Enforcing the minimum wage in international road transport

A study on the situation in five countries
Comparative overview: The minimum wage and its enforcement in international road transport

Introduction and background

The objective of this study is to gather and compare information from a small number of countries on the operation of minimum wage protection in international road transport. The study is undertaken at the request of the Ministry of Social Affairs and Employment of the Netherlands. It concentrates on the applicability and enforcement of the statutory minimum wage in international road transport in Belgium, France, Austria, Luxembourg and Germany.

Information has been gathered using a standard questionnaire issued to the members of the Network of Eurofound Correspondents in the relevant countries. The questionnaire was structured according to information on the situation in the Netherlands, supplied by the Ministry of Social Affairs and Employment, and for which comparable data from the other countries was sought. Correspondents were asked to respond to the questionnaire drawing on relevant written sources (e.g. national legislation, scientific studies and European Commission documents), and interviews in order to obtain more information on work instruments and cases (interviews with persons with knowledge of inspectorate dossiers).

Overview of findings

It should be recalled in what follows, that in the case of Austria there is no general national statutory minimum wage. Therefore the relevant reference regulation is exclusively the collective agreement(s) which apply. In the other countries considered, there is a statutory minimum wage in force, which in principle sets the “floor” for wages. However, in these countries the relevant collective agreements also set minimum remuneration (which is higher than the statutory national minimum wage), and which is binding in law. In principle these higher standards apply in international road transport.

In general, the minimum wage applies to employees with their habitual place of work in the country in question, whether or not their employer is established in that country; and to workers posted to the country to perform work by an employer established in an EU Member State or EEA State or a third country.

When workers (drivers) are assigned to work internationally, the minimum wage of their “home country” is the minimum to which they are entitled, but in the event that the minimum of the country where the work is executed is higher, then this higher minimum may apply (see Austria). The Belgian report notes, however, Belgian law would continue to apply if it is in Belgium that the greater part of the obligations to the employer are fulfilled.

The minimum wage or minimum remuneration covers somewhat different categories of payment according to country. Typically, not only basic pay, but also various additional payments, bonuses etc. are included, particularly if linked to work performed (see tables for details).

Allowances paid in compensation for housing, meals etc. are not generally considered as part of remuneration insofar as they correspond to actual expenses. Furthermore, deductions to the statutory minimum wage are not generally allowed in Austria and Belgium. However, in France and Luxembourg, the value of benefits in kind (food, accommodation) may be deducted - under certain conditions and with limitations.
In the countries with a statutory minimum wage, it is applicable in all categories of “drives” – whether cabotage, cross-border (in either direction), by posted workers or others. However, in many cases the statutory national minimum is superseded by the negotiated collective agreement (if legally extended). It should be noted, however, that in France transit operations do not meet the criteria for the application of the posted worker regulation, and are therefore not covered.

Documentation which must be available for inspection. In Germany, the main obligations fall on the employer, who must prepare for inspections and hold documentation in German - including employment contract, pay slip, proof of payment of wages, and a time sheet. There is an exception for employers domiciled abroad who may keep the documentation outside Germany, but must undertake to make it available in German. The obligations on the driver are only to carry a passport and, depending on country of origin, a residence permit. In contrast, in Austria and Belgium, more extensive documentation must be available for inspection in the vehicle, including the employment contract, A1 social insurance certificate in case of posting, records of pay and hours worked, as well as identity documents, driving license and vehicle documents.

In all countries covered, more than one body is involved in inspection and enforcement of minimum wage regulations. It is also generally the case that cooperation among these different agencies is expected. The report from France notes that, “the organisation of cooperation...presents difficulties inherent in all forms of cooperation involving a multiplicity of actors. Nevertheless, it seems that cooperation is multiplying and working better and better.” The report also notes that European cooperation is of growing importance.

Inspections are based on a combination of paper-based checks by the various authorities, and inspections at the roadside, in cargo-handling and distribution centres, and in company. To a degree these are risk-based, but may also be driven by complaints from workers and local competitors.

The establishment of “letterbox companies” (domiciled with a mailing address in one Member State but with their main operations elsewhere) as a method of evading obligations relating to taxation and social security, as well as wages is reported as a “sham construction” in several of the reports. Examples are cited of the posting regulations being abused, but for the authorities concerned detecting fraud in such circumstances is time-intensive and challenging.

The difficulties encountered in enforcement include the number of authorities involved, often operating under different pieces of legislation. When roadside checks are conducted, access to databases is often not possible. The fact that drivers are working in more than one jurisdiction during a single “wage period” means that calculating wages due is inherently challenging, and information on wages paid in another country is difficult to obtain and verify. The German report notes that the right to keep documentation in the home country is a bottleneck.

Failure to pay the statutory minimum wage due in international road transport can result in the sanction of a fine, of varying amounts depending on the country and legal basis concerned. In serious cases, the Austrian authorities may issue a ruling that prohibits the employer from deploying posted workers in Austria in future. Similarly in France, where the employer fails to remedy a severe breach, suspension of transnational service may be imposed for up to a month. If the employer fails to comply, additional fines can be levied. However, it is reported that “the scope of this measure is limited in the transport
sector...”. Criminal sanctions (fine of €45,000 and up to three years imprisonment) are also possible where actual hours worked are not reported on pay slips. This is not restricted to cases involving posting. The German report notes that in practice fines for under-payment (which can go up to €500,000) are very rare compared to fines imposed for failure to provide relevant documentation, or other reporting or administrative issues (which are limited to €30,000). In Austria it is mentioned that an employee can take action under private law to enforce the right to receive at least the minimum level of remuneration specified by law, ordinance or collective agreement.

Sources

**Austria:**
the website [https://www.entsendeplattform.at/cms/204/204_10/home](https://www.entsendeplattform.at/cms/204/204_10/home) (English version) providing information on legal issues (labour law, collective agreements, liability regulations, formal requirements, enforcement) for posted workers and posting firms. The site also includes particular information on the posting of drivers.

the Anti-Wage and Social Dumping Act (Lohn- und Sozialdumping-Bekämpfungsgesetz, LSD-BG) [https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009555](https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009555)


Expert interviews were carried out with representatives from the financial police, the Competence Centre at the Vienna Regional Health Insurance Fund, the Ministry for Labour, Social Affairs and Health and Consumer Protection, the union vida (section road transport), the chamber of labour (department of transport and environment, department of labour law).

**Belgium:**
[http://www.employment.belgium.be](http://www.employment.belgium.be)

[http://www.werk.belgie.be](http://www.werk.belgie.be)

Expert interviews were carried out representatives of the ACV-Transcom union, the National Social Security Office and the Social Law Inspectorate Transport (Toezicht Sociale Wetten)

**France:**
[article L. 1262-1 of the Labour Code (plus various other articles - L. 1262-4-8*, R. 3233-1, L. 8115-1](https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070706&TxtThl=TEXT&dateTexte=20180101)


Frequently asked questions about the new provisions governing application of posted worker legislation to drivers and crew members employed by inland transport companies', August 2017

Convention collective nationale des transports routiers et activités auxiliaires du transport du 21 décembre 1950

article R.1331-7-III of the Transport Code


Préfet de la région Bourgogne Franche-Comté, Contrôle routier sur l’A6 (Aire de Beaune-Merceuil) – Dossier de presse, 3 June 2018

Cour des Comptes, Rapport annuel 2019 – chapitre 1, La lutte contre la fraude au travail détaché : un cadre juridique renforcé, des lacunes dans les sanctions, February 2019

Interviews were carried out with representatives of the Fédération Nationale des Transports Routiers and the Ministry of Labour - Direction générale du travail (General Directorate of Labour)

Germany:


BAG 5 AZR 441/16


Luxembourg:

Circulaire - Le détachement de salariés de l’étranger vers le Grand-Duché de Luxembourg dans le secteur du transport routier

https://www.ccss.lu/salaries/remuneration/

Labour and Mines Inspectorate

**Regulation CE n°561/2006 of 15 March 2006**


### Comparative tables

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<th>Country</th>
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| Austria | According to the Anti-Wage and Social Dumping Act (Lohn- und Sozialdumping-Bekämpfungsgesetz, LSD-BG), section three, employees with their habitual place of work in Austria, employees with their habitual place of work in Austria whose employer is not established in Austria, and workers posted to Austria by an employer established in an EU Member State or EEA State or a third country **in order to perform work are entitled to at least the remuneration determined by law, ordinance or collective agreement (to which comparable workers employed by comparable employers are entitled at the place of work)**. This principle provision applies to all workers, of course including international drivers.  

What is stated in the Anti-Wage and Social Dumping Act is only applicable for work performed **IN AUSTRIA**. Drivers on international journeys (i.e. abroad) employed by firms established in Austria are **AT LEAST** subject to the minimum remuneration applicable in Austria. E.g. if a driver employed by a transport company established in Austria is performing transport services in the Netherlands, then the respective Dutch minimum remuneration has to be applied (which is higher than in AT). If he is performing transport services in Bulgaria, then the Austrian minimum remuneration applies, since Bulgarian wages are lower than in Austria. But this is not a decision of the Austrian legislator but of European regulation and its respective implementation abroad.  


- It is of no relevance if the driver is a national/resident of the country or someone from another country, the minimum remuneration is applicable **in Austria** in the cases mentioned above: (1) employees with habitual place of work in Austria with an Austrian employer; (2) employees with their habitual place of work in Austria whose employer is not established in Austria, (3) and workers posted to Austria by an employer established in an EU Member State or EEA State or a third country).  

- If the **employer is established in another country**, then either posting regulations apply or - if the driver has his habitual place of work in AT – he is fully covered by Austrian labour law.  

