTRASPORTI Sindicato de trabajadores del Transporte
UNOSTRA Sindicatos de Operadores de Transporte de Mercancías en Automóvil (Francia)
UNTRR Unión Nacional de Transportistas por Carretera en Rumania
UPTR Federación de Transporte Profesional por Carretera (Bélgica)
URTU Unión de Transporte por Carretera Unido (Reino Unido)
USDAW Sindicato de trabajadores en Tienda, Distribución y Trabajadores Afines (Reino Unido)
UWV-Werkbedrijf Servicio Público de Empleo (Países Bajos)
VER.DI Vereinte Dienstleistungsgewerkschaft (Sindicato Alemán de Trabajadores del Transporte)
VIDA Gewerkschaft vida (SIndicato Austríaco de Trabajadores del Transporte)
VVT Confederación de Transporte Vertical (Países Bajos)
ZADOPOT SR Asociación de Empleadores en Transporte, Correos y Telecomunicaciones (Eslovaquia)
ZDODS Asociación de Empleadores para Actividades Regionales de Eslovenia
ZDS Asociación de Empleadores Eslovenos
ZUS Instituto de la Seguridad Social (Polonia)

ANNEX II. EU COUNTRY CODES

COUNTRY CODES

Code	Official Name	Country in English
AT	Österreich	Austria
BE	Belgique/België	Belgium
BG	България	Bulgaria
CZ	Česká republika	Czech Republic
DK	Danmark	Denmark
DE	Deutschland	Germany
EE	Eesti	Estonia
IE	Éire/Ireland	Ireland
EL	Ελλάδα	Greece
ES	España	Spain
FR	France	France
HR	Hrvatska	Croatia
IT	Italia	Italy
CY	Κύπρος	Cyprus
LV	Latvija	Latvia
LT	Lietuva	Lithuania
LU	Luxembourg	Luxembourg
HU	Magyarország	Hungary
MT	Malta	Malta
NL	Nederland	Netherlands
PL	Polska	Poland
PT	Portugal	Portugal
RO	România	Romania
SI	Slovenija	Slovenia
SK	Slovensko	Slovakia
FI	Suomi/Finland	Finland
SE	Sverige	Sweden
UK	United Kingdom	United Kingdom
EU+10		New Member States that joined the EU in 2004
EU+12		New Member States that joined the EU between 2004 and 2007
EU-15		Original Member States before the 2004 expansion
EU-27		Member States up to 2013 (excluding Croatia)
EU-28		Current EU Member States

ANNEX III. FORM USED

VERSIÓN INGLESA

1	Legal framework	Answer
	How is the legal regime applicable to workers in the road transport sector (freight/passengers) in your country?	
	I. Is it only composed by legal acts (Constitution, EU and national laws)? Yes/No	
	II. Is composed by legal acts (Constitution, EU and national laws) plus collective agreements? Yes/No	
	III. If the answer to last question is "yes", please indicate (Yes/No) if the following agreements exist in your country and are applicable to road transport workers (freight/passengers):	
	III.a) National collective agreements? Yes/No (Freight/passengers)	
	III.b) Regional collective agreements? Yes/No (Freight/passengers)	
	III.c) Subregional collective agreements? Yes/No (Freight/passengers)	
	III.d) Company agreements? Yes/No (Freight/passengers)	
	If relevant, please provide further information	
2	Legal regime of workers	
	In your country, which is the percentage of road freight transport workers who are employed?	
	In your country, which is the percentage of road freight transport workers who are self-employed?	
	In your country, which is the percentage of road passenger transport workers who are employed?	
	In your country, which is the percentage of road passenger transport workers who are self-employed?	
3	Access to the road transport profession (freight and passenger)	
	Beyond EU Regulation 1071/2009 governing access to the profession, are there additional legal requirements to become a certified transporter (freight/passengers) in your country? (Yes/No)	
	Please explain/add hyperlink to texts and/or relevant legislation	
4	Collective rights applicable to road transport workers	
	Which of the following collective rights are applicable to road transport workers in your country?	
	i. Freedom of association (trade unions) (Yes/No)	
	Please explain and add references/links to texts	
	ii. Collective bargaining/agreement (Yes/No)	
	Please explain and add references/links to texts	
	iii. Collective actions (strike) (Yes/No)	
	Please explain and add references/links to texts	
	iv. Conciliation, mediation and arbitration (Yes/No)	
	Please explain and reference/links to texts	
	v. Information, consultation and participation (Yes/No)	
	Please explain and add reference/links to texts	
	Please add any other collective right that you consider relevant in your country for road transport workers	
5	Individual rights applicable to road transport workers (passenger/freight) in your country	
	i. Salary: please outline the structure	
	i.a) Salary base:	
	i.b) Pluses (Yes/No)	
	ii.b) Please explain briefly	

	i.c) Complements (Yes/No)	
	ii.c) Please explain briefly	
	i.d) Extra-salary benefits (not subject to social security) (Yes/No)	
	ii.d) Please explain briefly	
	i.e) Per diem/day allowances (Yes/No)	
	ii.e) Please explain briefly	
	If possible, please refer or add hyperlink to some examples (legal act, collective agreement, etc.)	
	ii. Driving and rest periods (Please indicate and/or refer to the legal text of transposition of the Road Transport Working time Directive 2002/15	
	Has the national act of transposition go beyond the minimum scope of the Directive? Please explain	
	iii. Non-discrimination (Yes/No)	
	Please refer/add hyperlink to relevant information (legal act, collective agreement...)	
	iv. Social security	
	a) Which is the burdenshare of cost for the employer (% of gross salary)?	
	b) Which is the burden share of cost for the employee (% of gross salary)?	
	c) In the case of self-employed people, what is the cost of social security?	
	v. Benefits	
	Which of the following benefits do road transport workers have in your country?	
	a) medical benefits (Yes/No)	
	Please explain and refer/add hyperlink to examples	
	b) unemployment benefits (Yes/No)	
	Please explain and refer/add hyperlink to examples	
	Please add any other relevant benefit in your country	
	vi. Occupational health and safety (Yes/No)	
	Please refer/add hyperlink to some examples (legal acts, collective agreements, etc.)	
6	**Hiring systems for road transport workers (freight/passengers) in your country**	
	Please outline/add examples or references to the different systems for hiring personnel in the road transport sector in your country	
7	**Modification of labor conditions of road transport workers (freight/passengers) in your country**	
	How are labour conditions modified in your country? Please explain/add references to texts and examples	
8	**Systems of closure, reduction or suspension of employment contracts for road transport workers (freight/passengers) in your country**	
	How can the labour relationship be extinct in your country? Please explain/add reference to texts or examples	
9	**Please provide reference to related studies, articles or publications which you consider interesting on this topic**	

VERSIÓN ESPAÑOLA

1	Marco legal	Respuesta
	¿Cómo es el régimen legal aplicable a los trabajadores del sector de transporte por carretera (mercancías/viajeros en su país?	
	I. ¿Está compuesto únicamente por legislación (Constitución, leyes nacionales y de la UE)? Sí/No	
	II. ¿Está compuesto por legislación (Constitución, leyes nacionales y de la UE) y convenios colectivos? Sí/No	
	III. Si la respuesta a la última cuestión es "Sí", por favor indique (Sí/No) si los siguientes acuerdos existen en su país y si son aplicables a los trabajadores del transporte por carretera (mercancías/viajeros):	
	III.a) ¿Convenios colectivos nacionales? Sí/No (mercancías/viajeros)	
	III.b) ¿Convenios colectivos regionales? Sí/No (mercancías/viajeros)	
	III.c) ¿Convenios colectivos subregionales? Sí/No (mercancías/viajeros)	
	III.d) ¿Convenios colectivos de empresa? Sí/No (mercancías/viajeros)	
	Si procede, sírvase proporcionar más información	
2	**Régimen legal de los trabajadores**	
	¿En su país, cuál es el porcentaje de trabajadores del transporte de mercancías por carretera que están empleados?	
	¿En su país, cuál es el porcentaje de trabajadores del transporte de mercancías por carretera que trabajan por cuenta propia?	
	¿En su país, cuál es el porcentaje de trabajadores del transporte de viajeros por carretera que están empleados?	
	¿En su país, cuál es el porcentaje de trabajadores del transporte de viajeros por carretera que trabajan por cuenta propia?	
3	**Acceso a la profesión de transportista por carretera (mercancías/viajeros)**	
	Más allá de Reglamento de la UE 1071/2009 que rige el acceso a la profesión, hay requisitos legales adicionales para convertirse en un transportista certificado (mercancías /viajeros) en su país? (Sí/No)	
	Por favor, explique/agregue hipervínculos a textos y/o legislación relevante	
4	**Derechos colectivos aplicables a los trabajadores del transporte por carretera**	
	¿Cuáles de los siguientes derechos colectivos son aplicables a los trabajadores del transporte por carretera en su país?	
	i. Libertad de asociación (sindicatos) (Sí/No)	
	Por favor, explique y añada referencias/links a textos	
	ii. Convenio/negociación colectiva (Sí/No)	
	Por favor, explique y añada referencias/links a textos	
	iii. Acciones colectivas (huelga) (Sí/No)	
	Por favor, explique y añada referencias/links a textos	
	iv. Conciliación, mediación y arbitraje (Sí/No)	
	Por favor, explique y añada referencias/links a textos	
	v. Información, consulta y participación (Sí/No)	
	Por favor, explique y añada referencias/links a textos	
	Por favor, añada cualquier otro derecho colectivo que considere relevante en su país para los trabajadores del transporte por carretera.	
5	**Derechos individuales aplicables a los trabajadores del transporte por carretera (mercancías/viajeros) en su país**	
	I. Salario: por favor, describa la estructura	
	i.a) Salario base:	
	i.b) Pluses (Sí/No)	

