



RTDD ROAD TRANSPORT
DUE DILIGENCE

ILAW

WIDESPREAD EXPLOITATION IN THE EU ROAD TRANSPORT INDUSTRY:

The Case of Central Asian Truck Drivers

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The Case of Central Asian Truck Drivers

It is freezing outside and in my vehicle. When I arrived at my vehicle from Lithuania by minivan yesterday, it did not start, and the heating did not work. I contacted my manager for assistance, but the answer was: "We will deal with it on Monday, and don't drink alcohol because you must work on Monday." I spent the night and the next day in the freezing vehicle wearing all the clothes I had.

Winter 2022-2023 - Truck Driver A from Kyrgyzstan
at a German truck parking lot

Two years ago, my company started to recruit drivers from Central Asia in large numbers. Instead of raising my pay, my employer told me that there are thousands of Central Asian drivers willing to take my job and to work for less.

Winter 2022-2023 - Truck Driver B from Lithuania
in a German truck parking lot

Nobody seems to care if a truck driver dies. Not even if he dies at the gate in front of the company for which he works.

Driver C from Kyrgyzstan who died at a public parking lot at the gate of a Dutch Mars factory during his weekly rest¹

who transport goods for large multinational companies are systemically underpaid. Employers oblige the drivers to live in and around their truck for months on end, working and sleeping in the few square meters of their truck cabins.

Despite clear regulations in place to protect drivers against exploitation, prevent unfair competition and ensure road safety, working conditions in the sector remain deplorable even with an industry-wide shortage of drivers. While one would expect that a labour shortage would lead to improved working conditions, transport companies have instead recruited drivers from third countries (i.e., non-EU citizens) who often have no other option but to accept degrading conditions.²

EU statistics show that Member States are issuing work permits to non-EU drivers on a large scale. While the majority of these workers come from countries bordering the EU such as Ukraine and Belarus, the RTDD Foundation has identified a sudden increase in the number of truck drivers from Central Asia³ working in the EU beginning in 2021. Initial interactions with these drivers suggested that the conditions they face make them even more vulnerable than drivers from Eastern Europe and countries bordering the EU. Drivers explained that it had cost them a lot and also had to pay substantial sums in recruitment fees to get a job and to pay for mandatory working tools that their employers have to provide according to EU safety regulations. As such, these drivers start their employment in the EU deeply in debt. They also explained that they are threatened with the cancellation of their contracts and residency permit

INTRODUCTION

Transport workers are the backbone of global supply chains, keeping inputs and finished goods moving from manufacturers to consumers. Even though truck drivers play this crucial role in Europe, these workers face abysmal working conditions. This fact can be seen at any European highway parking lot or industrial park. Drivers

¹Laura Romanillos, Het kan niemand wat schelen dat de chauffeur dood is, zelfs niet als hij dood gaat voor de poort van de fabriek waar hij voor werkt, BRABANTS DAGBLAD (Mar. 6, 2022), <https://www.bd.nl/oss-e-o/het-kan-niemand-wat-schelen-dat-de-chauffeur-dood-is-zelfs-niet-als-hij-dood-gaat-voor-de-poort-van-de-fabriek-waar-hij-voor-werkt-a0ffacbb/>.

²A third country national is a person who is not a citizen of the European Union within the meaning of Art. 20(1) of the TFEU and who is not a person enjoying the European Union right to free movement as defined in Art. 2(5) of the Regulation 2016/399 (Schengen Borders Code). Migration and Home Affairs, Third-Country National, EUROPEAN COMMISSION: GLOSSARY, https://home-affairs.ec.europa.eu/pages/glossary/third-country-national_en (last visited Mar. 2, 2023).

³Central Asia in this report refers to the countries of Kyrgyzstan, Uzbekistan, Tajikistan and Kazakhstan.

(and thus deportation) when they demand the payment of the agreed-upon salaries or request to return home after having spent months on the road.

These initial interviews led us to conduct more research to uncover more fully what is happening with the drivers from Central Asia in the road transport industry.⁴ This included gaining a more complete understanding of this new phenomenon, the recruitment and employment practices in order to substantiate initial findings. While Central Asian workers are a fairly new phenomenon on the EU labour market and, in absolute numbers, are still a minority, Central Asian countries appeared in the top five in three Member States as countries to whom permits were granted in 2022.⁵

The field observations and the scope of the developments were the main motivations to start dedicated research on the recruitment of third-country national truck drivers from Central Asia and their working conditions on the European roads.

The present report attempts to address four issues: (a) the recruitment in the countries of origin, (b) the hiring and employment of Central Asian drivers in the transit countries where drivers are formally employed, (c) the working conditions in the host countries where the drivers actually work and (d), compliance with applicable regulations and legislation by employers, the role of public enforcement authorities and accountability within supply chains. The present report focuses on Central Asian drivers. Their experiences are unique in some ways. At the same time it also turns out to be the well-known story of the race to the bottom in which workers are easily replaced by others.⁶

⁴ Road transport in this report refers to 'road freight transport' as defined by the European Commission, 'the transport by road between two places (a place of loading and a place of unloading) in two different countries irrespective in which the vehicle is registered. Migration and Home Affairs, Road Freight Transport, EUROPEAN COMMISSION: GLOSSARY, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Road_freight_transport (last visited Mar. 2, 2023).

⁵ See section 6.

⁶ Lithuania ready to recruit 600 truck drivers from Sri Lanka, NEWSWIRE (Feb. 14, 2023), <https://www.newswire.lk/2023/02/14/lithuania-ready-to-recruit-600-truck-drivers-from-sri-lanka/>.

Chapter One is an introduction to the Road Transport Due Diligence (RTDD) Foundation and its work. Chapter Two describes RTDD's methodology, while Chapter Three, the heart of the report, covers case studies based on interviews with numerous Central Asian drivers. Chapter Four explains the legal context and the applicable regulations that employers in the transport sector and other actors in road transport supply chains must respect. Examples from field observations and interviews with individual drivers that represent the systemic patterns of non-compliance and exploitation are also provided. Chapter Five describes the socio-economic situation in the home countries of the drivers.⁷ The lack of employment opportunities and low wages are an important push factor for migration and leave these countries with a high dependency on remittances from overseas workers.⁸ Chapter Six provides an analysis of the previous chapters from the perspective of the supply chain accountability. Finally, Chapter Seven offers some conclusions and recommendations.

⁷ Transition from Informal to Formal Employment Project Kyrgyzstan, ILO: PROJECTS, https://www.ilo.org/moscow/projects/WCMS_826841/lang--en/index.htm (last visited Mar. 2, 2023).

⁸ International Organization for Migration (IOM), KYRGYZSTAN: STUDY ON THE SOCIOECONOMIC EFFECTS OF COVID-18 ON RETURNEES (2021), <https://publications.iom.int/system/files/pdf/Kyrgyzstan-Survey-Report-2021.pdf>.

1. ROAD TRANSPORT DUE DILIGENCE (RTDD) FOUNDATION AND THE INDUSTRY



Picture 1: Public parking lot, Netherlands. Drivers cook their meals and wash their clothes at a public parking lot.

Multinational companies at the top of supply chains contract transport and logistics companies to move their goods. Some transport companies hire drivers directly but many subcontract operations to other smaller transport firms. This subcontracting creates complex and opaque supply chains with many that cross multiple jurisdictions. This has led to increasingly unsafe business practices, poor health and safety conditions and the exploitation of drivers in road transport.

Multinational companies often do not have specific policies in place covering transportation. If such policies do exist, the rights of workers are not properly addressed. Further, drivers often do not know whose goods they are moving, and have no knowledge of these companies' sustainability policies, if they exist, or their rights under those policies. Moreover, drivers often lack ways to effectively access internal or external procedures to address violations of their rights.

Today, most governments, employers and unions agree that there are serious labour and public safety issues in road transport supply chains. Most stakeholders also acknowledge that multinational companies at the top of supply chains have a responsibility for the issues

that arise in the transport of their goods. The United Nations, the ILO, the OECD and a growing number of national and international laws and regulations recognize the need for multinational customers to exercise human rights due diligence (HRDD) across their supply chains. HRDD requires companies to identify risks and to prevent and mitigate adverse human rights impact in their supply chains, even if they have not directly caused or contributed to these impacts. Transport workers and their representatives must be recognized as key stakeholders in HRDD efforts. To assist multinational companies in fulfilling these duties, trade unions have established the Road Transport Due Diligence (RTDD) Foundation.

1.1 THE RTDD FOUNDATION

The efforts of trade union organizations to uncover violations⁹ and bring them to the attention of stakeholders have not yet led to fundamental changes in compliance by the transport industry or to better public enforcement. They have, however, increased awareness about the state of the industry from actors at the top of road transport supply chains. Trade unions have engaged with these companies, cooperated with them to monitor their supply chains, reported findings, and discussed plans for remedy with them. This experience has led to the development of a due diligence strategy for road

⁹ The Dutch and Belgium trade unions have been very active in exposing exploitation in the transport industry. Most references in this report will therefore focus on the Netherlands and Belgium. VNB Foundation, International Transport Workers' Federation (ITF) & International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), PANDEMIC OF EXPLOITATION IN EUROPEAN TRUCKING (2022), <https://www.itfglobal.org/en/reports-publications/pandemic-exploitation-in-europe-an-trucking-vnb-itf-iuf-report>; ITF Global, The Pandemic in Road Transport, YOUTUBE (June 25, 2020), <https://youtu.be/apPICDIG-pd0>; Netherlands Trade Union Conference (FNV), Exploitation Across Europe in Road Transport Supply Chain Automotive Industry, YOUTUBE (Oct. 11, 2018), <https://youtu.be/Z4LOLVdf4dY>; , International Transport Workers' Federation (ITF), Exposed: European Trucking's Systemic Exploitation of Workers, ITF GLOBAL, <https://www.itfglobal.org/en/sector/road-transport/european-trucking-exploitation-of-workers> (last visited Mar. 2, 2023).

transport. In 2021, the trade union organizations ITF, FNV and IUF¹⁰ established the RTDD Foundation. The RTDD Foundation operates as a dedicated and independent organization to implement HRDD in road transport supply chains. The Foundation is based on the success of worker-led field investigation and research. As a rule, workers take part in monitoring compliance with a clear and agreed set of standards, which include industry principles and safety regulation.



Picture 2: Industrial Park, Germany. Driver hangs his clothes to dry on vehicle.

Whereas trade unions organize and represent workers and traditionally undertake action when the rights of workers are violated, the RTDD Foundation shifts the focus to systemic issues and the root causes of non-compliance. RTDD monitors and reports on the compliance or non-compliance of transport companies to a set of minimum standards, including applicable national laws, collective agreements, EU regulations and international

obligations - with a strong focus on industry regulation.

The Foundation aims to bring HRDD into practice while recognizing that in-depth knowledge of the industry is crucial and acknowledging the fact that workers play a crucial role in achieving actual due diligence including fair and transparent employment conditions. The RTDD worker-centred, bottom-up approach shows the world of the drivers as it really is and how it needs to improve.

1.2 REGULATING THE ROAD TRANSPORT INDUSTRY

The exploitive working conditions in the road transport industry have drawn public attention.¹¹ The severity of the violations have also been acknowledged in the political arena. In the European Commission and Parliament, as well as at the national level, there is an ongoing political debate on revising regulations to better protect drivers. The process of harmonization of the enforcement of road transport rules is also a much-debated issue. In May 2022, the European Commission implemented the so-called Mobility Package with the goal of achieving this harmonization.¹² However, the reality is that if applicable laws and regulations already in place before the introduction of the Mobility Package were well enforced, ongoing abuses would not be a problem.