- Is the truck driver considered to be a posted worker, or not? And which criteria are used to determine whether that is the case? |
For the Austrian territory: The statutory minimum wage (i.e. in Austria generally applicable collective agreement) is applicable to all rides in road transport. The LSD-BG determines that drivers in international transport are regarded as posted workers, and therefore entitled to minimum remuneration particularly under the following work arrangements:

- Cabotage (where goods are loaded and unloaded in Austria)
- Traffic terminating in Austria (goods are loaded outside Austria and unloaded in Austria, e.g. skiers are transported to Austria), including cases where the client is based outside Austria
- Traffic by non-Austrian companies which originates in Austria (goods are loaded in Austria and unloaded outside Austria), even for a client based outside Austria
- The items above also apply to the carriage of passengers (occasional service, regular service, also tourist trips in general which have their destination in Austria, including in particular trips by bus, taxi or hired car, ship or train)
- Unladen journeys
- Irregular or one-time transports also qualify as cases of posting.
- No posting of workers as defined in the LSD-BG exists in transit traffic for the carriage of goods or persons, and for carriage of goods on own account, where the (cross-border) transport service is only a secondary service provided as part of a legal transaction.

(Source: [https://www.entsendeplattform.at/cms/Z04/Z04_10.999_15/lsd-bg-current-information-for-the-transport-sector](https://www.entsendeplattform.at/cms/Z04/Z04_10.999_15/lsd-bg-current-information-for-the-transport-sector))

Principally, underpayment in international transport occurs when the driver’s habitual place of work is not respected or when they are not considered as posted workers when performing cabotage operations in Austria. If drivers operating internationally are considered as posted workers, then rights stipulated in the PWD (Posted Workers Directive), the respective national labour legislations and collective agreements are applicable. Alternatively, if drivers operating internationally are not considered as posted workers, it is necessary to identify their ‘habitual place of work’ to find the applicable regulation.

When the driver’s habitual place of work is in Austria, he/she is entitled to the wage and any special payment and working conditions awarded to workers at this place of work. In the case of posting, the worker concerned can claim entitlement to the applicable minimum wage/remuneration, leave, maximum working time, worker protection, maternity leave and any other non-discrimination provisions in Austria. Social insurance remains in the sending country. However, often these regulations are not respected, and workers are being paid according to the (much lower) minimum wages of their countries of origin and contributions to the social security system in the countries of origin are calculated on the basis of the minimum wage there, which constitutes an under-declaration.
Belgium

The national minimum wage applies to all contractual labour in the private-sector for over one month, including for activities executed abroad by employees from firms that are based in Belgium and activities in Belgium by employees from firms that are based abroad. By the Act on Collective Bargaining Agreements and Joint Committees of 5 December 1968 (article 9/4 on applicability and article 31 on general extension of agreements, Belgian employers and employees are subjected to collective bargaining agreements, including CBA n° 43 and sectoral agreements.

Specifically for the (international) transport sector, there is a collective bargaining agreement settled by joint committee 140.03 that stipulates wage floors for drivers in a limited number of categories depending on the task, tonnage and load (helpers, -7 ton, 7-15 ton, +15 ton and dangerous loads). The actual rate of the national average monthly minimum wage is 1593.81 EUR; for a standard working week of 38 hours, counting 4.33 weeks, this equates to 9.69 EUR per hour. The sectoral minimum wage in transport for blue-collar workers stands at 11.01 EUR per hour for a helper\(^1\). Only in the case of the average recurrent income from the sectoral CBA being below the national minimum wage, would the latter would be binding. This is currently not the case.

According to the Belgian Posting Act of 5 March 2002, sectoral collective bargaining agreements, including the pay rates and other working conditions laid out in Belgian law and collective agreements, are applicable for activities of posted workers in Belgium\(^2\). In case workers have more favourable working conditions in the sending country, those conditions still hold. With respect to social security contributions, however, it is possible that work is performed in Belgium under Belgian working conditions, but the social security is covered in the sending country, because social security legislation is not part of the Belgian Postings Act, and the closest ties are to the sending country. In that case, the A1 ‘certificate of coverage’ needs to be acquired.

The legal basis for international road transport is defined by the Rome I regulation.\(^3\) Belgian workers performing activities abroad remain subject to Belgian regulations, based on the principle of closest ties. The judgments of the Court of Justice of the European Union “Koelszch” and “Voogsgeerd” clarify how to interpret the criterion of the country in which or from which the worker habitually carries out his/her work, which determines the applicable law. In accordance with the aforementioned judgments, it is the country in which or from which, in the light of all the factors which characterise that activity, the employee performs the greater part of his/her obligations towards his/her employer.

Moreover, depending on the particular circumstances of each case, those factors which must be taken into account to the country in which or from which the employee performs the greater part of his/her obligations are, in particular, the country:

- from which the employee carries out his transport tasks/where the employee must report before discharging his/her tasks;
- where the employee receives the instructions concerning his/her tasks;
- where the employee organizes his/her work;
- where the employee’s work tools are to be found;
- where the transport is principally carried out;

\(^1\) ‘Minimum wages’ (in Dutch), FPS Employment, Labour and Social Dialogue: http://www.minimumlonen.be


where the goods are unloaded;
• where the employee returns after completion of his/her tasks.
In other words, if work is performed in Belgium, or if instructions are given from Belgium, Belgian labour law and sectoral minimum wage rates are applicable.

France

Posted workers:
According to a circular of the ministry of Transport⁴, article L. 1262-1 of the Labour Code, international transport operations to or from France and cabotage operations on French territory, performed by an employee temporarily posted to France and retaining his/her employment relationship with the undertaking from which he/she was posted, meet the criteria for application of posted worker legislation, and are therefore subject to the minimum wage regulation. In such situation, the Labour code stipulate that the legal minimum wage applies to all employment contracts exercised in France as well as to employment contracts abroad, provided that the employer and employee are established in France. If a branch-level agreement provides a higher minimum wage, then it has to be observed by employers. This is the case in the transport sector⁵. As mentioned in a circular of the ministry of Transport⁶, ‘the posted employee must be paid in line with the minimum wage in France, or the wage set by collective bargaining agreement, where this is higher than the wage set by the law by which the contract of employment is governed. However, the rights guaranteed by French law shall not prevent the employee from enjoying more favourable rights, where such rights arise from the law by which the posted employee’s contract of employment is governed. For example, the employee will retain his/her contractual wage where this is higher than the minimum wage in France or the wage set by collective bargaining agreement’.

Rules for non-posted workers:
A French employer who employs a national driver has to apply the French minimum wage which is compulsory for all workers. However, as the national collective agreement applying to the road transport sector provides its own minimum wage (depending the drivers’ qualification), it has to apply the agreed minimum wage when it is higher than the legal minimum wage. If the agreed minimum wage is lower than the legal minimum wage, which may happen for the lowest positions, than employers have to apply the legal minimum wage.

Relevant questions/answers:
- Is the driver a national/resident of the country or someone from another country? Is the employer located in the country or in another country?

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⁴ Ministère de la Transition écologique et solidaire, ‘Frequently asked questions about the new provisions governing application of posted worker legislation to drivers and crew members employed by inland transport companies’, August 2017
⁵ The National collective agreement of the road transport (freight and passengers) – Convention collective nationale des transports routiers et activités auxiliaires du transport du 21 décembre 1950.
⁶ Ministère de la Transition écologique et solidaire, ‘Frequently asked questions about the new provisions governing application of posted worker legislation to drivers and crew members employed by inland transport companies’, August 2017
In both cases, the driver must receive the French minimum wage (agreed or legal, depending which is the highest) while he is driving on the French territory, excepted if it is for an international transit.

- Is the truck driver considered to be a posted worker, or not? And which criteria are used to determine whether that is the case?
The driver is considered as a posted worker if he is sent into France on a temporary basis to drive on the French territory or to practice cabotage operation in France. But, to establish the date and time of entry into and exit from French territory (which determines the period of secondment), there is no specific rule for the transport sector. The employer shall establish, by all appropriate means, the employee’s working time in France. Generally speaking, in the event of suspicion of a reduction in working time in France, the burden of proof lies with the inspection services, the employer being able to contest the inspectors' assessments by any appropriate means.

- Is the truck driver only working inside the country or also abroad?
In both cases, if the driver is employed by a French employer, he has to receive at least the agreed or legal minimum wage (or in case of posting in a Member states where the compulsory minimum wage is higher, the minimum wage of this country for the period of time he his driving in this country).

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<tr>
<td>Germany</td>
<td>The Minimum Wage Act (Mindestlohngesetz; MiLoG) covers any workers in road transport spending more than one hour in Germany no matter whether the transport takes place in a number of countries or not; it therefore covers transit operations, cabotage and international transport. In May 2015, the EU Commission launched an infringement procedure against Germany on grounds that the application of the minimum wage to all international road transport activities restricts in a disproportionate manner the freedom to provide goods and the free movement of goods. Talks with the German government have not yet solved the conflict. In response to the infringement procedure the German government in 2016 released an ordinance to the national authorities exempting transit from other EU member states or third countries from inspection and prosecution under the MiLoG. The ordinance is of preliminary nature and only valid for the time the conflict between the EU Commission and the German government is unsolved. Cabotage and international transport aimed to delivering goods to Germany are not included in the ordinance. Information on the website of the Customs Service: Aussetzung der Kontrolle und Ahndung von Verstößen nach dem Mindestlohngesetz bei Personen- und Güterbeförderung aus EU- oder Drittstaaten im reinen Transitverkehr.</td>
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<td>Luxembourg</td>
<td>The minimum wage applies to all companies based in Luxembourg. Every posted employee must receive at least the minimum social wage (see below) applicable in Luxembourg, or the salary corresponding to the collective agreement declared of general obligation applicable to the activity carried out by his employer, that is to say the posting company. In addition, Luxembourg’s legislation concerning hours of work, Sunday work, legal holidays, days off, collective holidays, rest periods, occupational safety and health, occupational health etc, must be respected.</td>
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Since the collective agreement for transport and logistic is applied as well for bus drivers of private bus companies and is declared a general obligation in Luxembourg, it should be applied when posting employees to Luxembourg.\(^7\)

a) **The posting of employees in Luxembourg\(^8\)**

### Temporary posting from Luxembourg abroad
The employment relationship of an employee who usually works in Luxembourg and who is temporarily posted abroad is governed by Luxembourg law.