	ii.b) Por favor, explique brevemente	
	i.c) Complementos (Sí/No)	
	ii.c) Por favor, explique brevemente	
	i.d) Beneficios extra salariales (no sujetos a seguridad social) (Sí/No)	
	ii.d) Por favor, explique brevemente	
	i.e) Dietas (Sí/No)	
	ii.e) Por favor, explique brevemente	
	Si es posible, por favor consulte o añada links a algunos ejemplos (legislación, convenio colectivo, etc.)	
	ii. Periodos de conducción y descanso (Por favor, indique y/o haga referencia al texto legal de la trasposición de la Directiva de tiempos de conducción en transporte por carretera 2002/15)	
	¿El acto legislativo de trasposición nacional va más allá de los mínimos establecidos por la Directiva? Por favor, explíquelo	
	iii. no discriminación (Sí/No)	
	Por favor, haga referencia/añada link a información relevante (legislación, convenios colectivos ...)	
	iv. Seguridad Social	
	a) ¿Cuál es la cuota a cargo del empleador (% del salario bruto)?	
	b) ¿Cuál es la cuota a cargo del empleado (% del salario bruto)?	
	c) En el caso de trabajadores por cuenta propia, ¿cuál es el coste de la seguridad social?	
	v. Beneficios	
	¿Cuáles de los siguientes beneficios tienen los trabajadores del transporte por carretera en su país?	
	¿Cuáles de los siguientes beneficios tienen los trabajadores del transporte por carretera en su país?	
	a) Beneficios médicos (Sí/No)	
	Por favor, explique y haga referencia/añada links a ejemplos	
	b) Beneficios por desempleo (Sí/No)	
	Por favor, explique y haga referencia/añada links a ejemplos	
	c) Beneficios por jubilación (Sí/No)	
	Por favor, explique y haga referencia/añada links a ejemplos	
	Por favor, añada cualquier otra información relevante sobre beneficios en su país	
	vi. Salud y seguridad en el trabajo (Sí/No)	
	Por favor refiérase/añada links a algunos ejemplos (legislación, convenios colectivos, etc.)	
6	**Sistemas de contratación para los trabajadores del transporte por carretera (mercancías/viajeros) en su país**	
	Por favor describa/añada ejemplos o referencias a los diferentes sistemas para la contratación de personal en el sector del transporte por carretera en su país	
7	**Modificación de las condiciones laborales de los trabajadores del transporte por carretera (mercancías/viajeros) en su país**	
	¿Cómo se modifican las condiciones laborales en su país? Por favor, explique/ añada referencias a textos y ejemplos	
8	**Sistemas de conclusión, reducción o suspensión de contratos de trabajo de los trabajadores del transporte por carretera (mercancías/viajeros) en su país**	
	¿Cómo se puede extinguir la relación laboral en su país? Por favor, explique/añada referencias a textos o ejemplos	
9	**Sírvase proporcionar referencias a estudios relacionados, artículos o publicaciones que considere interesantes sobre este tema**	

ANNEX IV. LIST OF PERSONS AND INSTITUTIONS CONSULTED

Consultations

EU Institutions

- European Commission
    - o Directorate-General for Mobility and Transport
    - o Directorate-General for Employment and Social Affairs
    - o Joint Research Centre
- Council of the EU
- European Parliament
- European Economic and Social Committee

National Administrations

The transactions have been carried out via the 28 Permanent Representations of the EU Member States.

European Associations

- International Road Transport Union (IRU)
- European Transport Workers Federation (ETF)

National Associations

- CEOE (Spain)
- Fenebús (Spain)
- Asintra (Spain)
- Antrop (Portugal)
- Austrian Federal Chamber of Labour

Academic Institutions

- University of Cluj (Romania)
- University College Dublin (Ireland)
- University of Leuven (Belgium)
- University of Lund (Sweden)
- University of Nicosia (Cyprus)
- University of Oviedo (Spain)
- University of Pécs (Hungary)
- University of Tartu (Estonia)

Law firms, consultants and other professionals/experts

- Austria
- Belgium
- Bulgaria
- Cyprus
- Slovakia
- Spain
- Estonia
- Finland
- Hungary
- Italy
- Lithuania
- Luxembourg
- Malta
- Portugal
- United Kingdom
- Czech Republic
- Romania
- Sweden

Road transport companies

- Present and active throughout Europe, the majority of contributions come from companies that operate in Spain, Poland, Romania and the United Kingdom.

Contributions

- Enrique Arrieta Rodríguez, Lawyer, Bar Association of Álava
- Marius Harosa, Ph.D, Lawyer and Senior Lecturer at the Babes-Bolyai University, Cluj (Romania)
- Giuseppe Marotta, Lawyer, Italy
- Grupo Autobuses Jiménez, Spain
- IBERTRUCK SRL, Romania
- Alejandro Martínez Godín, Legal officer, Directorate-General for Mobility and Transport, European Commission
- Rosa Menéndez, General Secretary of the Asociación Nacional de Transporte Urbano Colectivo de Superficie de España (TU) (Spanish Association of Urban Collective Surface Transport)
- Nuria Muñoz Hernández, Lawyer, Analistas de Relaciones Industriales SA
- Alicja Oseasiak, Directorate-General for Mobility and Transport, European Commission
- Vicenç Pedret Cuscó, Adviser, Directorate-General for Mobility and Transport, European Commission

• José Luis Pertierra, Director of the Federación Nacional Empresarial de Transporte en Autobús (National Trade Federation of Bus Transport)
• Nevena Petrova Totolakova, Lawyer, Bar Association of Valencia
• Jean-Luc Putz, Judge at Luxembourg District Court (Tribunal d'Arrondissement)
• Fabiana Rego, Lawyer, Lisbon , Order of Portuguese Lawyers
• José Raúl Rodríguez Fernández, Lawyer, Vifer Asesoría de Empresas SL.
• Permanent Representation of Germany to the EU
• Permanent Representation of Spain to the EU
• Permanent Representation of Austria to the EU
• Richard Ruziczka, Austrian Federal Chamber of Labour
• Permanent Representation of Belgium to the EU
• Permanent Representation of Denmark to the EU
• Permanent Representation of Slovenia to the EU
• Permanent Representation of Estonia to the EU
• Permanent Representation of Finland to the EU
• Permanent Representation of France to the EU
• Permanent Representation of Hungary to the EU
• Permanent Representation of the Netherlands to the EU
• Permanent Representation of Portugal to the EU
• Permanent Representation of the Czech Republic to the EU
• Permanent Representation of Sweden to the EU
• Richard Ruziczka, Austrian Federal Chamber of Labour
• David Silvério, Trainee Lawyer, Echevarria Perez y Ferrero Abogados, Lisbon.
• University College Dublin
• Emilia Vavrekova, Lawyer, Slovakia
• Peter Holborn, Lawyer, Sweden

ANNEX V. COUNTRY SHEETS

Labour-law Technical Data Sheet
AUSTRIA

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: GDG and GPA-DJP

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	Constitution	Law	✓ Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Mediation and Arbitration Board, National Economic Commission, Federal Arbitration Board

Types:	Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	✓ Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Breaches relative to tachograph records.

NON-DISCRIMINATION

Competent bodies: Courts with civil or labour jurisdiction. Furthermore, increase in proceedings via the Equal Treatment Commission, prior to approaching the courts.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	20.65%	17.2%	-

RETIREMENT

Legal age for retirement: 65 years for men and 60 years for women (to be extended to 65 between 2024 and 2033)

HIRING

Trial period: ≤ 1 month

Min. age for workers hired: 15 (18-24 according to driving licence)

Type of contract:	✓ Free with exceptions	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? Yes, for justified causes or causes related to the worker.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: 6 weeks – 5 months.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
BELGIUM

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: BTB and ACV-TRANSCOM

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	Constitution	Law	✓ Case law	Agreement
Recognised for...		✓ Worker		Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Federal Employment Service

Types:	✓ Conciliation	✓ Mediation	Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	✓ Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

54,351.76 (goods)

WORK-REST TIMES

Most habitual breach: Breaches relative to tachograph records.

NON-DISCRIMINATION

Competent bodies: Labour Courts

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer and worker (joint)	Self-employed worker
%	37.84%	-

RETIREMENT

Legal age for retirement: 65 years

HIRING

Trial period: -

Min. age for workers hired: 18 (18-24 according to driving licence)

Type of contract:	✓ Free with exceptions	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? No.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: For contracts prior toes 1 January 214 it varies according to whether the employee is a manual or office worker.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
BULGARIA

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: Confederation of Road Transport Trade Unions, Trade Union of Automobile Transport Workers in Bulgaria and Federation of Transport Workers.