The introduction of yet another set of regulations to improve the conditions in the transport sector has been welcomed by some and opposed by others. A coalition

¹¹ Ana P. Santos, Gaps in Dutch Law Leave Migrant Truckers with Little Protection, PULITZER CENTER: STORIES (Feb. 3, 2022), <https://pulitzercenter.org/stories/gaps-dutch-law-leave-migrant-truckers-little-protection>; Sarah O'Connor, UK Truck Driver Shortage Signals a Broken Labour Market, FINANCIAL TIMES (Aug. 24, 2021), <https://www.ft.com/content/5f832d86-827e-4596-999d-e0618364dbe3>; Harry Dempsey, Europe's Lorry Driver Crisis to Deepen Next Year, Warns Haulage Boss, Financial Times (Sept. 20, 2021); Felicity Lawrence & David Pegg, Drivers for Amazon Contractor Allege Safety and Wage Abuses, THE GUARDIAN (Sept. 3, 2020), <https://www.theguardian.com/technology/2020/sep/03/drivers-for-amazon-contractor-allege-safety-and-wage-abuses>.

¹² Directorate-General for Mobility and Transport, Implementing Mobility Package 1: European Commission Harmonises Enforcement of Road Transport Rules, EUROPEAN COMMISSION: NEWS (May 2, 2022), https://transport.ec.europa.eu/news/implementing-mobility-package-1-european-commission-harmonises-enforcement-road-transport-rules-2022-05-02_en.

¹⁰ International Transport Workers' Federation (ITF), Netherlands Trade Union Conference (FNV), International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF).

of predominantly Eastern European Member States appealed the new regulation at the European Court of Justice.¹³ Lithuania argued, according to its Justice Ministry that, “a number of rules in the package – the compulsory return of trucks to their country of registration, cabotage restrictions, and the enforcement of drivers’ posting and rest rules in the absence of a necessary infrastructure – run counter to Lithuania’s political and economic interests and will negatively affect its businesses.”¹⁴

In short, an extensive package of clear directives and regulations apply, but these have failed to improve the everyday reality of drivers facing abusive working conditions. The industry, dealing with driver shortages and increasing transport volumes and prices, is constantly searching for new ways to attract new populations of drivers who have no other options than to accept the prevailing labour conditions in the industry. Companies at the top of road transport supply chains have no infrastructure to monitor them and do not have a clear strategy on compliance or remediation. Finally, public enforcement authorities fail to effectively enforce the applicable laws.¹⁵ The European Union Agency for Fundamental Rights (FRA) has repeatedly urged governments and enforcement authorities to do more to tackle labour exploitation, pointing to the gaps in enforcement.¹⁶

¹³ Transport Ministers of Nine Member States, Member states take action before EU court against first Mobility Package, EURACTIV (Oct. 28, 2020), <https://fra.europa.eu/en/news/2019/severe-labour-exploitation-migrant-workers-fra-report-calls-zero-tolerance-severe-labour>.

¹⁴ Directorate-General for Mobility and Transport, Driving Time and Rest Periods, European Commission, https://transport.ec.europa.eu/transport-modes/road/social-provisions/driving-time-and-rest-periods/form-attestation-activities_en (last visited Mar. 2, 2023).

¹⁵ This has for example been one of the conclusions of the Netherlands Court of Audit in a report investigating the Dutch approach of tackling labour exploitation in general. Netherlands Court of Audit, PROBLEMS TACKLING LABOUR EXPLOITATION (2021), <https://english.rekenkamer.nl/publications/reports/2021/09/28/offenders-scot-free-victims-not-helped>; Imke van Gardingen & Edwin Atema, Netherlands Trade Union Confederation (FNV), Perpetrators Free, Victims Not Helped, LA STRADA INTERNATIONAL BLOG (Oct. 12, 2021), <https://www.lastradainternational.org/news/perpetrators-free-victims-not-helped-blog-by-imke-van-gardingen-edwin-atema>.

¹⁶ European Union Agency for Fundamental Rights (FRA) Press Re-

One final recent development should be noted. In March 2023 the European Commission published a proposal to update the requirements for driver’s licences to allow individuals to take the necessary test and start driving cars and lorries as an accompanied driver from the age of 17. The update would also make it easier for citizens from non-EU countries with comparable road safety standards, to exchange their driver’s licence for an EU one.¹⁷ This initiative was seen as positive by the World Road Transport Organisation (IRU), who stated, “We already see a positive step in facilitating third-country citizens becoming professional drivers in the EU and complementing the EU talent pool.”¹⁸ This report will provide some insight into how European employers recruit and treat these newcomers to the “talent pool.”



Picture 3: Industrial Park, Germany. Drivers’ clothes hang to dry in a dirty parking lot.

lease, Severe Labour Exploitation of Migrant Workers: FRA Report Calls for ‘Zero Tolerance’ of Severe Labour Exploitation (June 26, 2019)[hereinafter FRA Press Release], <https://www.abo.fi/en/news/new-fra-report-on-rights-protection-of-exploited-migrant-workers/>.

¹⁷ European Commission proposes updated requirements for driving licences and better cross-border enforcement of road traffic rules, EUROPEAN COMMISSION (Mar. 1, 2023), https://transport.ec.europa.eu/news/european-commission-proposes-updated-requirements-driving-licences-and-better-cross-border-2023-03-01_en.

¹⁸ EU licence proposal helps truck driver shortage but ignores bus and coach, INTERNATIONAL ROAD TRANSPORT UNION (Mar. 1, 2023), <https://www.iru.org/news-resources/newsroom/eu-licence-proposal-helps-truck-driver-shortage-ignores-bus-and-coach>.

2. METHODOLOGY

This report was written by the RTDD Foundation based on a combination of field and desk research. The results are based on initial observations at the start of the COVID-pandemic (2020), dedicated research from June until November 2022 during which time the activities were funded by the Solidarity Centre and the ILAW Network, and additional observations and interactions from November 2022 until the beginning of 2023. During this period, the RTDD Foundation interacted with Central Asian truck drivers at parking areas and industry parks within Western Europe. Most interactions were done in person, although some were done online when the RTDD Foundation was introduced to other drivers.

In the course of its work the RTDD Foundation approaches drivers by starting a conversation in the parking area or by knocking on the door of the truck cabin. The interactions with drivers are always unannounced, so the drivers' nationality is not known beforehand. All drivers approached were willing to interact, and there was no difference in approach for reaching out to drivers from Central Asia. The RTDD Foundation has interacted with drivers either in their native tongue or in a language they can understand. Drivers from Central Asia in general understand and speak Russian, so interaction has taken place in Russian. When needed, additional interpretation was provided. When drivers wanted to have follow-up engagement they shared their personal contact details. Sometimes this led to in-person follow up conversations or interactions over the phone and the exchange of documentation.

In several cases the RTDD Foundation was contacted by drivers who received the Foundation's details from other drivers who were interviewed. In these cases, drivers reached out when they were in urgent need for help or had a request for advice. These were cases related to the non-payments of wages, isolation in vehicles when drivers lost hope of returning home or where employers cancelled or threatened to cancel drivers' employment status and residency permit and deport them home without being paid. Often, it was a combination of all these abuses.



Picture 4: Public Parking Lot, Netherlands. Facilities drivers use to cook meals outside around their vehicles.

The most informative interviews provide general and personal information on recruitment, employment, remuneration, countries where a driver carries out work, patterns of compliance or non-compliance with resting time and the supply chain in which the drivers work. During the course of the interview, the drivers are informed about their basic labour rights and about specific rules in the transport sector. If drivers requested background or written information, the RTDD Foundation provided documentation published by the European Labour Authority.¹⁹ The drivers themselves decide the level of detail they want to share. Their answers are anonymized.

None of the drivers indicated that their stories were isolated cases. Most drivers indicated that all drivers in their companies had the same issues and encountered the same pattern of abuses. This was also the observa-

¹⁹ Road Transport, The international road transport sector, ELA European Labour Authority, <https://www.ela.europa.eu/en/road-transport> (Jan. 14, 2022).

tion of the RTDD Foundation field team since the interviewed individuals parked in parking lots filled with their colleagues, also cooking hot meals in the open air. For every interview, 5 to 10 other drivers could have been interviewed if the Foundation had had the capacity to do so.

Desk research was done to validate the information gathered by cross checking the patterns of compliance or non-compliance. RTDD analysed driving and resting time data and employment and residency documentation and consulted national and international commerce and transport registers and databases to factcheck information and analyse company profiles. This information taken together was used to uncover patterns of compliance or non-compliance and to filter out potential anecdotic indications. Desk research also included mapping the transport supply chains in which individual drivers and transport companies work. In 2022, the RTDD Foundation registered close to 5,000 datapoints. Analysis of the collected data show reliable patterns of compliance and non-compliance at the industry and company level, as well as across transport supply chains.

3. EMPIRICAL RESEARCH: CENTRAL ASIAN TRUCK DRIVERS IN THE EU

The RTDD Foundation collected data entries on thousands of drivers, vehicles and transport companies in 2021 and 2022. For this research 166 truck drivers from Central Asian were interviewed. All interviewed drivers were men. Most interactions took place in 2021-2022 at parking lots, the majority of which were in the Netherlands, Belgium, France and Germany and several were in Poland and Lithuania. Some conversations were brief and included only the exchange of basic information (about 30-45 min), while some conversations lasted several hours and continued on following the initial conversation. The interactions included information on: (1) recruitment, (2) access to the EU/country of employment, (3) actual place of work, (4) driving and resting time, (5) remuneration, (6) duration of time on the road, (7) working conditions, and (8) supply chain organisation.

The first part presents an overview of the outcome of the interactions with drivers. It is important to note that not all drivers answered all questions. In the second part, we highlight three case studies in more detail, describing drivers' stories from recruitment to non-enforcement in the case of abuses. Chapter Four also provides examples and quotes from driver interviews when they are relevant to the respective topic. For safety reasons the names of the drivers are not published. Although the report mentions companies, the case studies are written in such a way that they cannot be traced back to an individual driver. However, the RTDD Foundation has maintained the datasets archived in a secure manner for future reference (see explanation of methodology).

3.1 OVERALL FINDINGS

The majority of the 166 drivers interviewed were from Kyrgyzstan (82). The second largest group was from Uzbekistan (50), and the rest were from Tajikistan (20) and Kazakhstan (14).

All drivers stated that they had paid fees to begin working. These fees ranged from US \$500 to \$4,500 and covered documents and sometimes also travel expenses. Drivers found the jobs either through local recruit-

ment agencies, via social media advertising or through their own informal networks (see also the section on recruitment agencies). Most were told to go to Alma Ata Kazakhstan, where the embassy of the countries of employment are located to organize their travel documents and entry visa. Upon arrival in the EU Member State of destination most had to pay unexpected additional fees. Many had to take on debt to cover additional costs.

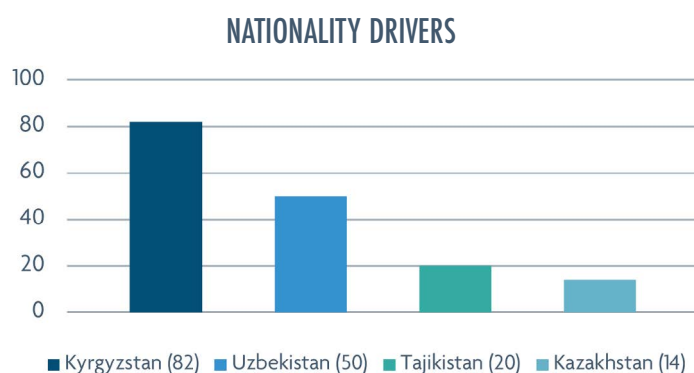


Figure 1: Nationality of the Central Asian drivers

Lithuania was for most drivers the Member State where they first entered the EU and also the country of employment. Poland was the country of employment for the second largest group (21) and Slovakia (6) and Latvia (5) for the rest.