Nevertheless, one must consult the law of the country to which the worker is posted to find out which foreign rules are applicable. The rules on the temporary posting of workers are partially harmonized at European level; the principle being that the contract of employment remains governed by the law of the State in which the employee usually works but that certain rules of the State to which he is posted must apply.

### Temporary posting from abroad to Luxembourg
When a company temporarily posts an employee in Luxembourg, the employment contract of the latter remains governed by the legislation of his/her country of origin.

Nevertheless, certain national (Luxembourg) rules, qualified as international public order by the Labor Code, apply.

By virtue of the principle of favourability, these national provisions of public order are applicable only if they are more favorable for the employee than the foreign provisions.

### International transport
The provisions on the posting of employees as part of a service provision apply in principle to situations where goods or persons are transported for:
- cabotage operations taking place in Luxembourg;
- cross-border transport taking place from or to Luxembourg.

At present, however, declaratory obligations with regard to the posting and the verification of compliance with the Luxembourg provisions on the minimum social wage for drivers posted on cross-border transport of goods or persons and cabotage operations in Luxembourg are suspended. Luxembourg is awaiting the end of the discussions on the European Commission's proposal for a directive to lay down specific

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\(^7\) [Circulaire - Le détachement de salariés de l’étranger vers le Grand-Duché de Luxembourg dans le secteur du transport routier](https://www.clc.lu/fr/publications/presse/33-le-detachement-de-salaries-de-letranger-vers-le-grand-duche-de-luxembourg-dans-le-secteur-du-transport-routier/file)

rules on the posting of drivers in the road transport sector at European level. The above-mentioned provisions on posting will be suspended for the road transport sector until the transposition into national law of the specific provisions in this area.

b) Luxembourg legislation guarantees a minimum social wage to all employees (regardless of sex, in all occupations and for all companies) working for an employer under a contract of employment. Since the provisions relating to the social wage are of a public nature, this minimum social wage must be paid by all employers carrying out business in Luxembourg. The minimum social wage rates depend on the age of the beneficiaries and their qualification⁹.

c) The provisions on the posting of employees are applicable to all economic sectors, with the exception of maritime merchant shipping companies.

The definition of posted worker in international road transport is the same as in other sectors.

For the Grand Duchy of Luxembourg, a posted worker is any employee who usually works abroad and who performs his work in the territory of the Grand Duchy of Luxembourg for a limited period of time determined by a specific service provision for which a contract has been concluded.

A company, whose head office is established abroad, can within the scope of a transnational service provision temporarily post employees for a specific mission to the client located in Luxembourg¹⁰.

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⁹ [https://itm.public.lu/fr/conditions-travail/salaires.html](https://itm.public.lu/fr/conditions-travail/salaires.html)

¹⁰ [https://itm.public.lu/fr/questions-reponses/droit-travail/detachement-salaires/a/a1.html](https://itm.public.lu/fr/questions-reponses/droit-travail/detachement-salaires/a/a1.html)
2. What kinds of income are counted to satisfy the statutory minimum wage requirement?

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<tr>
<td>Austria</td>
<td>The minimum wage level is not defined by law in Austria but usually derives from the collective agreement applicable to the sector and type of work (e.g. skilled or unskilled work), qualifications, and the period or duration of employment. In addition to this base pay, minimum remuneration includes special payments (holiday and Christmas remuneration, paid out on a pro-rata basis), overtime supplements and other supplements – if applicable. Allowances (e.g. accommodation, daily allowances) can topple minimum remuneration. Principally, allowances are not subject to obligatory social security contributions. Only, where daily allowances are not a reimbursement of expense but are intended to compensate for the inconvenience of being away from habitual surroundings, they are counted to the minimum remuneration (see question 3). In Austria, the minimum remuneration in goods transport is stipulated in the “Transportation of Goods” collective agreement. This collective agreement is valid for whole Austria and for different categories of workers employed in the “transportation of goods industry”. It covers (among others) drivers of vehicles with a total weight of more than 3,500 kilograms. The minimum remuneration according to this collective agreement includes: Minimum salaries for different professions and skill levels (e.g. drivers of motor vehicles with dangerous goods, drivers of articulated lorries, unskilled workers, etc.) Supplement for overtime work, supplements for overtime worked during the night Holiday and Christmas remuneration Continued payment of wages (only in case of illness, carer’s leave, etc) hardship supplements, dirt supplements The collective agreement also lists accommodation allowances according to the country of sojourn. Other relevant collective agreements in road transport are: With workers employed by companies that are active in the carriage of goods using only vehicles with a maximum permitted total weight of not more than 3,500 kilograms, the collective agreement for the transport trade for small loads needs to be observed. In the passenger transport sector, the collective agreement for private bus companies has to be observed. In the case of taxi companies, workers fall under the collective agreement for passenger vehicle transport. Offences against correct remuneration of drivers are addressed in the LSD-BG are subject to administrative law fostering financial penalties.</td>
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<td>Belgium</td>
<td>The national minimum wage for the private sector includes all wage components, including the basic pay, ‘waiting’ pay for the idle time of drivers, and bonuses (e.g. end-of-year bonus, double holiday allowance, contractual premiums for specific tasks like shift labour, etc.). To control compliance, the average total wage is calculated over all months with employment. The basic wage rate at the sectoral level at</td>
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12 [https://www.kollektivvertrag.at/kv/gueterbefoerderungsgewerbe-arb/gueterbefoerderungsgewerbe-rahmen/269770?d=Touch](https://www.kollektivvertrag.at/kv/gueterbefoerderungsgewerbe-arb/gueterbefoerderungsgewerbe-rahmen/269770?d=Touch) (German version), accessed April 4, 2019
least matches the national minimum wage, and is complemented by specific premiums. This includes accommodation, clothing, pensions, end-of-year bonus, weekend bonus, night work bonus, overtime bonus, and the so-called ARAB-compensation for charges (e.g. access to sanitary services) at the expense of the employer. None of these wage components are counted to the statutory minimum wage.

### France

**Common rules for all workers (posted or not)**

Only wage elements remunerating actual working time should be taken into account for the comparison between the salary paid and the level of the applicable minimum wage, i.e. the basic wage as well as other elements paid by the employer in return for work.

Thus, performance, production or productivity bonuses as well as those paid to a group of employees determined according to a pre-established scale and linked to individual work are taken into account in the comparison.

On the contrary, some bonuses or indemnities are to be ignored: those related to the employee's seniority, his attendance, hardship (e.g. noise, dirt) or those granted collectively (service or company) over which the employee has no control. Thus, a performance bonus paid based on the overall performance of the company will not be taken into account in the comparison of salary with the minimum wage.

The same applies to the transport allowance paid to the employee and, more generally, to the reimbursement of professional expenses (see Labour code, art. D 3231-6), whether they are paid in the form of flat-rate allowances or reimbursements of actual expenses.

**Posted workers:**

According to article L. 1262-4-8° of the Labour Code, the posted worker is entitled to ‘minimum wage and wage payment, including additional pay for overtime, and perquisites set by law or collective bargaining agreement’. The above mentioned circular of the ministry of Transport, add that, ‘within the framework of article 3§1 of Directive 96/71/EC of 16 December 1996, article L. 1262-4 of the Labour Code states that the reference minimum wage applicable in France must include the following elements: the minimum pay – hourly (€10.03 on 1 January 2019) or monthly; additional pay for overtime and perquisites set by law or collective bargaining agreement. The amounts are expressed gross’. The circular specifies which elements of the pay received by the employee from an undertaking not established in France may be considered when verifying compliance with the minimum wage in France: the employee’s wage; any additional pay for overtime; any perquisites (e.g. length of service bonus); any allowances specific to the posting (e.g. expatriation bonus) and any benefits in kind’.

On the other hand, amounts paid for the reimbursement of expenses such as travel, accommodation or food, even if these amounts are lump sums, are not taken into account.
Non-posted workers:

The principle is to apply the same rules for non-posted workers than for posted workers.

According to French Labour law; to verify that the salary paid is at least equal to the minimum wage, it is necessary to include in the calculation the basic salary, benefits in kind and productivity bonuses.

Conversely, some benefits and sums are excluded from the calculation of the Smic. This includes, for example, the following elements: reimbursement of expenses (including transportation allowance); overtime payments; profit-sharing and incentive bonuses; seniority, attendance bonuses or bonuses relating to special working conditions (unhealthy); vacation bonuses at the end of the year, unless they are paid in monthly instalments; and non-accident bonus. All these elements of remuneration have to be paid in addition to the minimum wage.

As mentioned for seniority bonus, the scope of the salary received to be compared with the minimum wage level may be sometimes tricky as it results of an interpretation on which allowance is directly related to the work performed during the working time. There is therefore a difference between the guidance for establishing the minimum wage to be applied for posted workers (where the following payments may be considered part of the minimum wage – overtime payments, bonuses for profit-sharing, incentive bonuses, seniority bonuses, bonuses relating to unhealthy working conditions, vacation bonuses), and the guidance for establishing the minimum wage in general (where these categories of payment are not to be considered as part of the minimum wage).