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	✓ Law	Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: National Conciliation and Arbitration Institute

Types:	Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/ consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Non-compliance with breaks

NON-DISCRIMINATION

Competent bodies: Legal proceedings at the general civil courts or specialised legal proceedings at the Independent Equality Body.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions:

To be paid by...	Employer	Worker	Self-employed worker
(% of total contribution)	60%	40%	215-282 €

RETIREMENT

Legal age for retirement: Increasing to 63 years for women and 65 years for men

HIRING

Trial period: ≤ 6 months

Min. age for workers hired: 16 (18-24 according to driving licence)

Type of contract:	Free	✓ Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? No, although there are exceptions.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: 3 months.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
CZECH REPUBLIC

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: OSD, OS DOISA and OSPEA

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	Constitution	✓ Law	Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Ministry of Labour

Types:	Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Non-compliance with breaks.

NON-DISCRIMINATION

Competent bodies: Courts.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	25%	3.5 – 6.5%	29.2%

RETIREMENT

Legal age for retirement: Currently in the process of being increased to 65 years for men and for women with one or no children; and 62 to 64 years for women with two or more children.

HIRING

Trial period: ≤ 3 months

Min. age for workers hired: 15 (18-24 according to driving licence)

Type of contract:	Free	✓ Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? Only by means of a written agreement between the parties, although there are situations where it is permitted.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: 2 months.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
DENMARK

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: 3F and HK

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	Constitution	Law	✓ Case law	✓ Agreement
Recognised for N/A		Worker		Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Conciliation Service, Industrial Tribunal

Types:	✓ Conciliation	✓ Mediation (med-conc)	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Non-compliance with rest periods.

NON-DISCRIMINATION

Competent bodies: Civil courts and Board of Equal Treatment.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	-	-	-

RETIREMENT

Legal age for retirement: 65 years

HIRING

Trial period: -

Min. age for workers hired: 18 (18-24 according to driving licence)

Type of contract:	✓ Free	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? Very limited.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: between 1-6 months but it varies.

Do special procedures for collective dismissal exist? N/A

Labour-law Technical Data Sheet
GERMANY

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: GdED, VER.DI and GÖD

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	Constitution	Law	✓ Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Independent bodies created by social partners.

Types:	✓ Conciliation	✓ Mediation (cond-med)	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	✓ Co-decision	✓ Co-determination

ANNUAL COST FOR EMPLOYER

30,509.43 (East) – 41,947.82 € (West) (goods)

WORK-REST TIMES

Most habitual breach: Breaches relative to tachograph records.

NON-DISCRIMINATION

Competent bodies: General courts. Possibility of mediation.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions:

To be paid by...	Employer	Worker	Self-employed worker
(% of total contribution)	53%	47%	-

RETIREMENT

Legal age for retirement: Gradually increasing to 67 years since 2012 until 2029.

HIRING

Trial period: ≤ 6 months

Min. age for workers hired: 18 (18-24 according to driving licence)

Type of contract:	✓ Free with exceptions	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? The general rule is an agreement between the parties but dismissal due to modification exists. Certain conditions are difficult to change.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: 4 weeks.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
ESTONIA

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: ETTA

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	✓ Law	Case law	Agreement
Recognised for...		✓ Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Public conciliator, Independent Labour Committees.

Types:	✓ Conciliation	✓ Mediation	Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/ consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Breaches relative to tachograph records.

NON-DISCRIMINATION

Competent bodies: Labour Tribunals and Committees. Furthermore, conciliation procedures may be performed by the Chancellor of Justice.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	-	-	-

RETIREMENT

Legal age for retirement: The age for women is being increased to reach the same age as that for men in 2016: 63.

HIRING

Trial period: ≤ 4 months

Min. age for workers hired: 18 (18-24 according to driving licence)

Type of contract:	✓ Free	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? No, except for agreement between the parties.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: 15-90 days.

Do special procedures for collective dismissal exist? N/A

Labour-law Technical Data Sheet
IRELAND

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: SITUP and NBRU

COLLECTIVE BARGAINING

Binding nature of collective agreement: No, but the binding elements of the collective bargaining agreement are increasing.

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	Constitution	✓ Law	✓ Case law	✓ Agreement
Recognised for...		✓ Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Labour Relations Commission (LRC)

Types:	✓ Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/ consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Breaches relative to tachograph records.

NON-DISCRIMINATION

Competent bodies: Equality Tribunal and Employment Appeals Tribunal

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	8.5 %	4 %	-

RETIREMENT

Legal age for retirement: Gradually increasing from 67 years in 2012 to reach 68 years in 2028.

HIRING

Trial period: according to contract

Min. age for workers hired: 16 (18-24 according to driving licence)

Type of contract:	✓ Free	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? No, except for agreement between the parties or when permitted by the contract.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: varies according to seniority.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
GREECE

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: OSME

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	✓ Law	✓ Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: OMED, Ministry of the Interior

Types:	✓ Conciliation	✓ Mediation	Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/ consultation	✓ Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Non-compliance with rest periods.

NON-DISCRIMINATION

Competent bodies: Civil courts and criminal courts

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	-	-	-

RETIREMENT

Legal age for retirement: Currently in the process of being increased. For 2016 the age for women will be equal to that of men: 63.

HIRING

Trial period: -

Min. age for workers hired: 16 (18-24 according to driving licence)

Type of contract:	✓ Free with exceptions	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? The consent of the worker is required.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: It varies according to whether the employee is a manual or office worker.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
SPAIN

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: FCT and TCM

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	✓ Law	Case law	Agreement
Recognised for...		✓ Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: SIMA, Labour inspectors

Types:	✓ Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/ consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

38,227 € (goods)

WORK-REST TIMES

Most habitual breach: Non-compliance with breaks.

NON-DISCRIMINATION

Competent bodies: First Instance courts and specialised courts, labour chambers, regional high courts, the National Court and the Labour Chamber of the Supreme Court. Obligatory conciliation mechanism.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	32%	6.4%	Varies according to base

RETIREMENT

Legal age for retirement: After 2007, either 65 years when the period for which contributions have been paid is 38 years and 6 months or more, or 67 years when the period for which contributions have been paid is below said limit.

HIRING

Trial period: According to position
≤ 2 or 6 months

Min. age for workers hired: 16 (18-24 according to driving licence)

Type of contract:	✓ Free with exceptions	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? Yes, for justified causes.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: regulated.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
FRANCE

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: FNCR

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	✓ Law	✓ Case law	Agreement
Recognised for...		✓ Worker		Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Conciliation Commission, Ministry of Labour.

Types:	✓ Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/ consultation	✓ Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

46,032 € (goods)

WORK-REST TIMES

Most habitual breach: Non-compliance with rest periods.

NON-DISCRIMINATION

Competent bodies: Legal and out-of-court means are in place. The appeal will be presented to the Labour Court.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	-	-	-

RETIREMENT

Legal age for retirement: Gradually increasing from 60 to 62 (in 2017) or from 65 to 67 (in 2022) according to compliance with the contribution requirements.

HIRING

Trial period: -

Min. age for workers hired: 16 (18-24 according to driving licence)

Type of contract:	✓ Free	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? Agreement between the parties is necessary as is the following of specific procedure.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: According to law, agreement or contract.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
CROATIA

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: Trade Union of Transport and Communications of Croatia, Independent Trade Union for the Road and Trade Union of Croatian Drivers.

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	Law	Case law	Agreement
Recognised for...		✓ Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations:

Types:	Conciliation	Mediation	Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: N/A.

NON-DISCRIMINATION

Competent bodies: The victim may make use of legal, civil and/or criminal proceedings via the ordinary courts, and in the case of a minor offence, the competent court for offences of this nature.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	-	-	-

RETIREMENT

Legal age for retirement: The age for women is being increased to equal that of men in 2030: 65.

HIRING

Trial period: ≤ 6 months

Min. age for workers hired: 16 (18-24 according to driving licence)

Type of contract:	Free with exceptions	✓ Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? No, only by means of a written agreement between the parties.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: -

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
ITALY

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: Filt-CGIL, Fit-CISL, UILT, UGL AF and FAST

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	Law	✓ Case law	Agreement
Recognised for...		✓ Worker		Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Independent bodies created by social partners, Guarantee Committee.

Types:	Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/ consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

52,484.93 (goods)

WORK-REST TIMES

Most habitual breach: Non-compliance with rest periods.

NON-DISCRIMINATION

Competent bodies: Specialised Labour Courts. Obligatory, at least, a prior conciliation hearing.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	29 %	9%	22%-

RETIREMENT

Legal age for retirement: 66 years and 3 months for men (employees, self-employed workers and male civil servants) and female civil servants. For women employed in the private sector it will be increased gradually to reach 66 in 2018.

HIRING

Trial period: varies according to category.

Min. age or workers hired: 15 (18-24 according to driving licence)

Type of contract:	✓ Free with exceptions	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? Possible only in very limited cases.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: depends on the duration of service, seniority, qualifications and level.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
CYPRUS

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: No relevant data have been found for the sector.