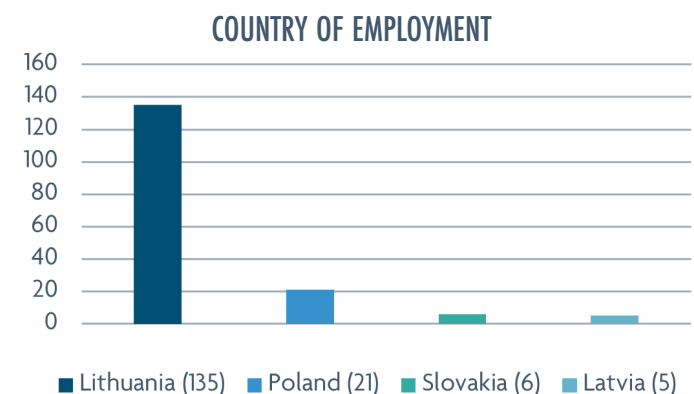


Figure 2: Country where drivers are formally employed

The drivers worked for 43 different transport companies. Some of these companies were small assets oper-

ators, but they also included subsidiaries of the largest transport companies in Europe. Some of these large companies used subsidiaries in several Member States, such as Lithuania and Poland, to employ Central Asian drivers. One company stood out as the employer of the majority of the Central Asian drivers. The patterns that the RTDD Foundation found are consistent with the statistics provided by the Lithuanian authorities.²⁰

The duration of work in the EU ranged from 1 month for drivers who had just started to a maximum of four years. The majority of the drivers had been employed for less than one year and have recently come to the EU. A smaller number has worked for over a year. Apart from the drivers who had just started driving, all drivers stated that they had been on the road – without holidays, rest or having returned home – for two months up to one year.

None of the interviewed drivers had a clear understanding of their hourly or monthly remuneration, the social security – or what their daily allowance structure was. In the employment documents, references to salaries were vague; there was no transparent descriptions of remuneration. In contrast to what was stated in employment documents, drivers were promised verbally they would be remunerated based on lump-sum-in daily payment at the time they were recruited. Drivers interviewed for this report stated that they were promised amounts of €15 to €40 a day for the first one or two months of employment and up to €85 for the remainder of their employment.

One pattern identified among all drivers was that they were paid only a small advance payment on a weekly or monthly basis. Most drivers explained that these advance payments ranged from €145 weekly to €1.200 per month. Their actual monthly remuneration was paid only as a final settlement when drivers returned to the country of employment after having been on the road for several months. Drivers explained that their employers would demand deductions from their pay for non-transparent reasons and force them to sign documents agreeing to these deductions. The fact that they are not paid while on the road makes drivers very de-

pendent on their employers.



Picture 5: Parking at Border Netherlands/Belgium. Driver cooking his meal inside the trailer and on top of the cargo, because it is raining outside.

Only a small number of drivers said they receive pay slips. When the RTDD Foundation viewed these pay slips, they often appeared to be handwritten documents in which days of work were multiplied by the daily lump-sum amounts. None of the observed documents met the standard requirements on transparent and predictable working conditions.²¹ None of the interviewed drivers could match their hours of work and the hourly minimum wage in the countr(ies) in which they worked to the remuneration structure used by their employer.

3.2 THREE INDIVIDUAL STORIES

The above section provides a picture of the situation in general. The following are the individual stories of drivers. They are recruited in far-away countries often with difficult socio-economic situations and lured with promises that fuel their hopes for a better future for themselves and their families. In this section the stories of three drivers are presented. The stories demonstrate

²⁰ See section number 6, statistics on issued work permits to third-country national workers and the companies whom the permits requested.

²¹ Directive 2019/1152, of the European Parliament and of the Council of 20 June 2019 on Transparent and Predictable Working Conditions in the European Union, 2019 O.J. (L 186) 105, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1152>.

what drivers have in common. Drivers work and live under constant pressure driving back and forth across the EU, not sure when the next payment will arrive and how high the arbitrary deductions will be. A pattern was discovered of drivers being threatened with deductions when fuel was stolen, for damage to vehicles, or for various other unclear reasons. The RTDD Foundation findings demonstrate that the liability and economic risks of the companies is passed on to the drivers.

These are the stories of a parallel world lived in poorly lit parking lots, without any or with only basic communal sanitary facilities. The stories also show the discrepancy between the applicable regulations and laws and the harsh daily reality drivers face.

Driver D from Kyrgyzstan was interviewed for the first time at an IKEA parking lot in Germany in the summer of 2022. Follow up communication took place online in the winter of 2022-2023.²² D worked in the supply chain of IKEA, Heineken, L'Oréal and Canon.²³

At the time of the first engagement with D, he had been employed for almost one year by his Lithuanian employer. He had to pay about \$1,000 in total to get his job in Lithuania. He said the company was his first European employer and that he had been home only once since he got the job. Although he had all the legal permits required before he started driving, he did not get paid during his first month of work which his employer claimed was training.

Before the start of his first shift, D and several colleagues were put in a minivan to drive from Lithuania to the Netherlands where their vehicles were parked. During his first stint, which lasted 3 months, D lived exclusively in his vehicle and transported containers to the Benelux countries and Germany from Rotterdam Port in the Netherlands.

Although he carried out his work in and from the Netherlands, D only received a weekly advance payment of €145. This was supposed to be given to him in advance of his monthly pay which he was

supposed to receive later. During his time on the road, his employer promised him he would receive his full payment upon returning to Lithuania.

After D returned to Lithuania and handed in all his documentation to the employer, however, he was told €4,000 would be deducted from his pay. These deductions were not the advance payments he had received, but other unspecified deductions. He wanted to return to Kyrgyzstan and look for a better employer in Europe, but the company prevented this by taking his European driver training certificate. The employer promised D he would reconsider the €4,000 in deductions if D would return to work for another stint. After D decided to return, the company said that he first needed to go on the road again and that they would then decide on the deductions. Before he was sent back out, he was forced to sign a Lithuanian document that he did not understand.

During his second stint, this time four months, the pattern of €145 a week in advance payment repeated. He again worked exclusively in Western Europe and slept in his vehicle continuously. He never was remunerated according to Lithuanian law or the law of the countries where he actually worked and never received the money that had been deducted after his first stint. He said he felt lucky to have been given back his training certificate so he could look for another company. He accepted that he would not receive his full wages and found another employer where the working conditions were similar, but the remuneration was according to what he was promised, although far below the legal requirements.

Driver E, from Uzbekistan, was interviewed for the first time in a Dutch parking lot in the summer of 2021.²⁴ Follow up communication took place online until autumn 2022. E worked in the supply chains of IKEA, Mars and Phillip-Morris.²⁵

²² Employment documentation and tachograph data in possession of RTDD.

²³ RTDD supply chain investigation.

²⁴ Employment documentation and tachograph data in possession of RTDD.

²⁵ RTDD supply chain investigation.

At the time of the first engagement with E, he had been employed several months by his Lithuanian employer. He had been on the road ever since and had lived the whole time in his vehicle. The company was his first European employer and he had paid about \$3.000 in fees to get his job in Lithuania. He explained that part of the \$3.000 was paid in cash to an Uzbek recruitment agency to get accepted into the recruitment process and that other payments were made for visa requirements, facilitating employment documentation and to travel to Lithuania.

During the first interview, E said he felt trapped and misled. His employment situation and conditions were very different from what he was promised. He was promised €80 per day and free accommodation during his rest periods. During the full duration of his employment, he did not receive the promised remuneration and slept in his vehicle. During his first interview, E hesitated to say how much he was paid, but he said that it was not even enough to cover his costs for food on the road.

Several weeks later E was back in the Netherlands and contacted the RTDD Foundation to share that the situation had not improved. He said he was desperate, had no money for food and was stressed because his family at home had no money to pay for food because all their money was used to pay for his job in Europe.

The RTDD Foundation met E in a parking lot again to speak to him in person. His bank statements confirmed his statements that he had not even received €600 in the months that he had worked.

Driver F, from Kyrgyzstan, was first interviewed on a Dutch-Belgium border parking lot in the autumn of 2022. Follow up communications took place remotely.²⁶ F worked in the supply chains of Amazon and Ferrero.²⁷

When the RTDD team approached F, he said he felt relieved to speak with someone with whom he

could communicate. He said that he had lived in his vehicle for four months and was pressured continuously to work harder and faster.

His first question was if his employer could terminate his visa and organize deportation back to Kyrgyzstan if he did not agree to compensate his employer for fuel theft by criminals at a parking lot. He showed us a police report confirming the robbery of 900L of fuel. He also showed the communications with his manager confirming that the manager wrote that it is company policy that drivers pay compensation in the case of fuel theft.

F said he was stressed because he had borrowed €3.000 to pay for the fees to get a job in Europe and had not yet received his full salary. He needed to feed his family back home and repay the €3.000. He said he had been paid €40 per day during his first month of employment and was promised €80 per day after that.

He asked if it was really allowed in Europe to live in one's truck because he had doubts. His employer had ensured him that it was allowed and normal because drivers need to guard their vehicle during weekends. At the same time his employer told him to not make any statements if asked by authorities about where he spent his weekly rest. F showed the RTDD team a letter the company gave him to hand over to control authorities in case of inspections. The letter is a statement from the European Commission that control authorities have no legal ground to ask drivers for evidence of where they have spent their weekly rest.

Several weeks later, F contacted the RTDD Foundation explaining that he was back in Lithuania and had not received his salary. The employer demanded that he sign a document to financially compensate the employer for the stolen fuel. If he would not sign the document, he would not be put to work again, would not get his remaining salary, and the company would take him to court to demand compensation.

²⁶ Employment documentation and tachograph data in possession RTDD.

²⁷ RTDD supply chain investigation.

The above cases show what individual drivers face while working in the EU. Misleading recruitment practices, un-transparent payment calculations and deductions, and abusive working conditions are common. All three drivers had paid large amounts for recruitment, and some were confronted with extra advance fees not communicated ahead of time. None had a clear understanding of the payments. The drivers had all been isolated in their trucks for longer periods than is legally allowed.

The case studies are not unique 'bad examples' or 'isolated incidents'. They shed light on systemic non-compliance with existing legislation and deliberate circumvention of regulations leading to practices of severe abuse of Central Asian third country national drivers working in the EU. The interactions with all 166 drivers give insight into the broader picture and also reveal a pattern of structural and systematic circumvention of rules and explicit illegal practices. This noncompliance is indeed part of the business model.

4. LEGAL CONTEXT

The legal framework applicable in road transport can be divided in three sections. Firstly, there is sector-specific regulation on access to the road transport market (transport regulation). Second, there is sector-specific regulation on driving and resting (regulations on road safety and driver protection). Third, there are sector specific rules on cross border-remuneration in case of posting of workers and general workers' rights and sector-specific rules when it comes to drivers' remuneration and legal protection (labour law).

The European Commission has taken the initiative to amend the existing industry legal framework as a part of the so-called Mobility Package, aiming to reach more targeted and consistent compliance with EU road transport rules.²⁸ The set of all directives and regulations taken together should result in a clear legal framework, guaranteeing coherence between laws and regulations and ultimately leading to fair working conditions and a safe sector.

In this section, we present an outline of the legal framework applicable in the transport sector, following the drivers' journey from recruitment in the country of origin, entry into the EU and country of employment, and subsequently time in the country of work and the working conditions on the road.

4.1 RECRUITMENT IN THE COUNTRY OF ORIGIN

Drivers from Central Asia working in the EU are all actively recruited either by recruitment agencies or transport companies. The companies and agencies recruit drivers via local agencies, online advertisements, or large billboards. Some drivers are introduced to job opportunities via their own networks or social media communities. In this chapter, Kyrgyzstan will be presented

as a case study to give insight in the recruitment procedures. An important aspect is that according to Kyrgyz law, each agency seeking to send people overseas must have permission from the Kyrgyz government. Also, the amount of the recruitment fee is capped. Both regulations intend to protect migrant workers. The Uzbek Law on Private Employment Agencies also prohibits private employment agencies from collecting money from citizens seeking to work abroad, stipulating that such fees should be collected from the employer.



Picture 6: Parking Lot, Border Netherlands/Belgium.

According to the ILO's 'General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs', no recruitment fees or related costs should be charged to, or otherwise be borne by workers or jobseekers²⁹ In spite of these protective measures, drivers pay high recruitment fees, are confronted with unexpected payments upon arrival, and are misled about their working conditions.

²⁸ Directorate-General for Mobility & Transport, Implementing Mobility Package 1: European Commission Harmonises Enforcement of Road Transport Rules, EUROPEAN COMMISSION: MOBILITY & TRANSPORT: NEWS (May 2, 2022), https://transport.ec.europa.eu/news/implementing-mobility-package-1-european-commission-harmonises-enforcement-road-transport-rules-2022-05-02_en.