Germany

The kinds of income are specified by labour court rulings rather than by the MiLoG. The MiLoG (Art. 1 paragr. 1) stipulates that any employee has the right to the statutory minimum wage but it does not spell out how or via which wage components this right is to realised.

The MiLoG applies a so-called 'umfassender Entgeltbegriff' (broad definition of renumeration) meaning that – apart from the basic salary – other wage components can be counted. Benefits in kind are excluded but according to BAG rulings, any cost allowance can be counted as long as it relates to the mutually binding obligations between employer and worker, i.e. as long as it can be considered a renumeration for the work done.

BAG 5 AZR 441/16

Luxembourg

Basic wage; accessories and complements that are identified as remuneration elements in cash and paid monthly, but the amount may be subject to adjustment from month to month (for example, performance related bonuses, commissions, etc.); payments for overtime; gratuities, shareholdings, benefits in cash or in kind; bad-weather compensation; cyclical unemployment compensation.13

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13 Centre Commun de la Sécurité Sociale (CCSS)  
https://www.ccss.lu/salaries/remuneration/
3. Under which circumstances are cost allowances counted to the statutory minimum wage?

Austria
In principle, cost allowances (“Aufwandsentschädigung”) are not counted to the minimum remuneration if they just cover the additional expenses the driver has for working outside his company's premises or abroad. Principally, daily allowances must correspond to the actual expenses (for food, accommodation etc.) the employee/driver has when working abroad. What is above this threshold, is regarded as a compensation/remuneration for the “additional effort and inconvenience” he/she has when working abroad. This part of the income is not defined as a cost allowance but is regarded (and accepted by the Austrian authorities) as part of the minimum remuneration. In this case, this part should as well be subject to social insurance contributions (in case of posted workers: in the sending countries).

If such a circumstance (i.e. “additional inconvenience”) of an allowance payment exists or if the payment is in fact a compensation for additional expenses (i.e. cost allowance), must be verified by the Competence Centre at the Vienna Regional Health Insurance Fund case by case.

This means, that Austrian authorities can count parts of the driver’s income, that are in the sending country counted as cost allowance, as remuneration, and accept it for the calculation of the minimum remuneration, even though the sending country does not.

Belgium
Cost allowances are not a part of the national minimum wage nor of the sectoral wage floor. Comment n° 4 to the national CBA n°43 article 5 that stipulates the wage components taken into account for the calculation of the minimum wage refers to ‘normal work activities’, explicitly excluding commuting costs, housing costs, and compensation for clothing, equipment, and trade union membership.

Moreover, in the sectoral agreement there is, besides other bonuses, a per diem for overnight stays of 38 EUR from Monday to Friday, and 48 EUR in weekends. This is added to the sectoral wage rates. However, if the transport firm can proof that accommodation is offered to the drivers, the company can request to drop this cost.

France

**Posted workers**
According to the above-mentioned circular of the ministry of Transport, any allowances paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging – and including any such amounts paid on a fixed-rate basis – may not be included in the calculation of the minimum wage. The Ministry of Labour explains on its website (in French, in English) that ‘sums paid out to cover costs incurred by the posting, such as travel, accommodation and food expenses, are not to be included when calculating the minimum wage and may not be chargeable to the posted employee’.

**Non-posted workers:**
The principle is to apply to posted workers the same rules as those applying the national employees. The rules are strictly the same. According to the national collective agreement of the road transport sector, employers have to reimburse the real expenses paid by drivers for their lunch or overnight, or have to pay a specific allowance according to this table:

<table>
<thead>
<tr>
<th>Nature of the compensation</th>
<th>Euros</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meal allowance</td>
<td>13.56</td>
</tr>
<tr>
<td>Allowance</td>
<td>Amount</td>
</tr>
<tr>
<td>------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Single meal allowance</td>
<td>8.35</td>
</tr>
<tr>
<td>Single meal allowance &quot;night&quot;</td>
<td>8.13</td>
</tr>
<tr>
<td>Special allowance</td>
<td>3.67</td>
</tr>
<tr>
<td>Snack allowance</td>
<td>7.35</td>
</tr>
<tr>
<td>1 meal + 1 night stay</td>
<td>43.37</td>
</tr>
<tr>
<td>2 meals + 1 night stay</td>
<td>56.94</td>
</tr>
</tbody>
</table>

All these allowances have to be paid in addition to the minimum wage. This rule applies also to posted workers.

Germany

Cost allowances that can be counted are, for example,

- Compensation
  - for work at Saturdays and Sundays,
  - for working conditions detrimental to health (high-risk workplaces, dirt/dust),
  - for piecework (premiums),
  - for costs the worker would otherwise carry herself (i.e. clothing),
  - shift boni
  - collectively agreed one-off-payments
  - premiums for work done


In case of daily allowances paid to a worker for working in a foreign country (Tagegeld), only the share of the daily allowance that is meant to pay for the stay (to work) can be counted to the minimum wage, not the share that covers the costs of the stay.

The following cannot be counted

- Reimbursement for travel costs and accommodation
- Allowances which are given as extras or because of mandatory regulations - such as: capital-forming benefits, compensation for night work,
- contributions to the occupational pension scheme.
- Special gratifications (birthday present)
- Other non-monetary benefits

Luxembourg

Cost allowances are not counted towards statutory minimum wage.
For the purposes of her work, the employee should address various expenses necessary for the carrying out of its mission when travelling. In most cases, it is travel costs and any other catering costs and hotel fees incurred by an employee so that the employee may carry out his professional activity. In this regard, employers adopt primarily two positions: An early payment of a lump sum to cover costs to be incurred or a posteriori reimbursement on costs incurred by an employee.\(^\text{14}\)

### 4. Are deductions or settlements with respect to the statutory minimum wage allowed?

<table>
<thead>
<tr>
<th>Country</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Principally, deductions are not allowed. They are only allowed if a factual expense in an appropriate amount for a factual service satisfying certain quality standard, e.g. for accommodation, was spent for the employee. But this deduction may not be misused to circumvent minimum wage.</td>
</tr>
<tr>
<td>Belgium</td>
<td>In principle, no deductions or settlements from the national minimum wage are allowed in the private sector.</td>
</tr>
</tbody>
</table>
| France | Must deduct from the minimum wage the value of the benefits in kind food and housing as fixed by agreement or collective agreement. Otherwise, the employer must deduct the amounts set by the Labour Code, i.e.:  
- for food: twice the guaranteed minimum per day or, for a single meal, once the said minimum (C. trav., art. D. 3231-10); the value of the guaranteed minimum is €3.62 on 1 January 2019;  
- for housing: €0.02 €per day, i.e. €0.60 per month (value unchanged since 1952) (C. trav., art. D. 3232-11);  
- other benefits: they must be valued according to their real value at cost to the employer (C. trav., art. D. 3231-12).  
For example: an employee paid at Smic for 35 hours, i.e. €1,521.21 since 1 January 2019, is fed free of charge once a day (22 days × €3.62 = €79.64). He also benefits from a functional accommodation (0.60 € per month). His gross cash salary may not be less than: 1521.21 – (79.64 + 0.60 ) = 1 440.97 €.  
This rule applies to all workers (posted or not). |
| Germany | Yes, as the minimum wage is a gross wage but deductions depend on the form of employment contract. Deductions with respect to the minimum wage of an employee with a standard contract include social security contributions (health insurance, pension insurance, accident insurance, unemployment insurance) and taxes (income tax; church tax if the employee is affiliated to the Protestant or Catholic Church), No deductions in case of non-standard workers on a mini-job contract (short part time work with an earnings threshold of 450 Euro or an employment of a maximum of 50 days) because the employer carries the social security contributions and a low lump-sum tax. |
| Luxembourg | The employer who provides the employee with accommodation or who provides food to an employee can deduct the value which corresponds to the respective providing of the employee’s remuneration, provided it is mentioned in the employment contract. The |

amount of the remuneration in cash payment and the value of advantages in kind which are provided in the contract of employment must not be less than the minimum wage.\textsuperscript{15}

\textsuperscript{15} https://itm.public.lu/fr/questions-reponses/droit-travail/remuneration/b/b5.html
<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
</tr>
</thead>
</table>
| Austria | The statutory minimum wage is applicable to all rides in road transport, including when a driver is posted from AT abroad. The LSD-BG determines that drivers in international transport are regarded as posted workers, and therefore entitled to minimum remuneration particularly under the following work arrangements¹⁶:  
- Cabotage (where goods are loaded and unloaded in Austria)  
- Traffic terminating in Austria (goods are loaded outside Austria and unloaded in Austria, e.g. skiers are transported to Austria), including cases where the client is based outside Austria  
- Traffic by non-Austrian companies which originates in Austria (goods are loaded in Austria and unloaded outside Austria), even for a client based outside Austria  

The items above also apply to the carriage of passengers (occasional service, regular service, also tourist trips in general which have their destination in Austria, including in particular trips by bus, taxi or hired car, ship or train). Accordingly, minimum remuneration also applies in these cases.  
- Unladen journeys  
- Irregular or one-time transports also qualify as cases of posting.  