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	Law	Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Ministry of Labour

Types:	Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/ consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Breaches relative to tachograph records.

NON-DISCRIMINATION

Competent bodies: Labour Court

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	6.8 %	6.8%	12.6%-

RETIREMENT

Legal age for retirement: 65 years, also retirement at the age of 63 years under some special conditions.

HIRING

Trial period: -

Min. age or workers hired: 15 (18-24 according to driving licence)

Type of contract:	✓ Free	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? No, agreement between the parties is required.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: varies according to seniority.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
LATVIA

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: LAKRS

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	✓ Law	Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Conciliation Commission, National Tripartite Cooperation Council

Types:	✓ Conciliation	Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Non-compliance with rest periods.

NON-DISCRIMINATION

Competent bodies: Court of General Jurisdiction.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	24.09%	11%	-

RETIREMENT

Legal age for retirement: 62 years

HIRING

Trial period: ≤ 3 months

Min. agefor workers hired: 15 (18-24 according to driving licence)

Type of contract:	Free	✓ Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? No, except for agreement between the parties.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: 1 month.

Do special procedures for collective dismissal exist? N/A

Labour-law Technical Data Sheet
LITHUANIA

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: KADPSF and TDF

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	✓ Law	Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Conciliation Commission

Types:	✓ Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Non-compliance with rest periods.

NON-DISCRIMINATION

Competent bodies: The complaint may be presented to the Labour Disputes Commission or the courts. Mediation exists in practice.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	30.8%	9%	-

RETIREMENT

Legal age for retirement: Gradually increasing to reach 65 years in 2026.

HIRING

Trial period: ≤ 4 months

Min. age for workers hired: 14 (18-24 according to driving licence)

Type of contract:	Free	✓ Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? No, except for written agreement between the parties.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: 2 months (4 for certain categories).

Do special procedures exist for collective dismissal? N/A

Labour-law Technical Data Sheet
LUXEMBOURG

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: No relevant data have been found for the sector.

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	Constitution	Law	✓ Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations:

Types:	✓ Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Breaches relative to tachograph records.

NON-DISCRIMINATION

Competent bodies: Labour Court. Mediation may be used.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	12.2%	12.45%	24.6%

RETIREMENT

Legal age for retirement: 65 years

HIRING

Trial period: 2 weeks – 6 months

Min. age for workers hired: 18 (18-24 according to driving licence)

Type of contract:	✓ Free	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? Yes, via specific notification procedure.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: varies according to seniority.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
HUNGARY

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: KKSC, ADU, TESZ, KMSZ and NeHGOSZ

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	✓ Law	Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: MKDSZ

Types:	✓ Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

18,957.33 € (goods)

WORK-REST TIMES

Most habitual breach: breach of maximum driving times.

NON-DISCRIMINATION

Competent bodies: Labour and Administrative courts.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	-	7%	-

RETIREMENT

Legal age for retirement: Gradually increasing to reach 65 years in 2022.

HIRING

Trial period: ≤ 1 month

Min. age for workers hired: 16 (18-24 according to driving licence)

Type of contract:	Free	✓ Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? No, except for agreement between the parties.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: 30 days but it increases according to seniority.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
MALTA

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: No relevant data have been found for the sector.

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	National (Inter-industry)	Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	Constitution	✓ Law	Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Directorate for Employment, Conciliation Panel.

Types:	✓ Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Non-compliance with rest periods.

NON-DISCRIMINATION

Competent bodies: as well as taking action before the Civil Court, First Hall, other bodies exist such as the Industrial Tribunal, the National Commission for Personas with disability, the Ombudsman or the Employment Commission, among others.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	-	-	-

RETIREMENT

Legal age for retirement: 65 years for people born after 1 January 1962. Younger age required, according to the year, for those born before that date.

HIRING

Trial period: ≤ 6 months

Min. age for workers hired: 16 (18-24 according to driving licence)

Type of contract:	✓ Free	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? Yes.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: varies according to seniority.

Do special procedures for collective dismissal exist? N/A.

Labour-law Technical Data Sheet
NETHERLANDS

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: Bondgenoten

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	Constitution	Law	✓ Case law	Agreement
Recognised for...		✓ Worker		Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Independent Bodies created by social partners.

Types:	✓ Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Breaches relative to tachograph records.

NON-DISCRIMINATION

Competent bodies: Civil/ Administrative Court or via the NIHR (quasi-judicial body)

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	-	-	-

RETIREMENT

Legal age for retirement: Gradually increasing to reach 67 years in 2023

HIRING

Trial period: ≤ 2 months

Min. age for workers hired: 16 (18-24 according to driving licence)

Type of contract:	✓ Free	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? No, unless weighty reasons exist.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: 1 – 4 months.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
POLAND

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Union of PEKAES Drivers, Trade Union of Drivers in Poland, Trade Union Drivers in Poland, Trade Union of Municipal Transport Employees in the Republic of Poland, Independent Trade Union of Municipal Transport for Bus Drivers, (See section 3.1 of the study for further information)

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	✓ Law	Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Association of Mediators, Social Dialogue Commission

Types:	Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

19,686 € (goods)

WORK-REST TIMES

Most habitual breach: Non-compliance with breaks.

NON-DISCRIMINATION

Competent bodies: Labour court, Conciliation Committee and Commissioner for Civil Rights Protection

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	20%	13%	30%

RETIREMENT

Legal age for retirement: In process of gradual increase to 67 years.

HIRING

Trial period: -

Min. age for workers hired: 18 (18-24 according to driving licence)

Type of contract:	Free	✓ Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? No, except by written agreement between the parties and/or notification of rescission of contract in a determined period.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: varies according to duration and type of contract.

Do special procedures for collective dismissal exist? N/A.

Labour-law Technical Data Sheet
PORTUGAL

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: FESTRU, SITRA and SNM

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	✓ Law	Case law	Agreement
Recognised for...		✓ Worker		Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations:

Types:	✓ Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Non-compliance with breaks.

NON-DISCRIMINATION

Competent bodies: Specialised labour courts.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	23.75%	11%	29.6%-

RETIREMENT

Legal age for retirement: 65 years

HIRING

Trial period: ≤ 2 months

Min. age for workers hired: 16 (18-24 according to driving licence)

Type of contract:	✓ Free with exceptions	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? Not regulated, depends on the condition to be modified.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: Depends on the duration of the contract.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
ROMANIA

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: FNSSR

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	✓ Law	Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Ministry of Labour

Types:	✓ Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: breach of maximum driving times.

NON-DISCRIMINATION

Competent bodies: CNCD National Council for Combating Discrimination) and/or civil courts.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	-	-	-

RETIREMENT

Legal age for retirement: Gradually increasing to reach 65 years in 2015 for men and 63 years in 2030 for women.

HIRING

Trial period: 30 -90 days

Min. age for workers hired: 16 (18-24 according to driving licence)

Type of contract:	Free	✓ Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? Yes, via notification to the worker and the Labour Inspectorate in the term of 5 days.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: In principle, 20 days.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
SLOVENIA

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: SDPZ, SVAPS and the Road Transport Trade Union

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	✓ Law	Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Economic and Social Council, Independent Bodies

Types:	✓ Conciliation	✓ Mediation (med-conc)	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	Co-decision	✓ Co-determination

ANNUAL COST FOR EMPLOYER

13,945€ (goods)

WORK-REST TIMES

Most habitual breach: Non-compliance with breaks.

NON-DISCRIMINATION

Competent bodies: Judicial and Administrative courts.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	-	-	-

RETIREMENT

Legal age for retirement: 65 years

HIRING

Trial period: ≤ 6 months

Min. age for workers hired: 15 (18-24 according to driving licence)

Type of contract:	Free	✓ Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? Any change obliges the employer to cancel the contract and offer a new one.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: varies according to the reason.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
SLOVAKIA

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: Trade Union of Transport, Road Works and Car Repair Services and Independent Public Road Transport Trade Union

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	✓ Law	Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Ministry of Labour

Types:	✓ Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Non-compliance with breaks.

NON-DISCRIMINATION

Competent bodies: Office of Labour, Social Affairs and Family.

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	20.5%	9.4%	133.42 – 1,344.28€

RETIREMENT

Legal age for retirement: 62 years as from 2017 it will increase gradually in line with the increase in life expectancy.

HIRING

Trial period: ≤ 3 months

Min. age for workers hired: 15 (18-24 according to driving licence)

Type of contract:	✓ Free	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? No, except by agreement between the parties.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: 1 month.

Do special procedures for collective dismissal exist? N/A.

Labour-law Technical Data Sheet
FINLAND

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: AKT

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	Constitution	✓ Law	Case law	Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: Conciliation Committee, Ministry of Labour

Types:	✓ Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Breaches relative to tachograph records.

NON-DISCRIMINATION

Competent bodies: District Court and criminal courts

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	-	-	-

RETIREMENT

Legal age for retirement: In systems of income-linked pensions, it is possible to retire between the ages of 63 and 68. For the national pension and the guarantee pension at 65.

HIRING

Trial period: ≤ 4 months

Min. age for workers hired: 15 (18-24 according to driving licence)

Type of contract:	✓ Free	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? Yes, with justification and written notice.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: 14 days – 6 months

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
SWEDEN

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: Swedish Transport Workers Union and Transport Professionals Union

COLLECTIVE BARGAINING

Binding nature of collective agreement: Yes

Levels:	✓ National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	✓ Constitution	✓ Law	Case law	✓ Agreement
Recognised for...		Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations: National Mediation Office, Independent Bodies.