²⁹ ILO, GENERAL PRINCIPLES AND OPERATIONAL GUIDELINES FOR FAIR RECRUITMENT AND DEFINITION OF RECRUITMENT FEES AND RELATED COSTS 13 (2019), https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf.

4.2 ENTRY TO THE EU LABOUR MARKET

Third-country national workers need an entry, residence and work permit to enter, reside and work in the EU.³⁰ EU Member States have the sovereign right to issue work permits to third-country nationals. The Member States decide to whom they grant entry to their labour markets. Article 79 TFEU is the legal basis for the European Parliament and the Council to harmonize and formulate procedural conditions for the entry of third-country national workers. Subsection (5) makes it clear that this shall not affect the right of Member States to determine the volume of admissions of third-country nationals coming to their territory for work. Therefore, a work and residence permit or visa issued to a third-country national worker is – in principle – only valid in the Member State that issued it and may only be used for employment at the unique employer. An important addition is that third-country national workers in the EU should be treated equally.³¹

The visa or work and residency permit is usually organized by the employer. Apart from a residence permit and a work permit, third-country national truck drivers need a driver attestation.³² A transport company may only employ drivers from third countries after obtaining a driver attestation.³³ This attestation contains the drivers' details, the period of employment and the details of the permit holder and is provided by the Member State of the establishment.³⁴ The transport company

has to apply for a driver attestation at the competent authority in the Member State of the establishment. A driver attestation is owned by the transport company. One copy must be kept at the address of the establishment and one must be kept by the driver while carrying out transport work in Europe. The work permit and driver attestation both aim to ensure that the third country national driver is legally working in the Member State that issued the work permit and in the country where the transport company is established. However, the third-country national drivers in this research mainly or exclusively work in countries where they did not obtain the work permit and the transport company for which they worked was not registered.

Driver G, from Kyrgyzstan, was interviewed for the first time in a Dutch industrial park in autumn of 2022. Follow up communications took place remotely.³⁵ G worked in the supply chain Heineken, Lidl, Ford and Proctor & Gamble.³⁶

G said he had been recruited by a company from Lithuania but was instructed to organize his visa at the Polish embassy in Alma-Ata in Kazakhstan. When this was done, he was ordered to fly to Poland to get a Polish EU entry stamp in his passport. When he had the stamp, he was ordered to take a bus from Warsaw to Lithuania to come to the company's office. There, he had to wait a month until all his paperwork was organized.

During the waiting time, he had to take a driving test and sign several documents that he did not understand. Upon arrival, the company told him that he had to pay €1.300 for his driving test and that the amount would be deducted from his first salary payment. After waiting a month in Lithuania, he was put in the companies' minivan with several other drivers. The drivers were instructed to drive to Calais, France where they would get their trucks. When interviewed, G had been on the road for 8 months nonstop and said he had not slept a single night outside of his vehicle.

³⁰ Non-EU Nationals, EUROPEAN COMMISSION: EMPLOYMENT, SOCIAL AFFAIRS & INCLUSION, <https://ec.europa.eu/social/main.jsp?catId=470&langId=en> (last visited Mar. 2, 2023).

³¹ Art. 12 Directive 2011/98/EU. on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (amongst others): Right to equal treatment. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32011L0098>.

³² Driver Attestations in Road Freight Transport 2012-2021, EUROPEAN COMMISSION: MOBILITY & TRANSPORT, https://transport.ec.europa.eu/system/files/2022-10/driver-attestations-in-road-freight-transport_2022-10.pdf (last visited Mar. 2, 2023).

³³ Passengers and Goods: Driver Attestation, EUR-LEX: SUMMARIES OF EU LEGISLATION, <https://eur-lex.europa.eu/EN/legal-content/summary/passengers-and-goods-driver-attestation.html> (July 19, 2006).

³⁴ Form of Attestation of Activities, EUROPEAN COMMISSION: MOBILITY & TRANSPORT, https://transport.ec.europa.eu/transport-modes/road/social-provisions/driving-time-and-rest-periods/form-attestation-activities_en (last visited Mar. 2, 2023).

³⁵ Employment documentation and tachograph data in possession RTDD.

³⁶ RTDD supply chain investigation.

G was recruited by a company from Lithuania but was formally employed in Poland and drove a vehicle registered in Poland. However, he had never seen an office in Poland. All his work was organized from Lithuania, and he drove in Western Europe.

Based on EU regulations³⁷ and EU case law,³⁸ a third-country national can be posted to other Member States to temporarily work there without being obliged to request a new visa or work permit in the second Member State. An important condition is legal residency and the right to work in the first Member State of entry. Also, the work must be temporary, and the posted workers should work habitually in and from the first Member State of entry.³⁹ For temporary posting in the transport sector, specific posting rules apply.⁴⁰ However, none of the drivers the RTDD Foundation encountered were habitually working in, or in and from the country of employment where they had received their work and residency permit. As explained earlier, the drivers received their work permit and employment contracts mainly in Lithuania. The RTDD Foundation findings are clearly supported by statistics.

4.3 STATISTICS DRIVER ATTESTATIONS

According to regulation 1072-2009,⁴¹ which sets out the rules on driver attestations, Member States must report to the European Commission the number of driver attestations that were provided to transport companies established in that Member State. Statistics show the number of attestations provided by Member State per

³⁷ Directive 2018/957, of the European Parliament and of the Council of 28 June 2018 Amending Directive 96/71/EC Concerning the Posting of Workers in the Framework of the Provision of Services, 2018 O.J. (L 173) 16, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0957>.

³⁸ Case C-43/93, Van der Elst v. Office des Migrations Internationales, 1994 E.C.R. I-03803 (Aug. 9, 1994), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61993CJ0043>.

³⁹ Id.

⁴⁰ Posting Rules, EUROPEAN COMMISSION: MOBILITY & TRANSPORT, https://transport.ec.europa.eu/transport-modes/road/mobility-package-i/posting-rules_en (last visited Mar. 2, 2023).

⁴¹ Commission Regulation 1072/2009, 2009 O.J. (L 300) 1, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:%3A32009R1072>.

year. Each driver attestation represents an individual driver. The statistics verify what the RTDD Foundation observed in fieldwork operations: Poland and Lithuania are the Member States where most driver attestations are issued.

DRIVERS ATTESTATION ISSUED 2021

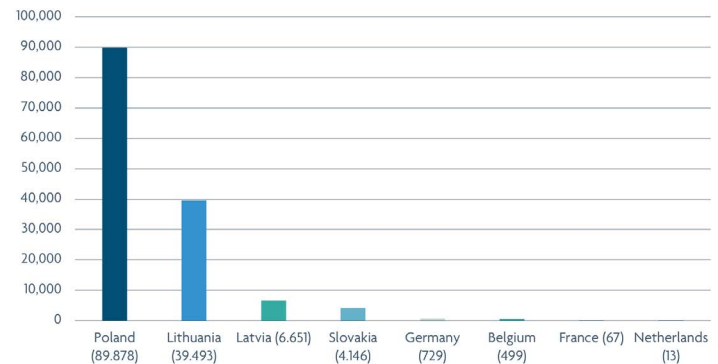


Figure 3: The number of driver attestations provided by the Member States to transport companies, 2021.

TOTAL SUM OF ISSUED ATTESTATIONS

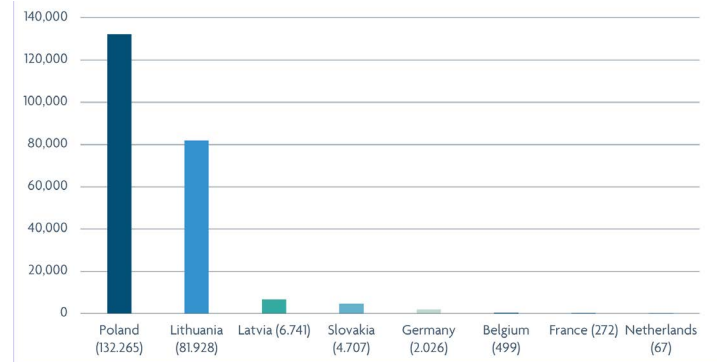


Figure 4: Total number of Attestations Applicable in 2021.

The above graphs show that the vast majority of driver attestations are issued in Poland and Lithuania. However, as field work observations suggested, a large group of drivers work outside of their country of employment. The statistics published in 2022 by the Dutch Ministry of Justice clearly verify this phenomenon.

In 2021, employers registered 300,850 drivers as being posted to the Netherlands. 102,480 of these posted drivers were third-country nationals, with Poland and Lithuania as the countries from which most drivers were posted.

RTDD Foundation case studies also show drivers who were posted to the Netherlands but were not regis-

tered by their employer so do not show in the above graph. The main conclusion based on RTDD Foundation fieldwork and desk research analysis is that most drivers cannot be qualified as “posted to the Netherlands” because there is no real connection with their country of employment and they have never worked in the country of employment - which is a prerequisite for posting. In that case, the Netherlands would have been the ‘habitual place of work’, so a work permit issued in the Netherlands would be required and Dutch labour conditions and wages would apply.⁴² If the actual working situation met the criteria for posting, the posting protection rules would apply. However, the drivers the RTDD Foundation encountered during this research were not granted the posted worker protections at all.

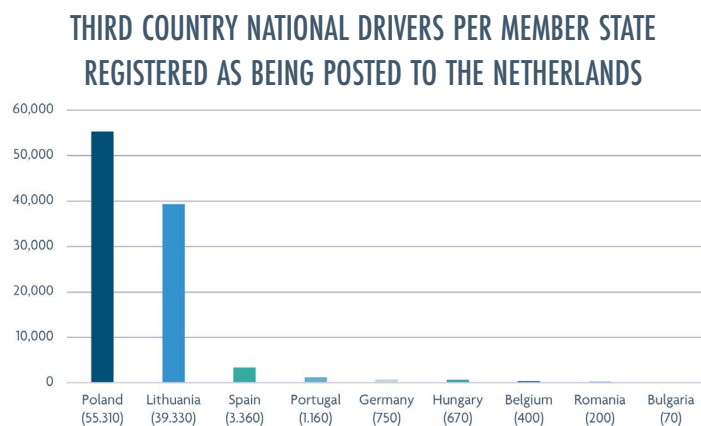


Figure 5: Third country national drivers per Member State posted to the Netherlands

4.4 ACCESS TO TRANSPORT MARKET RULES

Transport companies’ access to the road haulage market is governed by the EU regulation (EC) No 1071 and 1072/2009.⁴³ This regulation aims to improve the efficiency of the EU by harmonizing and simplifying rules in the road transport sector. The common rules claim to contribute to, “The achievement of a higher level of

⁴² This third-country national migration route, both genuine and non-genuine has been outlined by the European Labour Authority (ELA) in their recent report: “Report on the cooperation practices, possibilities and challenges between Member States - specifically in relation to the posting of third-country nationals”, March 2023

⁴³ Access to the Road Haulage Market, EUROPEAN COMMISSION: MOBILITY & TRANSPORTATION https://transport.ec.europa.eu/transport-modes/road/access-road-haulage-market_en (last visited Mar. 2, 2023).

professional qualification for road transport operators, the rationalization of the market and an improved quality of service in the interests of road transport operators, their customers and the economy as a whole, together with improvements in road safety. They will also facilitate the effective exercise of the right of establishment by road transport operators.”⁴⁴

Before getting access to the market transport companies must fulfil the market requirements, namely:

- (a) have an effective and stable establishment in a Member State
- (b) be of good repute
- (c) have appropriate financial standing; and
- (d) have the requisite professional competence

After companies fulfil these requirements, the competent authority of the Member State of establishment issues a community licence and certified copies for the number of vehicles that the transport company uses to carry out transport.⁴⁵

With the introduction of the Mobility Package the access to the market regulation was updated with a mandatory return of the vehicle. Vehicles must return to the country of establishment at least every 8 weeks.⁴⁶

Driver A who is quoted at the beginning of this report was interviewed in a German parking lot where the RTDD Foundation provided a hotel room for him so he did not have to sleep another night in his freezing vehicle.⁴⁷ A worked in the supply chains of Amazon, Ferrero and UPS.⁴⁸

Although driver A was driving a truck registered in Poland for a transport company registered in Poland, he was under the impression that he was employed in Lithuania. After the RTDD team inspected his employment documentation and asked addi-

⁴⁴ Commission Regulation 1072/2009, supra note 41.