No posting of workers as defined in the LSD-BG exists in transit traffic for the carriage of goods or persons, and for carriage of goods on own account, where the (cross-border) transport service is only a secondary service provided as part of a legal transaction. |
| Belgium | The national minimum wage is always applicable, but it is not sufficient. The sectoral minimum wage is applicable when the sectoral agreement has been legally extended by the Minister of Labour, which is not discretionary, but depends on procedural requirements with respect to the language, timing, and the contents of the agreement (e.g. the agreement should include a decision, not a statement).¹⁷ This holds for any activity of Belgian transport firms, whether national or international, and for foreign firms operating in Belgium. Naturally, it is not applicable to the self-employed (mainly found in the sector of package delivery), and it is not enforced for transit by foreign firms. |
| France | According to articles L. 1262-1 of the Labour Code, international transport operations to or from France and cabotage operations on French territory, performed by an employee temporarily posted to France and retaining his/her employment relationship with the |

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¹⁶ [https://www.entsendeplattform.at/cms/204/204_10.999_15/lsd-bg-current-information-for-the-transport-sector](https://www.entsendeplattform.at/cms/204/204_10.999_15/lsd-bg-current-information-for-the-transport-sector), accessed April 4, 2019

undertaking from which he/she was posted, meet the criteria for application of posted worker legislation, and are therefore submit to the minimum wage regulation. However, an operation involving transit across the national territory, with no loading or unloading of goods, or boarding or alighting of passengers, does not meet the criteria for application of posted worker legislation and, therefore, is not bound by any declaration obligations or minimum wage regulation, either under common law or under the specific legislation governing inland transport.

Rules for non-posted workers: the agreed minimum wage applies to all employers based in France and all drivers employed with a French employment contract. Therefore, the agreed minimum wage applies to truck drivers who perform their duties outside of France if they live in France and their employer is also based in France, as in the Netherlands. However, in case of posting of workers into a country where the minimum wage is higher than in France, then the French employers should apply the national minimum wage of this other Member states for the posting period.

<table>
<thead>
<tr>
<th>Germany</th>
<th>See answer to Q1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luxembourg</td>
<td>The provisions relating to posted workers apply in principle to the transport of goods or passengers, for cabotage operations in Luxembourg, as well as for cross-border transport from or to Luxembourg. However, the “Inspection du Travail et des Mines (ITM)”(^18) has recently clarified that the statement obligations on the posting of workers and verify compliance with the provisions of Luxembourg regarding minimum wages to drivers posted in cross-border transport of goods or passengers as well as cabotage operations which take place in Luxembourg, are currently suspended for the road transport sector. This suspension is due to the ongoing discussions concerning the European Commission's proposal for a Directive to lay down specific rules on the posting of drivers in the road transport sector at European level. It will run until the transposition into national law of these specific provisions.(^19)</td>
</tr>
</tbody>
</table>

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\(^{18}\) Labour and Mines Inspectorate

\(^{19}\) [http://www.itm.lu/home/detachement/transport-international.html](http://www.itm.lu/home/detachement/transport-international.html)
6. Which obligations are imposed on the employer, respectively the driver, in international road transport? (for example, regarding the pay slip, method of payment, proof of payment, tachograph data).

<table>
<thead>
<tr>
<th>Country</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Employers have to comply with the Austrian minimum wage and minimum remuneration as stipulated in the respective collective agreements (see question 2). Documentary obligations for the employer and the driver are laid down in the Anti Wage and Social Dumping Act (Section 4) and in other laws, such as the Freight Transport Act (Güterbeförderungsgesetz), Motor Vehicles Act (Kraftfahrgesetz) and EU regulations (such as the Regulation (EU) No 165/2014 on tachographs in road transport that directly apply). Principally, the driver is responsible to follow the rules of the Motor Vehicles Act (e.g. driving licence, etc.) and can be sanctioned in case of infringement. The Freight Transport Act foresees - depending on the infringement - sanctions for both drivers and transport companies, e.g. in case of exceeding driving time. The Anti Wage and Social Dumping Act only foresees sanctions that address the employer in case of non-compliance with the Act’s stipulations. <strong>Notification of a posted worker</strong> (Anti Wage and Social Dumping Act, Section 4) If the (international) driver is considered as a posted worker (see question 5), the employer has to notify the posting with the Austrian Ministry of Finance (financial police) via the ZKO3-T form. This is a <strong>summary form for each 6-month</strong> period before entering the Austrian territory, or in case of cabotage operations, before driving to the loading point. This means, that the inspecting authority (i.e. the financial police) cannot carry out inspections based on a specific notification because the form summarises notifications for a six-month period and the driver’s exact whereabouts is not traceable. It is only possible to inspect at roadside checks if the driver holds the appropriate notification for this particular journey. The notification information comprises the employees expected to be posted to Austria (birth dates, social security numbers and applicable social security institutions as well as the nationalities of the workers who will probably work in Austria in the given period); the licence plate numbers of the vehicles to be used, employer’s name and address and business licence or field of business; VAT identification number; name and address of persons appointed to represent the employer in external matters. In addition, it includes <strong>information about the amount of remuneration payable to the individual employee under Austrian law</strong> and date of commencement of the employment relationship with the employer; type of work and deployment of the worker, taking into account the applicable Austrian collective agreement; the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit, provided that an official permit is required to employ the posted workers in the country where the employer is established.</td>
</tr>
</tbody>
</table>

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20 [https://www.entsendeplattform.at/cms/204/204_10_999.10.a/1453954800754/faqs/what-documents-do-employers-from-countries-other-than-austria-have-to-keep-available](https://www.entsendeplattform.at/cms/204/204_10_999.10.a/1453954800754/faqs/what-documents-do-employers-from-countries-other-than-austria-have-to-keep-available), accessed April 4, 2019

21 [https://www4.formularservice.gv.at/formularserver/user/formular.aspx?pid=fe66cedb506e495c94b3e826701443e5&pn=B0d66e914664149109b455bce26ceca4a&lang=en](https://www4.formularservice.gv.at/formularserver/user/formular.aspx?pid=fe66cedb506e495c94b3e826701443e5&pn=B0d66e914664149109b455bce26ceca4a&lang=en), accessed April 4, 2019
The following **documents** have to be kept readily available and/or submitted after an inspection (according to the LSD-BG):

A copy of **notification of posting**, in case of cabotage at least the transaction and reference number issued with the registration (to be kept readily available in written or electronic form in the vehicle);

Documents showing **social insurance registration** when working in Austria (e.g. A1 form, to be kept readily available in written or electronic form in the vehicle);

**Pay documents** (in German or English) showing the amount of remuneration due and actually paid out to the employee during the assignment in Austria. The pay documents include the employment contract or written record of the content of the employment contract (to be kept readily available in written or electronic form in the vehicle), payslip, proof of payment by the employer or bank transfer statements, documents relating to pay categorisation (to be submitted after an inspection). In Austria, there is no explicate prohibition of paying out wages in cash to the driver (as is the case in construction works) but the payment must be transparent and traceable;

The **records of the hours worked for each posted employee** (to be kept readily available in written or electronic form in the vehicle). The records of hours worked can be recorded using the (analogue or digital) recording equipment (tachograph) customarily used in the transport sector, provided that the recordings indicate the hours worked that are required to be paid as specified in the Austrian collective agreement. Records of the hours worked for each posted employee of the last 28 days need to be submitted to the tax authorities upon request;

Employment permit for employees with third-country or Croatian citizenship issued by the posting country.

According to the **Austrian Freight Transport Act**, the following documents have to be kept readily available in the vehicle:

- a license document (certified), community licence, where appropriate.
- Drivers who are not citizens of an EU/EEA member country, working for a company registered in the EU/EEA, must be in possession of a driver’s certificate (readily available in the vehicle)
- freight documents and accompanying documents form about holiday and sick leave.

To summarise: In international transport in Austria (i.e. If transport operators established abroad perform transport services in Austria with posted workers) the following documents have to be kept in the vehicle or to be submitted after an inspection. The responsibility for providing this information lies with the employer/undertaking, not with the driver.

**Which documents are definitely required to be kept available in the vehicle?**

- Copy of notification of posting
- Social insurance certificate A1 (or similar documents permitted instead)
- Employment contract/statement of terms and conditions (*Dienstzettel*)
**Belgium**

- Trucks need to be equipped with a tachograph to comply with the driving and rest time regulations. However, the time sheets of the employee for the past period is agreed upon between the driver and the employer, signed, and attached to the pay slip. Belgian and foreign firms need to register the working period at the National Social Security Office (DIMONA or LIMOSA for foreign firms) and Belgian employers need to register the quarterly wage sum at the National Social Security Office in order to calculate social security contributions and social security rights of workers. Usually, international firms operating from Belgium will work with a ‘social bureau’ (HR payroll administration), and the inspectorates will contact this service.

  *Foreign employers* need to be able to present equivalent forms with wage data and time sheets. In addition, the labour contract and addenda and the company work rule book need to be available. Trucks need to be equipped with a tachograph to comply with the driving and rest time regulations. However, the time sheets of the employee for the past period (generally monthly) is agreed upon between the driver and the employer, signed, and attached to the pay slip.

  The *driver* should be able to present identity documents, tachograph data, shipping documents, driving license and vehicle documents, travel documents. The A1 certificate of foreign social security coverage can be asked but is not mandatory.²²

**France**

- **Posted workers**
  - **Certificate of posting**

  Since 2016, the certificate of posting replaces the declaration of posting mentioned in the Transport Code. A certificate of posting must be produced for each posted employee prior to the commencement of the first operation involving the posting of the driver, irrespective of the nature of the transport operation. The certificate of posting will remain valid for the period indicated by the

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undertaking, up to a maximum of 6 months for all transport operations included in the scope of the posting. This means that the certificates may cover multiple posting operations.

The six-month period is a rolling period, from one date to another, over six consecutive months. The certificate does not have to state a deadline for the transnational transport services scheduled during the period. Moreover, the certificate does not have to include details of all journeys carried out in France.