Types:	Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	✓ Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Breaches relative to tachograph records.

NON-DISCRIMINATION

Competent bodies: Labour Court

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	-	31.42%	28.97%

RETIREMENT

Legal age for retirement: The income-based pension can be taken as from the month in which the person reaches the age of 61 years and the guarantee pension at 65 years

HIRING

Trial period: ≤ 6 months

Min. age for workers hired: 15 (18-24 according to driving licence)

Type of contract:	✓ Free	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? Yes, in specific conditions and living one months's notice.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: Depends on the duration of the service.

Special procedures exist for collective dismissal.

Labour-law Technical Data Sheet
UNITED KINGDOM

FREEDOM OF ASSOCIATION (TRADE UNIONS)

Trade Unions of reference in the sector: URTU, CWU and USDAW

COLLECTIVE BARGAINING

Binding nature of collective agreement: No

Levels:	National (Inter-industry)	✓ Industry	✓ Workplace

COLLECTIVE ACTION: STRIKE

Covered by:	Constitution	✓ Law	Case law	Agreement
Recognised for...		✓ Worker		✓ Trade Unions

OUT OF COURT CONFLICT RESOLUTION

Organisations:

Types:	✓ Conciliation	✓ Mediation	✓ Arbitration

WORKER PARTICIPATION WITHIN THE ENTERPRISE

Types:	✓ Information/consultation	Co-decision	Co-determination

ANNUAL COST FOR EMPLOYER

N/A

WORK-REST TIMES

Most habitual breach: Non-compliance with rest periods.

NON-DISCRIMINATION

Competent bodies: Employment Tribunal (or Fair Employment Tribunal in Northern Ireland). Possible use of Conciliation and Arbitration Boards (or the Labour Relations Agency in Northern Ireland).

SOCIAL SECURITY: SELF-EMPLOYED VS SALARIED WORKERS

Contributions as percentage of gross salary:

To be paid by...	Employer	Worker	Self-employed worker
%	-	-	-

RETIREMENT

Legal age for retirement: 65 years for men and 63-65 years for women increasing to 66 in October 2020.

HIRING

Trial period: ≤ 3 months

Min. age for workers hired: 14 (18-24 according to driving licence)

Type of contract:	✓ Free	Written

MODIFICATION OF WORKING CONDITIONS

¿Is unilateral modification by the employer generally permitted? Yes.

TERMINATION OF EMPLOYMENT CONTRACT

Notice period for termination of individual contract: Between 1 and 12 weeks (according to years of service).

Special procedures exist for collective dismissal.

ANNEX VI. TABLES

This annex provides some additional tables, grouped under headings, which complete the information contained in the study.

4.3 Collective action (Strike)

The following table specifies the legal basis for the right to take collective action in each of the Member States:

Table 17 – Legal basis for the right to take collective action in the EU-28

Country	Constitution	Law	Case law	Collective agreement
Austria	-	-	-	-
Belgium	-	-	+	-
Bulgaria	+	+	-	-
Croatia	+	+	-	-
Cyprus	+			
Czech Republic		+	-	-
Denmark	+	-	+	+
Estonia	+	+	-	-
Finland	Not explicit	+		
France	+	+ (in public service)	+	-
Germany	Not explicit	-	+	-
Greece	+	+	+	-
Hungary	+	+	-	-
Ireland	-	+	+	+
Italy	+	-	+	-
Latvia	+	+	-	-
Lithuania	+	+	-	-
Luxembourg	-	-	+	-
Malta		+/-		
Netherlands	-	-	+	-
Poland	+	+	-	-
Portugal	+	+		
Romania	+	+	-	-
Spain	+	+		
Slovakia	+	+		
Slovenia	+	+	-	-
Sweden	+	+	-	+
United Kingdom	-	+		-

Source: ETUI-REHS (2007)[281]

[281] Wiebke Warneck, *Strike rules in the EU27 and beyond: A comparative overview, European Trade Union Institute for Research, Education and Health and Safety* (ETUI-REHS, 2007).

In accordance with section 4.3 (collective action) the following table shows who is legally entitled to exercise the right to strike in each Member State:

Table 18 – Holder of the right to strike EU-28*

Country	Worker	Trade Union	Both
Austria		√	
Belgium	√		
Bulgaria		√	
Croatia			√
Cyprus		√	
Czech Republic		√	
Estonia			√
Finland		√	
France	√		
Germany		√	
Greece		√	
Hungary		√	
Ireland			√
Italy	√		
Latvia			√
Lithuania			√
Luxembourg		√	
Malta		√	
Netherlands	√		
Poland		√	
Portugal	√		
Romania		√	
Spain			√
Slovakia		√	
Slovenia		√	
Sweden		√	
United Kingdom			√

*Except Denmark

Source: Prepared by the authors

5.1 Salary

This table provides a breakdown of the costs for the employer of hiring a road transport driver in Belgium, according to the number of workers employed:

Table 19 – Cost of driver in Belgium

Salary/hour (€)	Overtime (108%) (€)	No. of workers	Basic contributions (€)	Medical insurance and various (€)	Overnight pay allowance (€)	RGPT (well-being at work) (€)	Hospital insurance (€)	Pension (€)	Total cost (€)	Ratio
10.98	11.85	>20	17.9824	1.7716	4.5997	1.25	0.0506	0.1012	25.755	2.3457
		10 to 19	17.9812	1.7716	4.5997	1.25	0.0506	0.1012	25.744	2.3456
		<10	17.7808	1.7716	4.5997	1.25	0.0506	0.1012	25.550	2.3273

Source: FEBETRA (via CNR)[282]

The following table provides a breakdown of the annual costs of employing an international road freight transport driver in Belgium and the salary components of such a worker:

Table 22 – Comparison of agreements East-West Germany (the Länder of the East are highlighted)

	Professional Driver	Validity
Hesse (up to 30.09.2011)	€10.87	01.07.2011 - 30.09.2013
After 01.10.2011	€11.21	
After 01.10.2012	€11.43	
Mecklenburg-Western Pomerania	€5.81	since 1997
Lower Saxony	€9.60	01.01.2011- 30.04.2103
After 01.05.2012	€9.84	
Baden-Württemberg (excluding South Baden)		01.05.2010 - 31.03.2012
After 01.10.2010	€13.46	
North Rhine-Westphalia	€11.11	01.12.2010 - 28.02.2013
After 01.03.2012	€11.30	
Rhineland-Palatinate	From € 10.04 to€10.33	01.04.2011 - 31.05.2013
After 01.04.2012	from € 10.25 to€10.55	
Saarland	from € 11.28 to€12.31	01.06.2012 - 30.04.2014
After 01.05.2013	from € 11.51 to€12.56	
Saxony	€6.22	since 1996
Saxony-Anhalt	from€6.46 to€7	since 1999
Schleswig-Holstein		01.08.08 - 30.06.2010
After 10.09.2009	from€9.75 to€10.40	
South Baden	€13.16	01.04.2012 - 31.05.2014
After 01.04.2013	€13.49	
Thuringia	From€6.14 to€6.66	since 2005

Source: CNR[285]

[282] Comité National Routier, *Le transport routier de marchandises belge* (2013).
[283] Ibid.

The following table compares the differences in average salary of a freight driver in East and West Germany:

Table 21 – Average salary of a driver in Germany

Average salary in € (excluding bonuses and pay allowances)	West	East
1 868	2 047	1 688

Source: Stat. Bundesamt, Hans-Böckler-Stiftung taken from Bild Zeitung via CNR[284]

The following table offers a comparison between States of East and West Germany of the minimum salary/hour included in the collective agreements for road freight transport:

Table 22 – Comparison of agreements East-West Germany (the Länder of the East are highlighted)

	Professional Driver	Validity
Hesse (up to 30.09.2011)	€10.87	01.07.2011 - 30.09.2013
After 01.10.2011	€11.21	
After 01.10.2012	€11.43	
Mecklenburg-Western Pomerania	€5.81	since 1997
Lower Saxony	€9.60	01.01.2011- 30.04.2103
After 01.05.2012	€9.84	
Baden-Württemberg (excluding South Baden)		01.05.2010 - 31.03.2012
After 01.10.2010	€13.46	
North Rhine-Westphalia	€11.11	01.12.2010 - 28.02.2013
After 01.03.2012	€11.30	
Rhineland-Palatinate	From € 10.04 to€10.33	01.04.2011 - 31.05.2013
After 01.04.2012	from € 10.25 to€10.55	
Saarland	from € 11.28 to€12.31	01.06.2012 - 30.04.2014
After 01.05.2013	from € 11.51 to€12.56	
Saxony	€6.22	since 1996
Saxony-Anhalt	from€6.46 to€7	since 1999
Schleswig-Holstein		01.08.08 - 30.06.2010
After 10.09.2009	from€9.75 to€10.40	
South Baden	€13.16	01.04.2012 - 31.05.2014
After 01.04.2013	€13.49	
Thuringia	From€6.14 to€6.66	since 2005

Source: CNR[285]

[284] Comité National Routier, *Le TRM en Allemagne* (2012).
[285] Ibid.