⁴⁵ Id at art. 4.

⁴⁶ Commission Regulation 2020/1054, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1054&from=NL>

⁴⁷ Employment documentation and tachograph data in possession RTDD.

⁴⁸ RTDD supply chain investigation.

tional questions about his visa requirements, he began to realise that he was employed at a company in Poland where he had never been and by someone with whom he had never communicated.

Drivers H, I and J were interviewed in the summer of 2022 at a Belgian parking lot. The employer of H, I and J was a subcontractor for a large German-Lithuania transport company. This subcontractor worked in the supply chains of Aldi and Edeka.⁴⁹ As stated above, the EU regulation is clear that vehicles must return to the Member State where the company is registered every 8 weeks. Although this particular transport company violated this and many other regulations, the company was only required to pay a fine. The fine had no deterrent effect and the problem continued as before. Other Central Asian drivers who approached the RTDD Foundation suffered from similar issues as H, I and J.

H and I were from Kyrgyzstan and J was from Uzbekistan. They worked for a letterbox company registered in Poland situated in the Lithuanian-Polish border area. The drivers had been on the road many months, slept in their vehicle and were denied permission to return home.⁵⁰

They had not received their salary and were so desperate that they drove to a Belgian police department, where the police confiscated the vehicles and fined the company.⁵¹ Although the company was fined, it sent new drivers to pick up the confiscated vehicles (including the drivers' personal belongings). The three drivers were abandoned at the Belgian parking lot, and the RTDD team had to organize temporary shelter and repatriation home.

The RTDD team was familiar with the transport companies employing the above drivers and had documentation and datasets on the companies. In 2022, the Foundation carried out field research to find out if the Polish-registered company operated according to EU regulation with an 'active establishment'. No company office could be found. A representative of another

company stated that he had contact details from the company and contacted them. The company then turned out to be registered in Lithuania. This is in line with the story of the drivers. Official cargo documentation shows Lithuanian phone numbers and e-mail addresses as the contact details of the Polish company. The address of formal registration was located in the small border towns of Signy and Punske, where dozens of transport companies have letter-box companies owned by Lithuanian companies.

4.5 ROAD SAFETY AND DRIVERS' PROTECTION

A. DRIVING AND RESTING TIME

To protect drivers against unacceptable working conditions, protect road safety and combat unfair competition, the EU has mandatory rules regarding driving, working and resting times. EC 561-2006⁵² lays down rules on maximum driving and working times per day, per week and per fortnight. There are also minimum resting periods within a shift (breaks), at the end of a shift (night's rest) and weekend rest. The weekly rest is divided into shortened weekly rest periods that may be taken in the vehicle and the normal weekly rest periods that must always take place outside the vehicle.

The weekly rest must be taken outside the truck cabin, and accommodations should be organized and paid for by the employer. However, except for a handful of exceptions, all drivers stated that they spent all their weekend rests on parking lots inside their vehicles. Only two drivers stated that they had been allowed to stay in a hotel some of the time, and one claimed to always sleep in a hotel. However, it is important to add that the driver who claimed to always sleep in a hotel was interviewed at a Dutch parking lot on a Friday night and he was still at the same parking lot on Saturday and Sunday. His colleagues from Uzbekistan and Ukraine who were also interviewed stated that he gave such a declaration out of fear of being penalized by his employer if he were to state otherwise.

⁴⁹ RTDD supply chain investigation.

⁵⁰ Employment documentation and tachograph data in possession RTDD.

⁵¹ Police charges in possession RTDD.

⁵² Driving Time and Rest Periods in the Road Transport Sector, EURLEX: SUMMARIES OF EU LEGISLATION, <https://eur-lex.europa.eu/EN/legal-content/summary/driving-time-and-rest-periods-in-the-road-transport-sector.html> (Sept. 12, 2022); Commission Regulation 561/2006, 2006 O.J. (L102) 1, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006R0561>.

Although there is strong and clear regulation prohibiting drivers from taking the weekly rest in the vehicle and requiring the employers to organize and pay for accommodations, the drivers employed by this employer and those working for many other companies were not granted that right.

Driver K from Uzbekistan, driver L from Kyrgyzstan and driver M from Kazakhstan all worked for Lithuanian and Polish subsidiaries of a large German-Lithuanian transport company.⁵³ All drivers were on the road for many months and lived exclusively in and around their vehicles. When they took their mandatory weekly rest in Germany and France, the company provided them with fake hotel invoices to show during police inspections.⁵⁴ To prevent penalties, they are ordered to take their tachocards out of their tachographs and to keep their vehicle curtains closed.

With the introduction of the Mobility Package, the driving and resting time regulation was updated with the duty of transport companies to organize, facilitate, and pay for the drivers to return to their country of residence or the Member State of where the transport company is established. Individual drivers have the right to decide where they want to return to.

These rules intend to prevent drivers from having nomadic lifestyles on European roads. But to avoid having to adhere to this regulation, companies force their drivers to send them handwritten statements that they don't want to return home. This system is so strictly organized that companies send complete drafts of the statements for them to use as a model.

Driver N from Kyrgyzstan stated that his Lithuanian employer demanded that he send over a statement that he did not want to return home. He said that not signing was not an option because the company would not send him his advanced payments to buy his food on the road otherwise.⁵⁵

Driver O from Kyrgyzstan stated that he had to sign many documents when he left Lithuania, and he thought he had signed a mandatory document stating that he wanted to stay on the road for 10 weeks. During the interview, he said he had been on the road for more than four months and only slept in his vehicle. He had asked to be sent home for about the last two months, but the company ignored his requests. During his time on the road, he got advanced payment of €250 per week. The company said he would get his final payment upon return to Lithuania, after handing in all his documents.⁵⁶

It is a myth that road transport is an industry too complex to control. This section on driving and resting time shows that the rules are very clear and harmonized in Europe. To guarantee and monitor compliance with driving and resting times within the EU, harmonized rules have been drawn up for registration and documentation. Regulation (EU) No 165/2014 on tachographs in road transport requires road haulage vehicles in Europe to be equipped with a (mainly digital) certified tachograph which registers all activities.⁵⁷ These tachographs record and store all vehicle movements, including kilometres travelled and working time. Apart from the tachograph installed in all vehicle cabins, all drivers have a personal driver's card that must be inserted in the tachograph when the driver is on duty. These cards are strictly personal and are handed out upon request by a driver in the Member State of residency or employment. However, drivers are forced to circumvent these rules.

To prevent non-compliance from being detected by inspection authorities, driver P from Uzbekistan was ordered to remove his driver's card during weekends.⁵⁸ Additionally, he was ordered to work with the driver cards of other drivers. P's employer organized this in such a way that P had to remove his own tachocard and carry out work on

⁵³ Employment documentation and tachograph data in possession RTDD.

⁵⁴ Fake hotel invoices in possession RTDD.

⁵⁵ Statements in possession RTDD.

⁵⁶ Document observation by RTDD during parking interview.

⁵⁷ Commission Regulation 165/2014, 2014 OJ. (L60) 1, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014R0165>.

⁵⁸ Employment documentation and tachograph data in possession RTDD.

the personal card of another driver.⁵⁹ Moreover, he was given a hotel invoice⁶⁰ to show in case of an inspection, to make it appear he had rested in a hotel while working.⁶¹

The tachograph system enables authorities to inspect individual drivers by downloading the tachograph data. The driver must be able to show 28 days of administration when subject to a roadside inspection. The time that a driver spends travelling from the employer's location to and from the vehicle must be entered into the tachograph manually so that these activities can also be traced. The employer is obliged to keep a record of all his/her drivers' driving and resting times for a period of at least one year so they can be made available to the authorities in case of a company inspection.

B. REMUNERATION

For cross-border labour relations, the EU has drawn up rules to protect workers against social dumping and to prevent unfair competition between companies. These rules protect workers if they work temporarily or habitually in another Member State. In case of temporary work in a country other than the habitual place of work, the Posting of Workers Directive applies. The Posting of Workers Directive provides that, in these cases of temporary posting, the minimum standards of the temporary host country shall prevail over those of the country of employment, so long as these minimum standards are more favourable to the employee. The 'Mobility Package' includes an exception to this general rule and defines when and in what situations the exception applies.

When workers do not work temporarily but habitually in or from another Member State, they are protected by international civil law regulation. In this case, the minimum standards of the 'habitual place of work' prevail over the standards agreed upon between employer and employee. In international road transport, the country of employment is usually the country 'from which' a driver carries out the transport assignment and receives instructions, is where the work is organized and where

the work tools (including storage/maintenance) are maintained. The country where the transport is mainly carried out, the places where the goods are loaded/unloaded and the place to where the employee returns after his/her assignment must also be considered.

In European road transport, the total sum of remuneration and or compensation for working abroad can be divided between social security wages (for work) and tax-free daily allowances to cover daily living costs while on the road.

For example, the Dutch road transport industry is covered by a generally binding collective labour agreement, applicable to truck drivers who are employed in, are posted to or habitually work in the Netherlands. The gross basic salary of a truck driver who works in the Netherlands was €16,41 per hour and €2.854,20 per month in 2022, with additional payments for overtime, work on weekends and paid holidays. To compensate drivers for the cost of being on the road, Dutch employers must pay a driver €53 in tax-free daily allowances per 24 hours.

For 2022 Lithuania had a national gross minimum wage of €730 per month with a legally adopted multiplier of 1.65 for the road transport industry. The basic monthly salary driver employed in Lithuania is € 1.204,50. The structure of the daily allowance to compensate drivers for the cost of being on the road is also set by the Lithuanian government on the basis of a maximum amount per Member State where a driver works. The employer should pay at least 50% of that amount. For the Netherlands, this amount is set at €63, so the Lithuanian employer should pay at least 50% of this amount.

Although Driver Q from Kyrgyzstan was employed in Lithuania and his employment contract was governed by Lithuanian law, he never drove a truck in Lithuania. Q carried out his work in and from the Netherlands. Q's statement that he received weekly payments of €250 shows already that Lithuanian, not Dutch, remuneration rules applied. Despite the company's promise to pay him a €78 lump sum per day, he never received these payments. Upon return to Lithuania, Q faced unspecified deductions of up to €700.

⁵⁹ Driver's card analyzed by RTDD.

⁶⁰ Fake hotel invoices in possession of RTDD.

⁶¹ Employment documentation and tachograph data in possession RTDD.

The explanation of Dutch and Lithuanian remuneration regulation shows that both Member States have clear systems regulating remuneration. It is clear that remuneration based on fixed lump sum daily amounts is not compliant with that regulation. The illustration also shows that if a driver receives an lump sum amount of €78, almost half would constitute the mandatory tax-free daily allowance and the other half would be the net equivalent of the gross daily salary.

4.6 ENFORCEMENT AND FUNDAMENTAL HUMAN RIGHTS

The above chapters and the drivers' stories show that while there is a clear legal framework to protect drivers it fails to do so. Although regulation in road transport is clear and strong, there is poor enforcement across Europe. Because of its international character and the high mobility of its workers, the industry has the image of being hard to control. An analysis of the isolated issues might show isolated breaches of law. However when all the elements in an individual case study are taken together it often shows indications of widespread human rights violations, forced labour, human trafficking and labour exploitation. Some of the issues of non-compliance are so systematic and so widespread that they have become industry standards and might even be accepted by public authorities.

Drivers have to spend their weekly rest in parking lots without access to basic necessities such as toilets and safe drinking water. This can be qualified as a violation of basic human rights.