The certificate of posting must be appended to the host company’s single personnel registry, both for intra-group posting and for posting by a temporary employment undertaking. The certificates must be translated into French. However, only personal identification details and figures are compulsory for inclusion on the certificate, and this information does not require specific translation. The translations do not have to be produced by a certified translator. The certificate must mention one of the following French collective bargaining agreements: road freight or passenger transport.

A hard copy of the certificate must be produced and given to the posted employee, who must keep it on board the vehicle for inspection purposes. From 1 January 2017, the undertaking’s representative in France is no longer required to hold a copy. Other documents must be kept on board (article R.1331-7-III of the Transport Code): in all situations involving the posting of driver, the employee’s contract of employment must be kept on board the vehicle. The contract of employment does not have to be translated into French. If a contract of employment is not a legal requirement in the posted employee’s country of residence, then this obligation is waived. However, it may be useful for the employee to produce a document attesting to the employment relationship.

**Undertaking representative**

According to article L.1262-2-1 of the Labour Code, any employer that posts employees to France must appoint a representative on the national territory, and that such representative is responsible for liaising with the enforcement services. The representative must be able to respond to requests from the enforcement services. It must therefore be in possession of a certain number of documents: copies of the employee’s pay slips covering the posting period. These pay slips may be replaced by other documents, provided that such documents contain precise and specific details of the employee’s gross hourly pay, working hours (including separate details of hours paid at a higher rate), leave, public holidays, and a breakdown of his/her remuneration. The representative must also hold documents:

1. showing that the employee has actually been paid;
2. mentioning its designation by the undertaking;
3. mentioning the title of the collective bargaining agreement applicable to the posted employee.

‘In order to prove its compliance with the legal or agreed minimum wage, explains the Ministry of Labour on its website (in French, in English) the employer must produce a payslip for a posting equal to or exceeding one month; or an equivalent document testifying to payment for a posting of less than one month’.

Responsibilities:

- The French regulation stipulates clearly that the driver is not liable to any penalty.
- No penalty is provided for the employer’s representative in France if he does not reply or responds incompletely to requests from the inspection services. However, its possible inspections may reveal shortcomings attributable to the employer and lead to criminal or administrative sanctions against the latter (for example, an administrative fine if it appears that the employer has
An employer who does not pay the minimum wage due to the posted workers incurs (mainly) the following measures:
- either a criminal sanction: in the event of non-payment of the legal minimum wage (SMIC) or the legal minimum monthly remuneration, a fine of the 5th class level (maximum 1500 €), pursuant to Article R. 3233-1 of the Labour Code. This is a common law sanction which is not specific to the secondment;
- or an administrative penalty: in the event of non-payment of the legal or contractual minimum wage, an administrative penalty of a maximum amount of €2000, pursuant to Article L. 8115-1 of the Labour Code. Again, this is a common law sanction that is not specific to secondment.

The following measures are also likely to be taken:
- suspension of the transnational provision of services for a maximum period of one month, in the event of failure to regularise a serious breach of the minimum wage, pursuant to Articles L. 1263-3 and L. 1263-4 of the Labour Code. Failure by the employer to comply with the suspension decision is punishable by an administrative fine of up to €10,000 per employee affected by the breach. However, this measure remains limited in scope for transport, except for regular lines carried out under a contract between the principal and the carrier.
- criminal sanction in the event of concealment of overtime on pay slips: pursuant to Article L. 8224-1 of the Labour Code, a fine of 45,000 euros and 3 years' imprisonment. This is a sanction not specific to the posting of workers.

Multiple countries:
As far I understand, there is no obligation to keep records of pay slips in France related to periods worked in other country for posted workers employed in France. Only pay slips related to the French activities have to be kept by the representative in France. On the other hand, French undertakings have to establish pay slip for their drivers operating in multiple countries as if they worked in France.
a) To inform the Federal Customs Service (Generalzolldirektion) of the name, the location, social security coverage, the task/job, the time and the duration of the posting. In case of mobile workers, the employers have to provide information covering the upcoming six months. Since 1 January 2017 the reporting is digitized and can be done by mail (www.meldeportal-mindestlohn.de).

b) i) They have to give an assurance that they comply to the MiLoG. The assurance is asked for because in the road transport sector (an exception to the rule) foreign-domiciled employers may keep the requested documentation in their home country (see above).

ii) National users of a foreign company sending workers to Germany also have to provide an assurance by the supplier that the supplier complies to the MiLoG.

The MiLoG exempts employers employing/posting mobile workers with a gross earning of 2.958 Euro/month from this regulation. Also working family members are excluded.

**Reporting**

In 2014 (in force since 2015) the finance ministry together with the labour ministry complemented the MiLoG, the Act on the Provision of Temporary Workers (Arbeitnehmerüberlassungsgesetz, AÜG) and the Act on Posted Workers (Arbeitnehmerentsendegesetz, AEntG) with an ordinance stipulating special reporting obligations of foreign employers operating in sectors suspected of undeclared work (Mindestlohnmeldeverordnung, MiLoGMeldeV). More than a dozen sectors are suspected of undeclared work, one of these is the road transport sector (transport of passenger as well as of goods/logistics sector). According to the finance ministry, the MiLoGMeldeV aims at supporting the public authorities in controlling compliance to the minimum standards and to additionally promote the compliance of foreign employers – foreign temporary work agencies in particular.

An ordinance on the reporting obligations of employers (Mindestlohnauzeichnungsverordnung, MiLoAufzV) facilitates the reporting obligations on working time for foreign-domiciled employers. The MiLoAufzV assumes that the workers determine the distribution of their working hours themselves and exempts employers from the obligation to document the daily working hours (start and end). Instead, it is sufficient if they provide a plan specifying the working tasks of the upcoming months (Einsatzplan), the tasks of the worker and the number of working hours per day.

**Documentation**

All employers have to prepare for inspections and hold documentations in German language proving their compliance to the MiLoG. Required documents are the employment contract, the pay slip, a proof that the wage has actually been paid (pay check) and a working time sheet that shows the places of employment (it should inform of the regions where different levels of payment apply). If
circumstances require the presentation of any other documents, they shall also be made available to the inspection authority without delay.

Employers are typically obliged to keep the documentation ready for inspection – in Germany they are free to choose the location where the documentation is kept.

MiLoGMeldeV (Article 2 (4)) provides an exception to the rule for employers domiciled abroad who operate in exclusively mobile activities (i.e. passenger and goods transport, parcel services, a.o): they are allowed to keep such documentation outside Germany if they have assured in writing that they will make these documents, translated into German, available to the German Customs Service. They have to give this assurance when submitting the notification of the operational schedule under MiLoGMeldeV. Such documentation shall be supplemented by records informing of the type of work or services actually performed during the notified period (Article 2 (3) MiLoMeldV).

**The driver’s obligation**

The driver is not responsible for these notification and documentation obligations under MiLoG. The driver has to carry a passport and, depending on country of origin, a residence permit.

<table>
<thead>
<tr>
<th>Luxembourg</th>
<th>The pay slip must contain the following information:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- The number of effective working hours and the amount of gross wages;</td>
</tr>
<tr>
<td></td>
<td>- The number of overtime hours worked and the amount of overtime payable;</td>
</tr>
<tr>
<td></td>
<td>- The number of hours worked on Sundays and the amount of the increases;</td>
</tr>
<tr>
<td></td>
<td>- The number of hours worked at night according to Article 11.3 and the amount of the increases;</td>
</tr>
<tr>
<td></td>
<td>- The number of hours worked during public holidays and the amount of the increases;</td>
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<tr>
<td></td>
<td>- The number of days of leave taken and remaining if no register or other document is provided</td>
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<td></td>
<td>- Social deductions for the national health insurance, pension fund and long-term care insurance.</td>
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<td></td>
<td>In cases where a driver works both within Luxembourg and outside, it is reported that in general the employer does not differentiate between hours worked in Luxembourg, and hours worked abroad.</td>
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<td>Payment of the salary must be made at the end of the calendar month.</td>
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<td></td>
<td>Variable pay elements (night work, Sunday work, public holiday and overtime pay) are paid at the base salary in the month following the month during which the entitlement to these supplements was provided.</td>
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</tbody>
</table>
The drivers cannot be remunerated as a function of the distance travelled, mileage, gross recipe or the quantity of goods carried, except for premiums that do not compromise the compliance of the highway code.\textsuperscript{23} The digital tachograph must be installed on all road vehicles subject to the Regulation CE n°561/2006 of 15 March 2006 relating to driving and rest times.\textsuperscript{24}

a) The employer is subject to document retention obligations to be submitted in case of request or control by the competent authorities. The documents to be presented are among others:
- payment of wages and records of hours worked and proof of payment for the duration of the posting,
- the scores indicating the beginning, the end and the duration of the daily work for the whole duration of the posting in the Luxembourg territory.

b) The salary is based on the actual volume of weekly or monthly hours of work. Travel allowances come in supplement and generally reflect the actual movement of the driver.

According to the collective labor agreement in the transport and logistics sector, Luxembourg road drivers are required, during their working hours, to handle their tachograph precisely and, in particular, to indicate hours of availability, which are different from working hours.

Working hours are hours of driving, loading, cleaning and material safety work, as well as hours of rest, which refers to any uninterrupted period during which a driver can freely dispose of his / her time.

The availability time is not considered as working time. The hours of availability do not affect the working time and are, in principle, neither paid nor increased.