The following table gives a breakdown of the costs for the employer of a driver in West Germany, as well as details of the driver's salary:

Table 23 – Annual cost of a driver in West Germany

Annual cost of a driver in the West			
Worker		Employer	
Gross salary	€29,100.00	Salary cost	€36,655.82
- Social contributions for worker	€5,137.50	Salaries and pay allowances	€29,100.00
- Income Tax	€4,404.11	Social contributions for employer	€7,555.82
Pay allowances for travel	€5,292.00	Pay allowances for travel	€5,292.00
Net salary available	**€24,850.39**	**Total annual cost**	**€41,947.82**

Source: CNR[286]

The following table gives a breakdown of the costs for the employer of a driver in East Germany, as well as details of the driver's salary:

Table 24 – Annual cost of a driver in East Germany

Annual cost of a driver in the East			
Worker		Employer	
Gross salary	€20,619.96	Salary cost	€25,973.93
- Social contributions for worker	€3,644.60	Salaries and pay allowances	€20,619.96
- Income Tax	€2,727.20	Social contributions for employer	€5,353.97
Pay allowances for travel	€4,536.00	Pay allowances for travel	€4,536.00
Net salary available	€18,784.17	**Total annual cost**	€30,509.93

Source: CNR[287]

This table provides a breakdown of the annual costs for the employer of a road transport driver in Hungary:

Table 25 – Annual cost of a driver in Hungary

Annual cost of typical driver		
	No. months	Total €
Total monthly cost during activity period	11.5	€18,614.67
Total monthly cost during paid holiday period	0.5	€342.67
Annual cost of driver for employer		€18,957.33

Source: CNR[288]

[286] Ibid.
[287] Ibid.
[288] Comité National Routier, *Le transport routier de marchandises hongrois* (2013).

This table provides a breakdown of the annual costs for the employer of a road transport driver in Poland:

Table 26 – Annual cost of a driver in Poland

Annual cost of a driver				
Real cost during months of activity	Quantity/month (zlotys)	No. months	Total (zlotys)	Total (€)
Gross basic salary + employer contributions	2547	11	28019	€7,004
Remuneration Km (0.09€/km)	4320	11	47520	11880
Bonus for good behaviour	60	11	660	165
Real cost during months of inactivity	Quantity/month (zlotys)	No. months	Total (zlotys)	Total (€)
Gross basic salary + employer contributions	2547	1	2547	637
Real annual cost of driver for employer			78,746	19,686

Source: CNR[289]

The following table specifies the different costs for an employer of a heavy goods vehicle driver with a C+E driving licence in the United Kingdom:

Table 27 – Salary cost of a heavy goods vehicle driver with C+E driving licence in the United Kingdom

Salary costs of driver*	
Average annual salary (including social charges) for domestic work	£23,920
Average hours worked per year	2,430
Additional costs**	£1,250
Total	£25,170
Total cost of employment per hour of work	£10.36
Employment cost index***	100

*Exchange rates: £1 = €1.47

**Assuming some 50 nights travelling

***Including social costs

Source: Burns Freight Taxes Inquiry Report[290]

[289] Comité National Routier, *Le TRM Polonais* (2012).

[290] Robbie Burns, *The Burns Freight Taxes Inquiry* (Freight Transport Association, Tunbridge Wells, 2005).

5.2 Hours of work and rest periods

The following table shows the maximum driving time permitted by EC legislation, with the respective break and rest times (per day and week):

Table 28 – Main provisions of Regulation (EC) 561/2006

Key points of Regulation				
Daily			Weekly	
Driving time	Break time	Rest time	Driving time	Rest time
9 hours	45 minutes	11 hours	56 hours	45 hours
maximum	minimum	minimum	**maximum**	minimum

Source: Prepared by the authors

The following table defines the types of daily rest (regular and reduced) and proposes examples of each one:

Table 29 – Daily rest periods (regular and reduced)

Regular rest period in 24 hours	Reduced rest period in 24 hours
Any period of rest of at least 11 hours Alternatively, this may be taken in two periods, the first an uninterrupted period of at least three hours and the second an uninterrupted period of at least 9 hours.	**Any period of rest of at least 9 hours, but less than 11 hours.** Drivers may not take more than three reduced rest periods between two weekly rest periods.
Example	**Example**
13 hours (driving + other work + breaks + availability) + 11 hours (daily rest)	15 hours (driving + other work + breaks + availability) + 9 hours (daily rest)

Source: Driving and Rest Time of Drivers of Certain Road Vehicles.

The following table offers an example of how to comply with the obligatory daily rest period:

Table 30 – Example of how to comply with the daily rest period

8 hours (driving + other work + break)	**3 hours** (daily rest)	**4 hours** (driving + other work + break)	**9 hours** (daily rest)
Distribution of daily rest periods within a 24-hour period			

Source: Driving and Rest Time of Drivers of Certain Road Vehicles

The following table shows the definitions of rest periods according to European regulations:

Table 31 – Definition of rest periods

Regular rest period	Reduced rest period
Any period of rest of at least 45 hours	Any period of rest of less than 45 hours which may be shortened to a minimum of 24 consecutive hours.

Source: Driving and Rest Time of Drivers of Certain Road Vehicles

The following table offers an example of how to comply with the obligatory weekly rest period:

Table 32 – Example of how to comply with the distribution of weekly rest periods

Alternatives	First week	Second week	Third week	Fourth week
Option 1	45 hours (weekly rest period)	45 hours (weekly rest period)	45 hours (weekly rest period)	45 hours (weekly rest period)
Option 2	35 hours (weekly rest period)	45 hours (weekly rest period)	45 hours (weekly rest period)	45 hours +10 hours (weekly rest period + compensation time for the first week

Source: Driving and Rest Time of Drivers of Certain Road Vehicles.

The following table offers an example of how to calculate the driving time for two consecutive weeks:

Table 33 – Example of how to calculate the driving time for two consecutive weeks.

Week	Total driving hours	Total during two weeks		
1	40 hours	70 hours		
2	30 hours		75 hours	
3	45 hours			87 hours
4	42 hours			

Source: Driving and Rest Time of Drivers of Certain Road Vehicles

The following table offers an example of how to calculate a driver's daily breaks:

Table 34 – Example of how to schedule the daily breaks

Option 1	Driving	Other work	Driving	Break	Driving	
	4.5 hours	1 hour	2 hours	45 minutes	4.5 hours	
Option 2	Driving	Break	Driving	Break	Driving	Break
	2 hours	20 minutes	2.5 hours	30 minutes	4.5 hours	45 minutes

Source: Driving and Rest Time of Drivers of Certain Road Vehicles

The following table offers an example of how to calculate the daily breaks of multiple drivers:

Table 35 – Example in the case of multiple drivers

Driver 1	TIME	Driver 2
Daily rest period	**30 min period**	**Daily rest period**
Other work 1 hour	**08:00-09:00**	Daily rest period (outside the vehicle) – *First hour*
Driving 4.5 hours	**09:00-13:30**	Availability of 4.5 hours
Break + availability of 4.5 hours	**13:30-18:00**	**Driving 4.5 hours**
Driving 4.5 hours	**18:30-22:30**	Break + availability of 4.5 hours
Break + availability of 4.5 hours	**22:30-03:00**	**Driving 4.5 hours**
Driving 1 hour	**03:00-04:00**	Break 1 hour
Break 1 hour	**04:00-05:00**	**Driving 1 hour**
Daily rest period (9 hours)	**05:00-14:00**	Daily rest period (9 hours)
10 HOURS	**TOTAL DRIVING**	**10 HOURS**

Source: Guide to EU Rules on Drivers' Hours Regulation (EC) No.561/2006

The following table shows the working time and breaks (daily and weekly) included in EC legislation with regard to the organisation of the working time of persons performing mobile road transport activities:

Table 36 – Main provisions of Directive 2002/15/EC

Key points of Directive			
Daily			Weekly
Working time for night drivers	**Break after driving for more than 6 consecutive hours**	**Break after driving for more than 9 consecutive hours**	**Working time**
10 hours	30 minutes	45 minutes	48 hours (60 hours)*
Maximum	Minimum	Minimum	**Maximum***

Source: Prepared by the authors

This table shows the percentages of minimum checks required by EC legislation with regard to the reduction and prevention of offences in road transport activities:

Table 37 – Main provisions of Directive 2006/22/EC regarding the minimum requirements for checks to be carried out during the 2009-2010 period.