Human Trafficking for labour exploitation and forced labour are violations of fundamental human and labour rights and severe criminal offences. The ILO's eleven indicators of labour exploitation are: abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions and excessive overtime.⁶² The drivers interviewed

for this research all discussed experiencing several of the ILO's indicators mentioned above.

The more isolated breaches of labour law in some Member States are sanctioned through administrative law and in others through criminal law (social crime). In some Member States victims can actively participate in prosecution as civil party to demand financial compensation.

The examples below show how difficult it is to apply these ILO indications to effectively help drivers and prosecute perpetrators. They also show that it is possible to help workers and punish perpetrators as long as public authorities are willing to do so.

At the EU level, the Directive on Preventing and Combating Human Trafficking covers the crime of forced labour.⁶³ The European Agency for Fundamental Rights (FRA) has expressed its concerns many times on forced labour in the EU and the urgent need of European governments to do more to tackle severe labour exploitation in companies, factories and farms throughout the EU.⁶⁴ From the perpetrators' perspective, labour exploitation is a lucrative business model based on structural non-payment of statutory wages and the evasion of tax and social security payments. This is often facilitated through regime shopping within the EU to find the most lucrative or untraceable ways to avoid paying applicable wages, social security and taxes.⁶⁵ This modus operandi bears a resemblance to the use of complex legal structures to launder illegally obtained money via financial service providers. The more the exploitation is covered up through mostly foreign legal constructs, the easier it is to get away with it. The enforcement agencies lack awareness and a sense of urgency about fight

⁶² ILO Special Action Programme to Combat Forced Labour, ILO INDICATORS OF FORCED LABOUR (2012), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf.

⁶³ Directive 2011/36/EU, of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA, 2011 O.J. (L101) 1, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:en:PDF>.

⁶⁴ Fra Press Release, supra note 16; New FRA Report on Rights Protection of Exploited Migrant Workers, ÅBO AKADEMI UNIVERSITY: NEWS (June 28, 2021), <https://www.abo.fi/en/news/new-fra-report-on-rights-protection-of-exploited-migrant-workers/>.

⁶⁵ Mensenhandel op bouwwerf Borealis: zaak blijft niet beperkt tot België, NIEUWSBLAD (Aug. 1, 2022), https://www.nieuwsblad.be/cnt/dmf20220802_91474980.

ing human trafficking for labour exploitation.⁶⁶

Many of the cases presented in this report show clear indications of labour exploitation and forced labour. The drivers start with debts often over a thousand euros, while the minimum wage in the home countries does not exceed a few hundred euros. Drivers are misled by false promises and live in terrible conditions, isolated for months at a time in their truck cabins and restricted in their movements because they fear not getting paid fully unless they complete the work on the employer's terms. The drivers cook their meals outside, between their trucks, even in the snow and rain, and have no access to sanitary facilities other than what is available at public parking lots. If drivers complain, they are threatened with loss of their work and residence permits. In short, the drivers cannot escape their situation.⁶⁷ Several companies about which the RTDD Foundation has shared intelligence with public enforcement bodies are now under criminal investigation or prosecution in Belgium.

In December 2021, Belgian public authorities confiscated 11 trucks loaded with Tesla, BMW and Mercedes cars in Zeebrugge Port. The RTDD Foundation had interviewed drivers from Ukraine, Belarus, Kyrgyzstan and Tajikistan at this company. The Belgian public prosecutor was quoted publicly to have observed indications of human trafficking.⁶⁸

In January 2023, another Lithuanian transport company that had 14 trucks confiscated under suspicion of human trafficking and social crimes in February 2020 faced trial in Belgium. The RTDD Foundation was present at the criminal hearing. Also present was the company's CEO and former Vice Minister of Transport in Lithuania.

⁶⁶ Gardingen & Atema, supra note 15; <https://english.rekenkamer.nl/publications/reports/2021/09/28/offenders-scot-free-victims-not-helped>; <https://english.rekenkamer.nl/latest/news/2021/09/28/inspectores-labour-exploitation-strategy-in-effective>; Netherland Court of Audit, supra note 15.

⁶⁷ Gardingen & Atema, supra note 15.

⁶⁸ Mathias Mariën, 11 vrachtwagens in beslag genomen in Zeebrugge: "Aanwijzingen van mensenhandel en uitbuiting," HLN (Dec. 14, 2021), <https://www.hln.be/brugge/11-vrachtwagens-in-beslag-genomen-in-zeebrugge-aanwijzingen-van-mensenhandel-en-uitbuiting-ab386ad9/>.

The Belgian public prosecutor requested an 18 month prison sentence and fines for labour exploitation and several other social crimes such as the underpayment of drivers. The company stated it had respected all laws and regulations and was a fair company that carries out transport for NATO and IKEA.

Although the RTDD Foundation had only interviewed drivers from Belarus, Ukraine and Russia, the criminal investigation showed that the company also employed drivers from Central Asia. The investigation further highlighted that the company organized residency for hundreds of third country national drivers at a hotel in Lithuania.

In the March court ruling the CEO got a 6-months suspended jail sentence and the company was ordered to pay compensation to the drivers who had taken part in the trial. Although these drivers were employed in Lithuania, the court ruled that Belgian law applies to their employment contracts since they had carried out their work in and from Belgium. Drivers are entitled to financial compensation up to €69.000.⁶⁹

In 2021, the Dutch trade union FNV filed detailed criminal charges in Germany against one of Europe's biggest and fastest-growing transport companies with subsidiaries in Lithuania, Poland, France and Germany. The charge included labour exploitation, fraud with driving and resting time registration and the falsification of documents on a massive scale. There is no sign of action from the German authorities as of yet. In the meantime, the company has expanded its capacity and new drivers from Central Asia employed and exploited by the company approach the RTDD team almost on a weekly basis.

At the same company, the RTDD Foundation interviewed drivers from Tajikistan who were recruited to work in Germany. The drivers had to make cash payments at an agency in Uzbekistan on instructions from their Lithuanian recruiter. They were provided with Lithuanian visas and employment documentation to work as truck drivers. Upon arrival in Lithu-

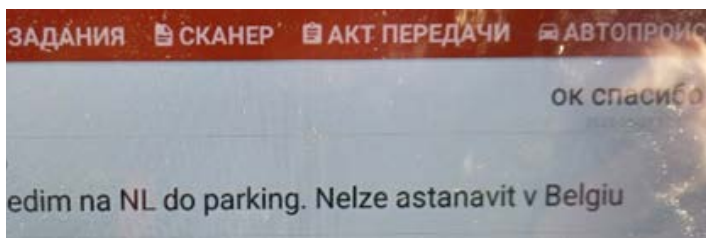
⁶⁹ <https://trans.info/social-dumping-belgium-2-330989>

ania, they were picked up at the airport and were brought to a farm where they were forced to work for months in a row and where they were made to live in barracks. The workers were told they were at risk of being deported if they were discovered. After several months, the workers managed to escape the farm. Currently, one of the involved drivers has been given a human trafficking victim status in Lithuania and the case is under investigation.

The Belgium approach to labour exploitation and socio-economic criminality seems to be effective. The Belgian authorities have minimal capacity, but they are feared by transport companies. In the criminal investigation at the transport company that was prosecuted in January 2023, the manager said in his interrogation that the company has stopped working for the Belgian department of their customer and instead started working for their Dutch department.⁷⁰

During RTDD field interviews at the Dutch – Belgium border region, drivers regularly state that they are ordered by their employers to leave Belgium and spend their weekly rest in the Netherlands because there are no inspections. The message below was sent to several hundreds of drivers after the Belgian prosecutor seized vehicles under the suspicion of human trafficking.⁷¹

How Dutch authorities deal with indications of labour exploitations is shown by the case study of Driver E from Uzbekistan above:⁷²



Picture 7: Message from company to its drivers saying that they are not allowed to take the weekly rest in Belgium and must go to the Netherlands.

During an in person follow up conversation the RTDD Foundation had with E in the Netherlands, he stated he was exhausted, desperate and saw no way out of his situation other than sharing his story with the Dutch public authorities hoping he would get help and be protected. The RTDD Foundation contacted Dutch labour authorities to interview E on the clear indications of labour exploitation (isolation in his vehicle, salary not being paid, not being able to buy food, fearing his employer and the threat of being deported when requesting salary and no regular access to basic human necessities such as sanitary facilities). After E was interviewed by the authorities, they concluded that there was no indication of labour exploitation and E was advised to hire a civil lawyer in Lithuania to defend his rights.⁷³

E could not believe the statements of the Dutch authorities and went back on the road looking disoriented. The RTDD Foundation staff seriously feared for his mental health and road safety but had no way to intervene since the public authorities did not act.

This example reflects the much-debated concerns in the Netherlands about the ineffectiveness of the Dutch authorities. In 2021, the Dutch parliamentary audit committee published a study called: “Perpetrators go free, victims are not helped” and concluded that more financial investments in labour inspection had not led to a more effective approach to combatting labour exploitation. In fact, the number of inspections even decreased.⁷⁴ In the same year, an ILO report was published comparing the Belgian and Dutch approaches regarding protection and remedy for victims of labour exploitation and human trafficking.⁷⁵

During his interview, Driver R from Kyrgyzstan had been on the road for three months and had lived

⁷⁰ Statements made during criminal investigation, files in possession of RTDD

⁷¹ The message was sent by Transarloja.

⁷² Employment documentation and tachograph data in possession of RTDD.

⁷³ RTDD interview conclusions.

⁷⁴ Netherlands Court of Audit, supra note 15.

⁷⁵ Irene Wintermayr & Amy Weatherburn, ILO, ACCESS TO PROTECTION AND REMEDY FOR VICTIMS OF HUMAN TRAFFICKING FOR THE PURPOSE OF LABOUR EXPLOITATION IN BELGIUM AND THE NETHERLANDS (2021), https://www.ilo.org/brussels/information-resources/news/WCMS_783811/lang--en/index.htm.

exclusively in his vehicle. He had repeatedly asked his managers to be allowed to return home and to have his weekly rest outside his vehicle. Despite the clear regulations, his rights were denied and his salary was not paid. The RTDD Foundation guided R to an inspector of the Dutch road transport authority to whom he stated that he lived in his vehicle and had audio recordings of his manager saying that it is the company's policy that drivers do not sleep outside their vehicles.⁷⁶ Despite the authorities having a driver willing to speak and clear evidence that the company broke the law, the authorities said, "You can say that you have slept in your vehicle and may have audio recordings but that proves nothing".⁷⁷

Some drivers pay the ultimate price. This is the tragic case of a Driver C – already mentioned in the introductory chapter – who drowned at a Dutch parking lot after using unsafe and insufficient toilet facilities.

Driver C, from the cover story "Nobody seems to care that a truck driver dies. Not even if he dies at the gate in front of the company for whom he works"; was employed in Lithuania and had taken his weekly rest on an unsafe parking lot at a Dutch industrial park at a Mars factory. He had already been on the road for several months living in his vehicle.⁷⁸ The parking lot had poor and unsafe sanitation facilities and no access to clear water.⁷⁹

After the RTDD Foundation interviewed several witnesses and spoke to the police, the conclusion was that C drowned in the dark when he left the unsafe, dark and dirty toilet facilities on a Saturday night. He would not have been there if his employer had respected the law. The Dutch labour inspectorate did not investigate because the incident was considered non-work related. At the moment, no more details can be shared because the case is under financial remedy on behalf of C's widow.

In the most recent example of non-enforcement in a labour exploitation case, the Dutch prosecutor's office decided to not prosecute a Dutch transport company which had hired Moldovan drivers using falsified documents, had underpaid them, and had forced them to stay in their trucks for months. The trade union appealed the dismissal of the case, but the judges decided,

"Although, in the opinion of the court of appeal, the case file does contain indications that justify further criminal investigation into possible criminal acts by the accused, the court of appeal is of the opinion that, after weighing all the interests involved, ordering such an investigation would no longer serve a reasonable purpose. In doing so, the court of appeal has taken into account the lapse of time that has since passed, the international nature of the facts and the limited investigation capacity at public authorities."⁸⁰

It had taken the prosecutor's office several years to investigate the case, after which they decided to dismiss it. Unbelievably, the fact of the passage of time – caused by the prosecution office – was an argument for the court of appeal to not order further investigations. This example also shows that the perceived complexity of cases and the international character of the industry – fundamental aspects in labour exploitation cases – are decisive factors in the context of limited enforcement capacity.