\textsuperscript{23} Convention collective de travail pour le secteur des transports et de la logistique.
Règlement grand-ducal du 3 août 2010 portant déclaration d’obligation générale de la convention collective de travail transports et logistique et d’un avenant y relatif, conclus entre le Groupement Transports, d’une part, et les syndicats LCGB et OGB-L/ACAL, d’autre part, page 2682.
\textsuperscript{24} https://douanes.public.lu/fr/commerce-international/Transport_marchandise/tachygraphe-digital.html
7. Which inspectorates are involved in enforcement of the statutory or sectoral minimum wage in road transport, and what are their respective roles in this?

<table>
<thead>
<tr>
<th>Country</th>
<th>Details</th>
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</table>
| Austria | In Austria, each authority has its limited competences that are stipulated by law. The inspection of minimum wage is in the scope of competences of the financial police if Austria is not the driver’s habitual place of work (= also in case of posting of workers). The financial police carry out checks on the road side. They announce suspicious cases to the Competence Centre at the Vienna Regional Health Insurance Fund. This centre verifies suspicious cases of underpayment and files the complaint on the basis of the LSDBG if the suspicion is confirmed.

The representative of the financial police interviewed for this report emphasised that on the one hand difficult coordination with authorities abroad, and on the other hand the non-existent possibility to check the social security status of a driver employed by a foreign transport company on the spot, are key obstacles to inspect and verify the applicable minimum wage of such drivers.

For Austrian companies, the health insurance providers are competent to check minimum wages at the premises of a transport company. They do not carry out road side checks.

The enforcement of penalties and wage claims is another important issue:

The responsibility for the enforcement of penalties resulting from infringements of minimum wage is with the district authorities following an administrative penalty proceeding against the incriminated transport operator. The district administration authority issues – in case of conviction - an administrative penalty that must be collected by the responsible authority in the country where the transport operator is established. In case of foreign transport operators, however, these cross-border administrative penalties often are not collectible. If there is evidence of fraud (e.g. social security fraud) then a criminal court procedure follows. Such court cases are very complex and costly and last for years.

The employee can take action to enforce the claim for due remuneration before the regionally competent Labour and Social Court – if the employer is established in Austria. If not, the legislation of the country of the employer’s establishment applies. |
| Belgium | The main inspectorates involved are the Social Law Inspectorate (‘Toezicht Sociale Wetten / Contrôle des Lois Sociales’), operating under the Federal Public Service Employment and Social Dialogue (‘Ministry of Labour’), and the social security inspection. The former has general competences in checking compliance with labour law and employment conditions (e.g. minimum wages, working time, transport regulations, discriminations, collective bargaining agreements). The latter controls the payroll administration (in Belgium this is in hands of specific third-party HR service providers) for social security payments. |
The inspectorates always operate in a ‘coordinated action’, which may also involve the Labor Prosecutor, police and customs. Since 2006, these coordinated actions are supported by the ‘Social Intelligence and Investigation Service’ (SIOD/SIRS), which facilitates the cooperation between inspectorates in the field of combatting economic fraud and social dumping, and sets targets. Similarly, the Federal Public Service Mobility and Transport may set targets and initiate controls in which the Social Law Inspectorate is involved.

Despite the small staff of the Social Law Inspectorate, the controls are effective. The main threat to fraudulent firms is the seizure of capital goods.

<table>
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<tr>
<th>France</th>
<th>Posted workers</th>
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|              | The Ministry of Transport is responsible for coordinating the State's action related to the control of freight and passengers’ road transport. It has a specialised body for this purpose: the land transport controllers (contrôleurs des transports terrestres – CTT) who work on the road and in companies. Several regional state bodies are responsible to the regional prefect for managing the competence centre, which brings together the State departments concerned by the control activities. Cooperation between these regional bodies and the Regional directorates for enterprise, competition, consumption, labour and employment (DIRECCTE) exists to guarantee effective control. For instance, on 30 September 2019, a control operation was carried out by the Regional and Interdepartmental Directorate for Equipment and Planning in the Île-de-France (Direction Régionale et Interdpartementale de l’Équipement et de l’Aménagement d’Île-de-France - DRIEA) in the region Île-de-France and by 11 other Regional Directorates for the Environment, Planning and Housing (Directions régionales de l’environnement, de l’aménagement et du logement DREAL) in the other regions. This operation of coordinated controls was part of one of the five weeks of cabotage observation scheduled by the Road Transport Sub-Directorate of the Ministry of Transport. The aim is to ensure, on the one hand, the working conditions of national and foreign drivers and, on the other hand, to verify compliance with the regulations governing cabotage and the international secondment of employees in order to combat unfair competition from operators who do not comply with the law. This operation also made it possible to control fraud in the pollution control system, known as Adblue fraud. Such an operation involves both officials of the control bodies (DRIEA and DREAL) as well as the police forces. Another example of regional cooperation is given in a press kit about a administrative cooperation in the region Bourgogne Franche Comité (Press kit, 3 June 2018).

  Cooperation between the multiple agencies and control bodies is highly encouraged at the highest level of the State administration. Of course, the organisation of cooperation between various control bodies presents difficulties inherent in all forms of coordination involving a multiplicity of actors. Nevertheless, it seems that cooperation is multiplying and working better and better. |

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25 The Regional Directorates for the Environment, Planning and Housing (Directions régionales de l’environnement, de l’aménagement et du logement DREAL), the directorates for the Equipment, Planning and Housing (Directions de l’Équipement, de l’Aménagement et du Logement DEAL) and the Regional and Interdepartmental Directorate for Equipment and Planning in the Île-de-France (Direction Régionale et Interdpartementale de l’Équipement et de l’Aménagement d’Île-de-France - DRIEA)
European cooperation is also an important focus that has developed between administrations. To strengthen this cooperation, an administrative arrangement was signed in October 1999 between the transport ministers of the three Benelux countries and France. It provides for: systematic exchanges of information on infringing undertakings; the organisation of joint and coordinated controls; the development of joint training programmes for controller officers; the promotion of cross-border exchanges of experience; exchanges of information on new technological developments; closer consultation between the participating countries, with joint initiatives and, as far as possible, joint positions.

This agreement was extended in 2001 to Germany and Ireland. The United Kingdom and Spain signed it in 2002. Then in 2004 Poland and Austria, in 2007 Bulgaria, Italy and Romania, in 2008 Hungary, in 2010 Lithuania and in 2015 Croatia. Representatives of the administrations of the countries mentioned above shall participate in the meetings organised within the framework of the 'Euro road control' body set up by the administrative arrangement in order to define the actions to be implemented.

**Germany**

By organisational structure, the enforcement of the minimum wage is related to the control of economic activities not to labour inspection which is confined to the inspection of working conditions.

The control of economic activities is centralised under the heading of the Ministry for Finance and over the past two decades the Customs Service has been restructured and enlarged to serve as the central agency inspecting most economic activities. In contrast, labour inspection is under the headings of the labour ministries of the 16 federal states.

The Customs’ role has been significantly strengthened – particularly with regard to the inspection of labour-related issues, cross-border forms of employment and foreign workers. The Customs controls (a.o.) the minimum wage, the contributing of social security contributions (related to detecting bogus self-employment), the working conditions of posted workers, the act on temporary agency workers and the act on battling undeclared work.

The Customs Service holds the right to impose administrative fines and to lodge criminal complaints in case of non-compliance to the reporting obligations under MiLoGMeldeV and MiLoGAufZ and in case of non-payment of the MW.

Main external partners are the road side inspection of the federal agency on the transport of goods (Bundesamt für Güterverkehr, BAG) which controls compliance to traffic regulations and minimum standards of working conditions, the police forces, the Federal Employment Agency (Bundesanstalt für Arbeit, BA) and the labour inspectorates of the 16 federal states (headed by the 16 federal labour ministries) which are in charge of inspecting working conditions and working time. Cooperation agreements give the Customs Service a dominant role in inspecting compliance to the MiLoG, the other national authorities are only involved on request by the Customs Service. In the Customs Administration, the unit on control services (on the spot) and the unit on battling undeclared work (Finanzkontrolle Schwarzarbeit, FKS) is in charge of conducting the controls.
Breaches of law are sought and recorded by the “Administration des douanes et accises” officers and by the members of the “Inspection du Travail et de Mines”. The offences established by oversight bodies must be addressed to the Director of the “Inspection du Travail et de Mines”. The “Inspection du Travail et de Mines” is designated as the national competent authority for law enforcement. Within this mission, the “Inspection du Travail et de Mines” is called upon to cooperate with the authorities in other Countries which carry out similar duties stipulated in the Law.

Since the beginning of 2016, the “Administration des douanes et accises” and the “ITM” have informally agreed to strengthen their cooperation, contributing to the development of an effective and efficient control system with the objective of intensifying controls, particularly with regard to the posting of workers, in order to be able to fight more effectively against “social dumping”, thereby promoting fair competition and at the same time protecting posted workers’ rights.

Administrations are authorized to collaborate and exchange, in particular by computer, the data relating to posting. The personal data thus collected are kept at the “ITM” for a maximum of twenty-four months following the end of the posting. Customs officers have been trained to better identify abuse and fraud linked to the posting of workers. Control points are numerous and the purpose of the agreement is to rationalize them by avoiding duplication between the “Administration des douanes et accises” and the “ITM”. Customs carry out a number of checks. Along other things, they can check whether the company applying the posting is in good standing, thus maximizing the effectiveness of the controls.

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26 Customs and Excise officers
27 Article L.142-1 Code du travail
8. How is implementation of the statutory minimum wage supervised? (Risk based? On Paper? Checks on the spot?)