Main requirements			
Total % checked of days worked by drivers (m	**Checks at the roadside**	**Checks on company premises**	**Checks at the roadside concerted between Member States per year**
2% (2009), 3% (2010)	30%	50%	6
Minimum			

Source: Prepared by the authors

The following table shows which authorities and agencies are responsible, in each EU Member State, for ensuring compliance with the regulations regarding the working and rest times of drivers:

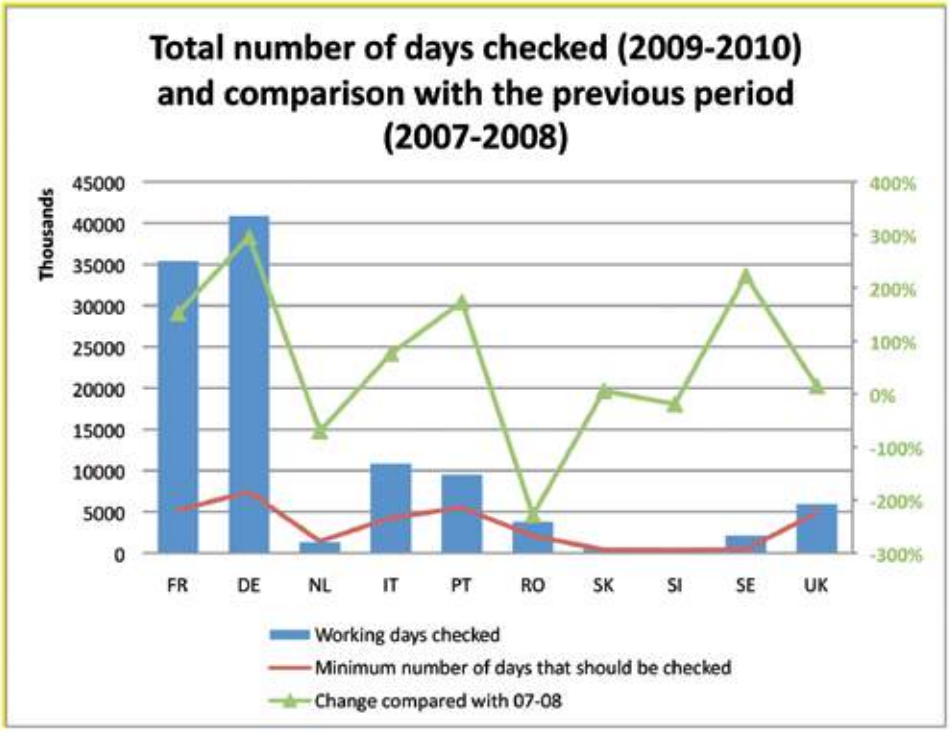
Table 38 – Main authorities responsible for application of the road transport regulations regarding social legislation.

EU countries	State / Federal Police	Local / Federal Police	Customs	Ministry of Transport	Road Administration	Other authorities
Austria		√		√		
Belgium	√	√	√	√		
Bulgaria				√		Executive Agency Road Transport Administration
Cyprus	Data not available					
Czech Republic	√		√	√		Centre of Service for Road Transport
Germany		√			Federal Office for Goods Transport	
Denmark	√	√				
Estonia	√	√		√		Labour Inspectorate
Greece	√					Ministry of Labour
Spain	√					
Finland	√	√	√			Occupational Safety and Health Administration
France	√		√	√	X	
Hungary	√		√		National Transport Authority	Labour Authorities
Ireland	√			√	Road Safety Authority	
Italy	√	√				Ministry of defence
Lithuania	√				State Road Transport Inspectorate	
Luxembourg	√			√		x
Latvia	√			√	Road Transport Administration	
Malta				√	Authority for Transport	
Netherlands	√	√		√		
Poland	√				General Road Transport Inspectorate	
Portugal	√			√		Labour Inspectorate Ministry of Social Security and Labour
Romania	√			√		Ministry of Labour, Family and Social Protection
Sweden					Swedish Transport Agency	
Slovenia	√	√			Traffic Inspectorate	
Slovakia	√					National Labour Inspectorate
United Kingdom		√		√		

Source: Overview and evaluation of enforcement in the EU social legislation for the professional road transport sector.

The following graph shows the total number of days on which checks were made of driving and rest periods in a series of EU countries compared to previous years (2009-2010 compared with 2007-2008):

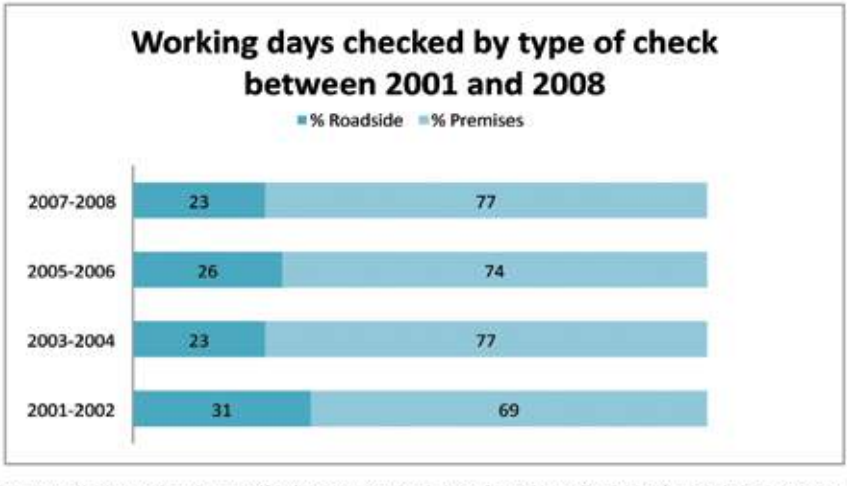
Table 39 – Total number of days checked in absolute terms for the period 2009-2010 compared with the previous period 2007-2008 for a series of EU countries.



Source: Overview and Evaluation of Enforcement in the EU Social Legislation for the Professional Road Transport Sector Study. 2012

This graph shows the percentage of working days checked, by type of check, between the years 2001 and 2008:

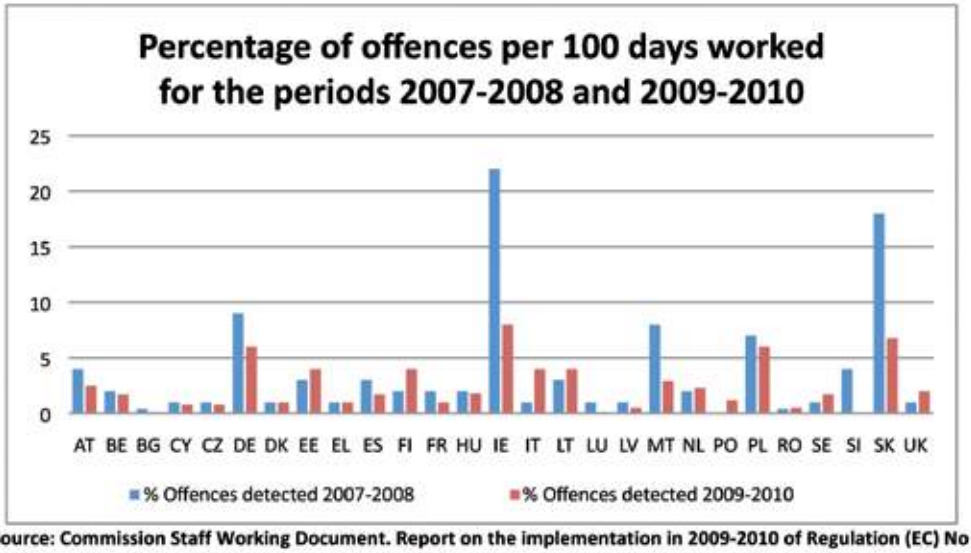
Table 40 – Working days checked by type of check between 2001and 2008 in percentage.



Source: Overview and Evaluation of Enforcement in the EU Social Legislation for the Professional Road Transport Sector Study, 2012.

The following graph illustrates the percentage of offences with regard to driving and rest times per 100 days worked in the EU countries, in the periods 2007-08 and 2009-10:

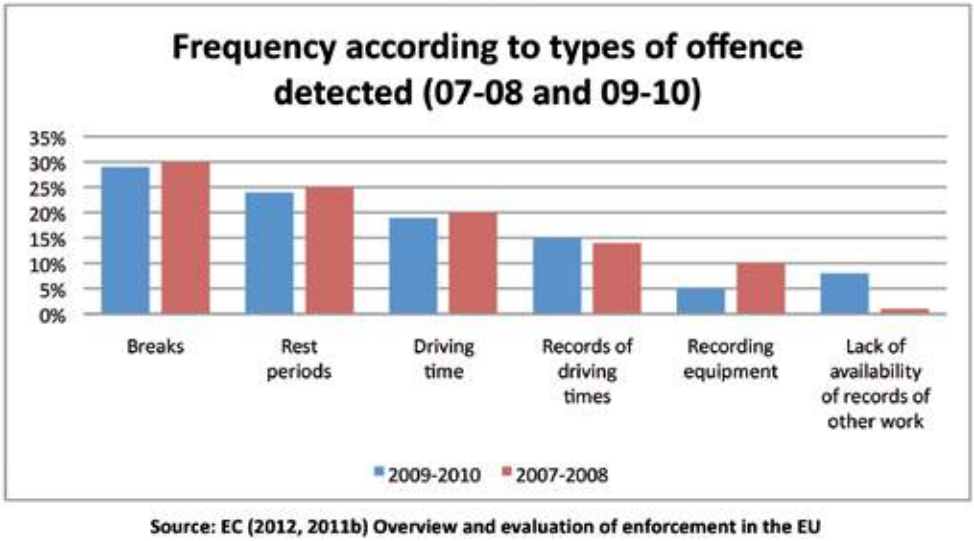
Table 41 – Percentage of offences detected per 100 days worked checked for the different Member States for the periods 2007-08 and 2009-10



Source: Commission Staff Working Document. Report on the implementation in 2009-2010 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive2002/15/EC on the organisation of the working time of persons performing mobile road transport activities

The graph below offers a comparison, in percentage terms, of the different types of offence detected in the periods 2007-2008 and 2009-2010:

Table 42 – Comparison of the types of offence detected as a percentage between the periods 2009-2010 and 2007-2008.