⁷⁶ Audio recording of the calls between driver R and his managers is in possession of RTDD.

⁷⁷ RTDD interview.

⁷⁸ RTDD interview.

⁷⁹ RTDD observations prior to incident.

⁸⁰ Court of Appeal, The Hague. K20/220430.

5. THE RECRUITMENT OF DRIVERS FROM CENTRAL ASIA

As the publication, ‘Migrants from Central Asia in the EU Countries’ explains, departure for labour migration from the Central Asian countries is rarely initiated by individuals. Employment assistance is provided by public or private recruitment agencies licensed by the government.⁸¹ The RTDD Foundation has identified several ways in which drivers from Central Asia find their employers in Europe and what is required to get the job. Firstly, there is a route via formal recruitment agents in Central Asia recruiting drivers on behalf of European employers. A second route is organized via informal recruiters that operate without a website or traceable registration. The third route is direct recruitment by EU employers and the fourth route is via word-of-mouth promotion; drivers telling others that their companies are looking for more drivers from Central Asia.

All interviewed drivers shared the same experience, namely that a lot of time and money was invested to be employed in Europe. The majority of the drivers said it had cost them between \$500 and \$4,500 in recruitment fees or related expenses to get their jobs in Europe. This money was used to pay agents to introduce them to employers and to organize visa requirements and other documentation and travel. Sometimes drivers could not reconstruct what they paid for. Upon arrival in the EU, drivers were often also confronted with unexpected costs, while waiting in hostels until their employment documents were prepared. These costs included training costs and payment for working equipment.

The RTDD Foundation has interviewed dozens of drivers employed at several companies who were recruited via one specific recruitment agency from Tashkent, Uzbekistan. This recruitment agency recruits for several Lithuanian and Polish-registered companies. The company has an active and public campaign to attract drivers from Central Asia. All interviewed drivers said that they had to pay large sums of cash to get accepted in the recruitment process. After entering the process of

visa application, they had to travel to the embassies of the countries where they would be employed.

Another recruiter that the RTDD Foundation detected several times could not be found in public registers but has a Facebook page saying it has agents operating from Bishkek, Kyrgyzstan and Alma-Ata, Kazakhstan. The drivers recruited by this agency all stated that they had to make cash payments.

Driver S contacted the RTDD Foundation. He was introduced to the Foundation by his colleagues who had previously been interviewed. S worked in the supply chains of Amazon and Pfizer.⁸²

S, who is Kyrgyz and is employed in Slovakia, stated that he ‘only’ paid €580 to get his job in Slovakia, but that he had been instructed to sign many documents in Slovakian that he did not understand. He shared a document with the Foundation that said that the employer lent him €3,000 so the employer could organize and pay the cost of formalizing the employment.⁸³

5.1 LABOUR MIGRATION FROM CENTRAL ASIA: CONTEXT AND STATISTICS

In general, the number of third-country national workers in the EU is increasing. EUROSTAT annually publishes the number of work permits issued to third-country national workers. In 2021 permits for employment hit a ‘record high’ according to EUROSTAT.

“Employment reasons accounted for 45% of all first residence permits issued in 2021, with 1.3 million permits. [...] It is also the highest number of permits issued for employment reasons since the beginning of the time series.”⁸⁴ Poland issued 27% of all employment related

⁸¹ Olga Gulina, Migrants from Central Asia in the EU countries, CABAR.ASIA, https://longreads.cabar.asia/migrants_from_central_asia_in_the_eu_en (last visited Mar. 2, 2023).

⁸² RTDD supply chain investigation.

⁸³ Employment documentation in possession of RTDD.

⁸⁴ First Residence Permits Reached Pre-Pandemic Levels, EUROSTAT:

first residence permits issued in the EU to third-country nationals (790,100). And these are merely the numbers registered by EUROSTAT and don't include the even larger number of work permits issued via bilateral agreements between EU Member States and third countries outside of the EU.

Third-country national workers in the EU are particularly vulnerable. They face vulnerabilities that migrant workers face in general, often not being aware of the local language and rights, having no network, being dependent on the employer for residency, income and housing. On top of this third-country national worker have high recruitment fees that need to be repaid, and often start their working life in the EU in debt. Moreover, third-country national workers mostly originate from countries with lower wages, sometimes high unemployment rates and less job opportunities, leaving them financially no option but to deal with abusive situations. This is the case with drivers from the Central Asian countries, which have high unemployment and limited future prospects, large young male populations and low wages.

Central Asian workers are a new phenomenon on the EU labour market. Although in absolute numbers they are still a minority, this year central Asian countries among the top five countries to which permits were granted in three Member States. These numbers confirm the observations of the RTDD team that the number of third-country nationals working in the EU are increasing in road transport. EUROSTAT has published an overview of the top five countries whose citizens received a first resident permit in 2021, by EU Member State. In Lithuania, Latvia and Czechia they appear in the top 5 of countries of origin.⁸⁵

The road transport employers' organization LIVANA from Lithuania has a public strategy to convince their government to shorten procedures for drivers from

Lithuania		Latvia		Czechia	
Total permits granted: 20 977		Total permits granted: 8 138		Total permits granted: 74 395	
Citizenship (top 5):		Citizenship (top 5):		Citizenship (top 5):	
Belarus	9 828	Russia	1 934	Ukraine	41 440
Ukraine	5 732	Ukraine	1 925	Russia	6 841
Russia	1 412	Belarus	948	Vietnam	2 751
Kyrgyzstan	487	Uzbekistan	780	India	1 992
Uzbekistan	446	India	523	Kazakhstan	1 945

Figure 6: Top five countries whose citizens received a first resident permit in 2021 in Lithuania, Latvia and Czechia.

Central Asia.⁸⁶ According to the statistics for 2022 recently published by the Lithuanian authorities, 2388 work permits were issued to Kyrgyz citizens, 2073 to workers from Uzbekistan, 1850 to workers from Tajikistan and 751 to workers from Kazakhstan.⁸⁷

WORK PERMITS ISSUED IN LITHUANIA IN 2022 FOR WORKERS FROM KYRGYZSTAN, UZBEKISTAN, TAJIKISTAN, KAZAKHSTAN

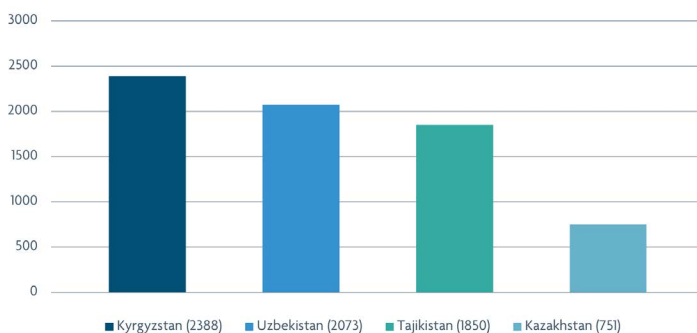


Figure 7: Work permits issued in Lithuania in 2022 for workers from Kyrgyzstan, Uzbekistan, Tajikistan, Kazakhstan.

According to this same publication, 78% of the issued work permits were issued for the transport industry.

News (Aug. 9, 2022), <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20220809-2>.

⁸⁵ Top 5 countries whose citizens received a first resident permit in 2021, by EU Member State and EFTA country.png, EUROSTAT: STATISTICS EXPLAINED, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:T2_Top_5_countries_whose_citizens_received_a_first_resident_permit_in_2021_by_EU_Member_State_and_EFTA_country.png (last visited Mar. 2, 2023).

⁸⁶ Atsiskaius suteikti 3 tūkšt. kelionės leidimų Uzbekistanui, šios šalies atstovai kreipsis į Lietuvos institucijas, Linava: News (Oct. 10, 2022), <https://www.linava.lt/naujienos/atsiskaius-suteikti-3-tukst-keliones-leidimu-uzbekistanui-sios-salies-atstovai-kreipsis-i-lietuvos-institucijas/>.

⁸⁷ Užsieniečiams išduota mažiau leidimų dirbti, UŽIMTUMO TARNYBA (Jan. 30, 2023), <https://uzt.lt/naujienos/8/uzsienieciams-isduota-maziau-leidimu-dirbti:152>.

The publication mentions that most permits were issued to third-country nationals for employment at transport companies. The publication also states that the majority of the newcomers are employed with Hoptransa, Transmėja, Hegelmann transporte, Transorloja and the companies Girmeta, KLP transport, Termolita, Trasis, Girtrans, ME transportas which are, according to RTDD Foundation findings, subsidiaries of Europe's largest transport company Girtoka Logistics. For this report the RTDD Foundation interviewed drivers from all these companies.

5.2 SOCIO-ECONOMIC BACKGROUND: KYRGYZSTAN, UZBEKISTAN AND TAJIKISTAN

Kyrgyzstan, Uzbekistan and Tajikistan lack employment prospects, have high unemployment figures and low salaries - which makes it very attractive for their citizens to seek employment abroad. According to the World Bank, Russia had 7 to 8 million registered migrants from Kyrgyzstan, Tajikistan and Uzbekistan in 2021. Remittances accounted for 30 percent of the GDP in Tajikistan, nearly 28 percent in Kyrgyzstan and 11,6 percent in Uzbekistan (\$7.6 billion).⁸⁸ Since early 2022, economic prospects in Russia changed after the invasion of Ukraine. Several media outlets describe how work at international airports and businesses hit by sanctions decreased, affecting millions of migrant workers from Central Asia.⁸⁹ According to a recent study in December 2022, the difficulties of employment and mass layoffs significantly reduced the level of remittances. About 49 percent of the respondents confirmed that their families back home had already begun to experience financial difficulties.⁹⁰ This might influence interest into seeking employment in the EU. While the number of migrant workers in the

EU from Central Asia still is relatively low, the absolute numbers are increasing.

According to the Kyrgyz Ministry of Labour, Social Security and Migration 800,000 Kyrgyzstan workers work outside the country.⁹¹ The vast majority work in Russia, but since no work permit is needed, official figures are difficult to obtain.⁹² Kyrgyzstan depends heavily on remittances, which comprise over 25% of GDP. Nearly half of Kyrgyz households benefit directly or indirectly from remittances.

Uzbekistan's labour force is about 19,1 million people, with around 2,5 million working abroad. The Uzbek government facilitates labour migration through the Agency for External Labour Migration. It helps with travel expenses and obtaining permits, insurance, pensions and loans. This agency has the responsibility to open representative offices in destination countries and the accreditation of foreign companies recruiting Uzbek migrants. According to the Ministry of Labour of Uzbekistan, private recruitment agencies sent most Uzbek citizens to work in Lithuania, Latvia, Poland, Bulgaria, Croatia and Estonia.⁹³

An estimated 10% of the Tajikistan's population is employed abroad. The Asian Development Bank (ADB) published a report in 2020 on international migration out of Tajikistan, finding that Russia was the destination for 97.6% of Tajik migrants.⁹⁴ The ADB finds that the Tajikistan's economy is not creating enough jobs for its rapidly growing labour force and that fifty-five percent of the working-age population is not economically active. Lack of job opportunities is an important reason for seeking employment abroad.

⁸⁸ Farangis Najibullah, Central Asian Migrants Losing Work As Russian Businesses Downsize Or Close, RADIO FREE EUROPE/RADIOLIBERTY (Mar. 26, 2022), <https://www.rferl.org/a/russia-sanctions-central-asian-migrants/31771858.html>.

⁸⁹ Central Asian Migrants Losing Work As Russian Businesses Downsize Or Close, RADIO FREE EUROPE (Mar. 26, 2022), <https://www.rferl.org/a/russia-sanctions-central-asian-migrants/31771858.html>.

⁹⁰ The Impact of Economic Sanctions Against the Russian Federation on the Labor Rights of Migrants from Kyrgyzstan, FRIEDRICH-EBERT-STIFTUNG (Dec. 18, 2022), <https://kyrgyzstan.fes.de/news/the-impact-of-economic-sanctions-against-the-russian-federation-on-the-labor-rights-of-migrants-from-kyrgyzstan?s=08>.