Source: EC (2012, 2011b) Overview and evaluation of enforcement in the EU

The following table groups the countries according to the type of offence most frequently detected:

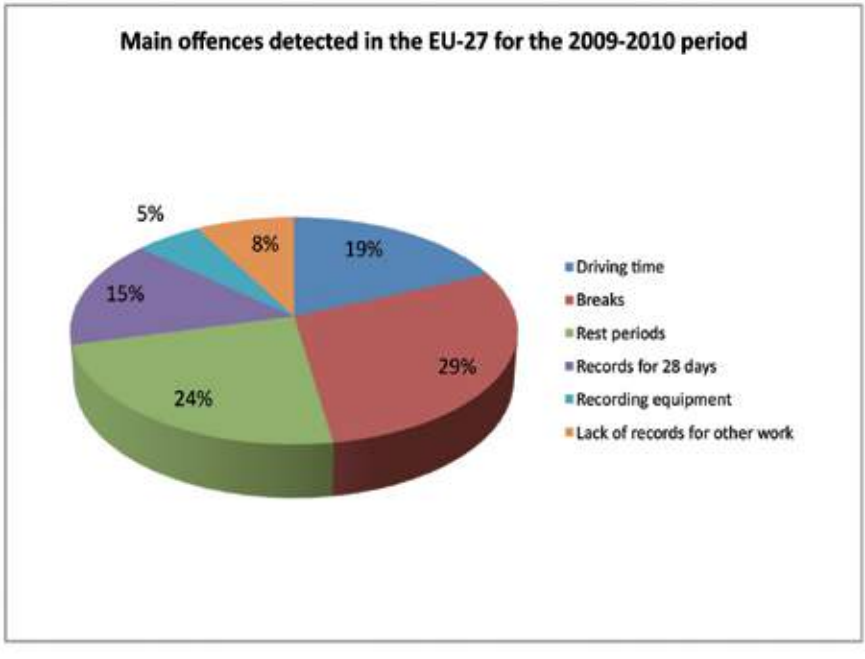
Table 43 – Most frequent type of offence per Member State

Driving times	Tachograph records	Breaks	Rest periods	Tachograph	Record keeping
Hungary	Austria	Denmark	Bulgaria		Ireland
Romania	Belgium	France	Italy		Estonia
	Cyprus	Greece	Latvia		
	Finland	Poland	Lithuania		
	Germany	Slovakia	Malta		
	Luxembourg	Czech Republic	Spain		
	Netherlands	Portugal	United Kingdom		
	Sweden	Slovenia			

Source: Prepared by the authors

The following graph shows the most frequent types of offence in the EU in the period 2009-2010:

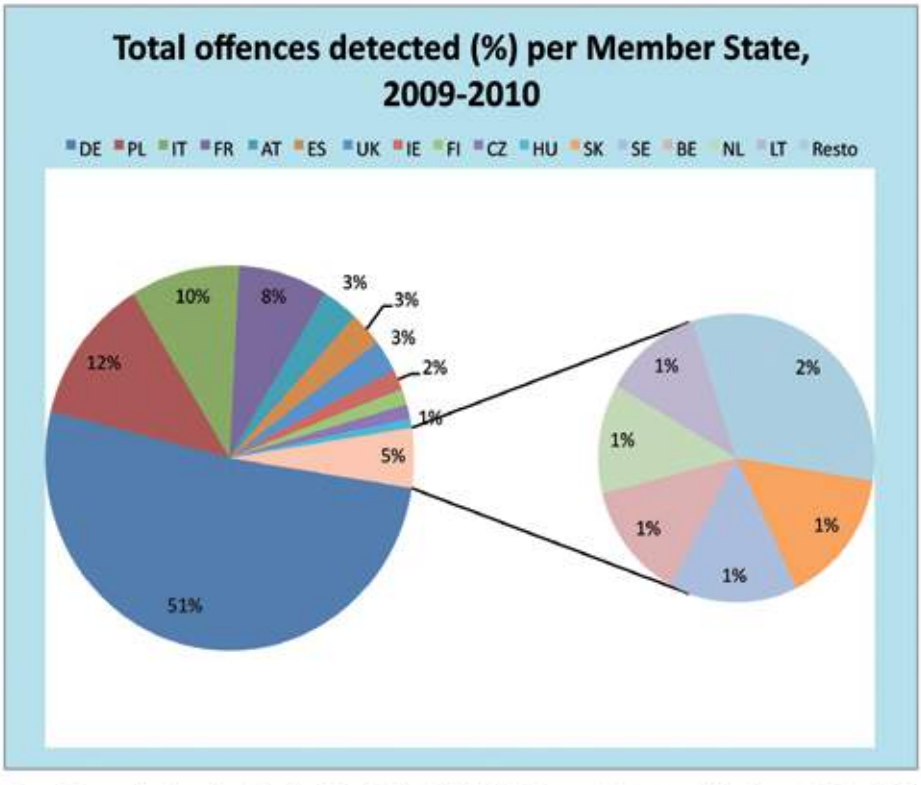
Table 44 – Types of offence detected in the EU-27



Source: Prepared by the authors based on Commission Staff Working Document. Report on the implementation in 2009-2010 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive2002/15/EC on the organisation of the working time of persons performing mobile road transport activities

This table shows the percentage of offences detected in each Member State of the total for the EU-27:

Table 45 – Overall volume of offences detected in theEU-27 per Member State



Source: Prepared by the authors based on Commission Staff Working Document. Report on the implementation in 2009-2010 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities

The following table lists the main differences between the different types of penalties contemplated in the legal systems of the Member States:

Table 46 – Differences in penalties

Differences with regard to penalties of the different legal systems
• Types of penalties (financial penalties, prison, immobilisation of the vehicle, withdrawal of driving licence). • Amount or severity of the penalties. • Treatment of repeated offenders. • Level of differentiation between offences and penalties. • Different priorities and assumptions regarding the severity of a particular offence. • Different or equal treatment of national and foreign drivers.

Source: Overview and evaluation of enforcement in the EU social legislation for the professional road transport sector

5.3 Non-discrimination

The following table shows the penalties contemplated in each Member State relative to discriminatory practices:

Table 47 – Penalties for discrimination in EU-28

Country	Compensation for damages	Fine	Criminal sanction	Readmission/right to job	Nullity of discriminatory clauses in contracts, agreements	Others
ES	√	√	√	√	√	Publication of the decision
AT	√	√	X	X		Restoration of previous employment status
BE	√				√	Publication of the decision
BG	√	√				
CY	√	√	√	√		
CZ	√	√	√			
DE	√			X		
DK	√	√				
EE	√			X		
EL	√	√	√			
FI	√		√		√	
FR	√	√	√	√		
HR	√	√	√			
HU	√	√		√		Publication of the decision
IE	√			√	√	
IT	√		√	√	√	Publication of the decision
LT	√	√	√			
LU		√	√	√	√	
LV	√		√			
MT	√	√	√		√	
NL	√	√		√	√	Termination of contract and claiming of corresponding salaries
PL	√	√	√			
PT	√	√		√/ X[291]		Publication of the decision
RO	√	√				
SE	√		√	X	√	
SI	√	√	√	√		
SK	√	√		√		
UK	√					Publication of the decision

Source: Developing Anti-Discrimination Law in Europe http://www.non-discrimination.net/

[291] In cases where an employment relationship already exists re-admission may be requested, but if the offence occurs in a stage prior to contracting, such right does not exist.

ANNEX VII. BASIC BIBLIOGRAPHY

Regulation

International agreements and conventions

- Tripartite Consultation Convention, 1976 (No. 144)
- Collective Bargaining Convention, 1981 (No. 154)
- Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153)
- Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 152)
- Examination of Grievances Recommendation, 1967 (No. 130)
- AETR: Agreement Concerning the Work of Crews of Vehicles engaged in International Road Transport "Collective Dispute Resolution – European and ILO perspectives" (High Level Tripartite Seminar, Nicosia 2007).Road Freight.

European Union

- Council Regulation (EEC) No 3820/85 of 20 December 1985on the harmonisation of certain social legislation relating to road transport.
- Council Regulation (EEC) No 3821/85 of 20 December 1985on recording equipment in road transport.
- Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002on the organisation of the working time of persons performing mobile road transport activities.
- Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC.
- Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85.
- Directive 2006/22/ECof the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC.
- Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC.
- Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009on common rules for access to the international road haulage market.
- Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006.
- Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of cer-

tain social legislation relating to road transport.

Case-law

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