⁹¹ Kyrgyz Ministry of Labor Announce Real Data on Labor Migrants, INOZPRESS (Oct. 13, 2022), <http://inozpress.kg/en/ministry-of-labor-of-kyrgyzstan-announced-real-data-on-labor-migrants/>.

⁹² Fighting for the Rights of People with Disabilities in Kyrgystan, SOLIDARITY CENTER (Feb. 3, 2023), <https://www.solidaritycenter.org/tag/kyrgyzstan/>.

⁹³ Olga Gulina, Migrants from Central Asia in the EU countries, https://longreads.cabar.asia/migrants_from_central_asia_in_the_eu_en (last visited Mar. 2, 2023).

⁹⁴ Asian Development Bank, STRENGTHENING SUPPORT FOR LABOR MIGRATION IN TAJIKISTAN (2020), <https://www.adb.org/sites/default/files/publication/681666/support-labor-migration-tajikistan.pdf>.

5.3 RECRUITMENT PROCEDURE CASE STUDY: KYRGYZSTAN

Kyrgyzstan actively promotes their citizens to work overseas. The Ministry of Labour and Social protection and Migration of the Kyrgyz Republic have launched a centre which helps citizens with overseas employment – the Centre for Employment of Citizens Abroad. Their main task is creating a partnership with employers in foreign countries, facilitate information and consultation campaigns about the work overseas. They also work with locally based Private Recruitment Agencies (Agency) and monitor their work.⁹⁵

According to the Kyrgyz law, each agency seeking to send people overseas must have permission from the government. They must meet the following criteria⁹⁶:

- be legally registered at the Ministry of Justice;
- have several physical bodies with legal permit in the territory of Kyrgyz Republic;
- be registered at the tax and social security offices, submit reports regularly;
- have a written contract with overseas companies which is legally translated into Russian;
- have a written contract with each job seeker;
- pay 4 000 kgs (45 Euro) for getting permission; and
- put a Guarantee Fee in the amount of 100 000 kgs (1,120 Euro) to each partner country.

The time to get the permission lasts from one to two months. Upon submission of necessary documents by the Agency, the Ministry will decide about granting the permission together with a commission comprised of representatives of the Foreign Ministry, Ministry of Justice, and the Ministry of Internal Affairs.

According to the Centre for Employment of Citizens Abroad, the recruitment agency can charge the fee from the job seeker in the amount of 50% of the first month's

salary.⁹⁷ However, often the fee paid by job seekers exceeds 1,000 Euros, in some cases even 3,000-4,000 Euros. There are 74 legally registered agencies with legal permits which are working with European countries: 20 – Bulgaria; 4 – Slovakia; 18 – Poland; 9 – Lithuania; 2 – Latvia; 6 – Hungary; 12 – Germany; 1 – Finland; 1 – Estonia; 1 – Czech Republic.⁹⁸ These agencies followed the regulations of the Ministry of Labour and received their licenses. Usually, they have legal partners in Europe and can legally and openly advertise their job postings and recruit people.

The Kyrgyz drivers interviewed for this report were recruited by informal agents that could not be traced, or recruiters from other Central Asian countries or directly by their employers in Europe.

⁹⁵ CENTER FOR EMPLOYMENT OF CITIZENS ABROAD, www.migrant.kg (last visited Mar. 2, 2023); Center for Employment of Citizens Abroad, FACEBOOK, <https://www.facebook.com/info.migrant.kg/> (last visited Mar. 2 2023).

⁹⁶ List of documents for obtaining a permit. <https://migrant.kg/ru/services/article/perechen-dokumentov-dlya-chastnyh-agentstv-zanyato/> (last visited Mar. 7, 2023).

⁹⁷ Regulations on the procedure for carrying out activities for the employment of citizens of the Kyrgyz Republic abroad. <http://cbd.minjust.gov.kg/act/view/ru-ru/13565?cl=ru-ru> (last visited Mar. 7, 2023)

⁹⁸ List of Private Employment Agencies. <https://migrant.kg/ru/services/employment-agency/> (last visited Mar.7, 2023)

6. SUPPLY CHAIN ACCOUNTABILITY

The EU road transport industry is dominated by small and medium size transport companies and a small number of large companies. Small and medium size companies mostly subcontract for the large companies or get transport orders over online cargo platforms. Large operators are often direct suppliers of multinational companies, who are the ultimate contractors in road transport. The companies that employ the interviewed drivers represent small, medium and large transport companies and can be found at different levels in the contracting chain.

In Europe, there is growing awareness of supply chain accountability, corporate sustainability and the introduction of European⁹⁹ and national¹⁰⁰ due diligence legislation. However, this momentum also comes with risks of creating box-ticking reports without properly involving workers. On the global level, 21,218 companies from 162 countries have committed themselves to the United Nations Global Compact principles.¹⁰¹ This set of principles includes human and labour rights guarantees and intends to identify and manage the impact of businesses, both positive and negative, on people.

Some of the drivers interviewed for this research were employed at subsidiaries of a large Lithuanian transport company transporting the goods of several companies¹⁰² who actively committed themselves to the UN

Global Compact. This research demonstrates systemic non-compliance and human rights violations making it clear that either these companies have no awareness of what happens in their road transport supply chains, or they have no willingness to address what they do know (or should have known).

This report intends to create awareness and aims to further investigate problems at the supply chain level, and work towards dedicated remedy and prevention.

In one example, a large multinational logistic company awarded a subsidiary of a large Lithuanian transport company with an environmental sustainability certification.¹⁰³ This subsidiary appeared frequently in our research and is mentioned several times in this report. The company is one of Lithuania's largest employers of third-country national drivers.¹⁰⁴ In addition to being responsible for the patterns of non-compliance uncovered in this research, the company also appears frequently in the UK Government's yearly publication on road safety offences committed by transport companies.¹⁰⁵

In a RTDD case regarding exploited drivers from Ukraine employed at the Lithuanian subsidiary under subcontract for the large logistic company during the pandemic, human rights violations were reported to the logistic company. A Ukrainian driver had lived in his vehicle 11 months nonstop and almost died at a parking lot. A lawyer brought up the case with the logistic company, which did not respond.¹⁰⁶ Both companies actively pub-

⁹⁹ Corporate Sustainability Due Diligence: Fostering Sustainability in Corporate Governance and Management Systems, EUROPEAN COMMISSION, https://commission.europa.eu/business-economy-eu-ro/doing-business-eu/corporate-sustainability-due-diligence_en (last visited Mar. 2, 2023).

¹⁰⁰ France: Natl. Assembly Adopts Law Imposing Due Diligence on Multinationals to Prevent Serious Human Rights Abuses in Supply Chains: Timeline, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE (Feb. 14, 2017), <https://www.business-humanrights.org/en/latest-news/france-natl-assembly-adopts-law-imposing-due-diligence-on-multinationals-to-prevent-serious-human-rights-abuses-in-supply-chains/>.

¹⁰¹ The Ten Principles of the UN Global Compact, UNITED NATIONS GLOBAL COMPACT, <https://www.unglobalcompact.org/what-is-gc/mission/principles> (last visited Mar. 2, 2023).

¹⁰² Inter IKEA Group, UNITED NATIONS GLOBAL COMPACT, <https://>

www.unglobalcompact.org/what-is-gc/participants/135598-Inter-IKEA-Group (last visited Mar. 2, 2023).

¹⁰³ Press Release, Deutsche Post DHL Group, Deutsche Post DHL Group Introduces Green Carrier Certification as Part of its Sustainability Roadmap (Dec. 21, 2021), <https://www.dpdhl.com>.

¹⁰⁴ See Lithuanian statistics including companies in section 5.1.

¹⁰⁵ Driver & Vehicle Standards Agency, Transparency Data: Vehicle Operators Who Committed Road Safety Offences in 2021, Gov.Uk (Oct. 13, 2022), <https://www.gov.uk/government/publications/vehicle-operators-who-committed-road-safety-offences-in-2021>.

¹⁰⁶ The case was addressed to Deutsche Post DHL Group

licize their UN Global Compact commitments and report yearly on progress.

Another multinational company also contracting the same Lithuanian transport company similarly states that it is committed to the UN Global Compact. It has been made aware of non-compliance and human rights violations in its European road transport supply chain¹⁰⁷ but has not seriously engaged with workers' representatives to work on prevention and remedy.¹⁰⁸

The company has chosen to enter into a corporate initiative together with transport companies.¹⁰⁹ Notably, the Lithuanian subsidiary has stated to the press that it is 100% compliant according to an internal audit conducted by the multinational.

22.02.2022.

¹⁰⁷ Zoe Conway, Ikea Drivers Living in Trucks for Months, BBC News (Mar. 15, 2017), <https://www.bbc.com/news/business-39196056>.

¹⁰⁸ ITG Global, IKEA's new product - EXPLÖITED Trück-driväer!, YOUTUBE (Apr. 10, 2017), <https://www.youtube.com/watch?v=RogUu3jyS7Q>.

¹⁰⁹ Responsible Trucking, CSR EUROPE, <https://www.csreurope.org/responsible-trucking> (last visited Mar. 2, 2023).

7. CONCLUSIONS

The drivers' stories that are at the heart of this report give voice to individual experiences and at the same time show that the abuses suffered by these drivers are not incidental. Circumvention of applicable regulations is part of a business model where drivers are granted work permits and are employed in a country where they never work. Drivers are given pittance barely enough to pay for food while being on the road. They are promised they will receive their salaries after having been on the road for months and are then often confronted with incomprehensible deductions. Remediation for individual drivers is urgently needed, but this can only be done with a clear and sharp supply chain due diligence strategy. The RTDD Foundation is often perceived to be the last resort that drivers can turn to for help since public authorities often fail to fulfill their enforcement duties. Drivers not only need assistance with claiming their wages, but also often need medical care, shelter and protection that is not provided while being on the road.

The examples also show that transport companies know their way around and know which Member State has the most profitable tax and social security system, the lowest wages, which Member State is the most liberal in issuing work permits and where most profit is to be earned. This so-called regime shopping within the EU can lead to practices barely allowed within the legislative framework, but mostly ends up with plain violation of the law and regulations, even resulting in breaches of fundamental human rights and forced labour. An additional factor is that because of the poor state of public enforcement, being caught or issued fines is a calculated and not very high risk. In comparison to transport companies, public enforcement is not organized, not well-informed and not operating transnationally.

Although the state of the enforcement is poor and in their current state enforcement agencies are not capable of dealing with the widespread abuse in the sector, there are differences. As can be seen in the cases discussed, the Belgium approach to enforcement is pro-active and effective, while the Dutch approach is not. And

since this is well-known, drivers are instructed to have their weekly rest in the Netherlands, where there is no danger of inspections. There is an urgent need for the governments and public enforcement agencies to scale up - to improve their knowledge of the international employment business models, to invest in research capacity, and in general to operate more effectively.

An even more important and urgent role to change the industry also lies within the companies and supply chains themselves. Multinational customers contract their orders to transport logistics companies who subcontract to smaller companies. The subcontracting chains this process creates are often organized in multilayer structures across multiple borders. The result is that multinational customers know less and less about the reality of how their goods are transported. They often do not have specific transport policies in place and if policies are in place, the voice of workers is not properly included. The RTDD Foundation aims to help companies by monitoring their supply chains, reporting findings, discuss methods for remedy developing a due diligence strategy for road transport.

This report has tried to provide a glimpse of what drivers daily encounter on the European roads and at parking lots. They drive around within the EU like nomads for months, keep supply chains moving while staying 24/7 in their truck cabins, go from one parking lot to another, living in a parallel world, lightyears away from the world of the rule of law. The rule of law does not seem to apply to the transport employers who do get away with severe labour and human rights breaches. After reading this report, no company or enforcement authority can claim that they do not know the reality. The next step will be figuring out what must be done to change the industry. This will necessarily include implementing Due Diligence in road transport supply chains.

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