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<th>Austria</th>
<th>Belgium</th>
<th>France</th>
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<td></td>
<td>The financial police reports that inspections in road transport are <strong>driven by complaints</strong> (e.g. by local competitors). Moreover, inspections of the correct remuneration of international drivers are also carried out at <strong>roadside checks and at hotspots of cargo handling</strong> (e.g. logistics, distribution centres). These checks are important because they have deterrent effects for other potentially non-complying companies and drivers. During the inspection, the financial police interrogates the drivers (Who is the employer? Does the driver carry along the relevant documentation? Does/did the driver stop for loading and unloading in Austria? Does the driver’s statement correspond with the freight documentation? Does the freight loaded correspond to what is stated in the freight documentation? Etc.) The financial police do have the authority to seize the freight company’s property (e.g. the vehicle) if a) the extent of the fine would be relatively high and if b) fines in the company’s country of origin are deemed to be uncollectable. At the same time, a thorough investigation of company practices can only be accomplished when <strong>checking the premises of a company</strong> suspected of an infringement. Since Austrian authorities can only check on companies registered in Austria, cross-border cooperation with authorities abroad, is key to detect underpayment in international transport. (see also questions 7, 10 and 11) According to the Anti-Wage and Social Dumping (LSDB)-Statistics, between May 1st 2011 and March 31st 2019, in (national and international) road transport 143 complaints against underpayment have been submitted (compared to 2.208 over all sectors, of them 1.135 against companies registered abroad), 57 final decisions have been filed (compared to 997 over all sectors, of them 526 companies registered abroad) 29 30</td>
<td>The inspectorates can undertake action on their own initiative, or based on complaints by workers or social partners. Led by the State Secretary for the Fight against Social Fraud, a Plan for Fair Competition, interpreting Belgian and European social legislation, was signed in a number of target sectors, including transport, construction, and the metal and technology industry. The plan for the transport was signed between the social partners in 2016, and recognized their role in signalling non-compliance. A ‘guideline’ document is available summarizing all requirements and legislation. 31 The inspectorates have broad competences, such as inspections on the spot, access to facilities and information, including the tachograph, to verify the declared time sheets and compare this with the registered wage payments.</td>
<td>In practice 32, according to the Ministry of Transport, the land transport controllers (<strong>contrôleurs des transports terrestres</strong> – CTT) intervene on road and in companies while the unified forces (police, gendarmerie, customs authorities) mainly launch control on road and labour inspectoral mainly in the companies. - On road, the control is carried out by a control team composed of land transport controllers accompanied by uniformed forces (police, gendarmerie, customs authorities) who are responsible in particular for intercepting vehicles. The checks shall cover the transport</td>
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29 Information by the Ministry of Labour, Social Affairs, Health and Consumer Protection, April 10th, 2019:
documents and the verification, where appropriate, of compliance with the rules on cabotage, driving and rest conditions for the driver with the examination of the tachograph, the technical condition of the vehicle, overloads, etc. The check ends: 1/ where no infringement is detected, by a letter of completion of the inspection or a vehicle release form; 2/ when one or more infringements are detected, by a fixed fine, a report and, where applicable, by the immobilisation of the vehicle.

- In company, the control may be carried out in collaboration with other audit bodies, such as labour inspectors and tax auditors (particularly when the audit is carried out within the framework of a departmental anti-fraud operational committee - CODAF). After being informed of the inspection, the company makes available to the officers the various documents necessary for the inspection. The checks will cover compliance with driving and rest periods, conditions of access to the profession, working conditions, the vehicle fleet and its situation with regard to compulsory technical inspections, unfairly low prices and illegal work. The check ends if no infringement is found by a letter at the end of the inspection and the return of the documents; or if infringements are detected: by notifying the company of the infringements, drawing up a report and forwarding it to the court and the company.

### Germany

Inspection is typically risk-based and coordinated with the inspection of compliance to the Social Code Book (social security contributions), to the SchwarzArbG (undeclared work, control of the driver), the AEntG and the AÜG.

In the inspection of road transport, the Customs’ unit of control services cooperates with the BAG in controlling vehicles whereas the FKS visits sites of work and headquarters/offices for inspecting documents. Documents are checked on the spot. If no documents are available because the foreign domiciled employer keeps the documents in his/her home country, the FKS controls the operational schedule delivered under the MiLoGMeldeV and requests the documents from the employer.

### Luxembourg

The employer must provide the “Inspection du Travail et de Mines” with the following documents:

Pay slips and proofs of payment for the whole period of posting, information indicating the beginning, the end and the duration of the daily labour for the whole period of posting in Luxembourg territory. In addition, the controls are carried out by the authorities on the road or within the company.

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34 https://itm.public.lu/fr/questions-reponses/droit-travail/detachement-salaries/a/a5.html
9. Which (sham) constructions are found in international road transport to evade statutory minimum wage regulations?

<table>
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<tr>
<th>Country</th>
<th>Description</th>
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<tbody>
<tr>
<td>Austria</td>
<td>Principally, “outflagging”, i.e. registering trucks or trailers and the establishment of subsidiaries abroad are perfectly legal strategies for companies’ cost and tax optimization. However, corporate arrangements aimed at reducing operational costs by subcontracting business to countries with lower labour costs, open opportunities for illegitimate practices. These practices include the establishment of letterbox companies i.e. businesses which establish their domicile in one Member State through a mailing address, whilst conducting their actual activities in other Member States. Such artificial arrangements are used as a way of cutting costs by avoiding legal and conventional obligations, such as: taxation, social security, value-added tax and wages. The detection of fraud in artificial arrangements/sham companies is highly time and personnel intensive. In many cases, former employees file very detailed and concrete reports against their employers. Investigations of such artificial arrangements end up in criminal law since social fraud is a criminal offence. There is evidence of several companies creating subsidiaries abroad to pay drivers wage rates of the country where the subsidiary is located. To give you one example: In Austria, one of the biggest court cases in road haulage involving the use of foreign subsidiaries was the “Stadler Case”. Infringements against criminal law but also against (among others) the social security act, employment of foreigners’ act, the labour contract law were prosecuted. Based in Upper Austria, the company set up subsidiaries in the Czech Republic, Poland and Bulgaria for registering foreign employees, while the Stadler Group in Upper Austria acted as employer. The foreign subsidiaries were for all intents and purposes letter-box companies. External audits concluded that the Stadler Group owed some 90 mio Euro in social security contributions and taxes. The tax and social security authorities based their demands on Stadler’s practice of paying its more than 1.000 truck drivers under the wage provisions of Bulgaria, Romania and Slovakia, and paying the relevant taxes and social security contributions</td>
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</table>

38 Until December 2016, the labour contract law (AVRAG) and the Temporary Agency Work Act stipulated provisions relating to the fight against wage and social dumping. In the meantime, the pertinent paragraphs have been transferred to the Anti-Wage and Social Dumping Act (LSD-BG). http://dienstgeber.wgkk.at/portal27/wgkkdgportal/content?contentid=10007.724482&viewmode=content
in those countries. In the court proceedings, the authorities argued that all Stadler companies in Eastern Europe were controlled from the group’s headquarters in Upper Austria, and for that reason the group had to pay its taxes and social security contributions in Austria. The drivers’ habitual place of work was Upper Austria, as they were being shuttled by bus from their home countries to Upper Austria, the base from where they started their week-long journeys throughout Europe. Any alleged damage, late arrivals or excessive motorway kilometres were systematically docked from their wages. Hence, a personal and economic dependency was determined by a diversity of circumstances: the habitual place of work is Austria; the disposition of the lorry drivers is made by the parent company; bonuses are awarded by the parent company as is misconduct sanctioned. The criminal and administrative penal procedures against Stadler lasted for more than 10 years. In the meantime, Stadler was convicted for serious fraud and other crimes with 6 years of prison. However, the enforcement of claims by the public authorities is still pending. The burden of proof in such a sophisticated system is very difficult. What happened to the workers’ claims remains unknown.

| Belgium | In the European Union, cabotage is allowed, meaning that services can be provided in other countries by foreign firms, for instance in addition to a regular international transport activity. Through so-called letterbox companies, which are only formally registered abroad (mainly but not exclusively in Eastern Europe), foreign workers can operate in Belgium under foreign employment conditions. The Plan for Fair Competition aims at eradicating these constructions. The ongoing Jost Group case exposed this practice in one of the leading firms in the sector and already led to multi-million sanctions against the company. |
| France | The main fraud is the so called ‘establishment fraud’ (fraude à l’établissement). In this case, the posting of worker regime is used whereas the employee should have been legally employed in France and the company registered there, because the employee or company has a stable, usual and continuous activity on the national territory. The main methods of using this type of fraudulent arrangement are organised through companies, known as shell companies, established in third countries from which they send posted workers benefiting from the social and tax regime of their country of establishment. Particularly complex arrangements are often highlighted, with the setting up of a company in a tax-efficient country, recruiting employees in countries with low levels of remuneration and social contributions and then posting them to a country with higher taxes and social contributions. In the 2019 report of the Court of Auditors, the following example is given: a French road haulage company illegally employed the employees of a company in a European country with low wage costs to carry out missions in France, the staff of the foreign entity working exclusively under the direction of the French structure. Social and tax losses were estimated at €4.8 million. 1.1 million in assets were seized. In reality, it was a fictitious relocation of a French company. This company had previously laid off its employees in France, then created a company in a country with low labour costs for the sole purpose of posting employees to France. |


40 Cour des Comptes, Rapport annuel 2019 – chapitre1, La lutte contre la fraude au travail détaché : un cadre juridique renforcé, des lacunes dans les sanctions, February 2019
A similar fraud is the intra-group fraudulent posting of workers. For instance, the Annual report of the Labour inspectorate 2016\textsuperscript{41}, mention control launched in the Jura department (East). A road transport inspection carried out partly at night, around 2 a.m., detected a diversion of intra-group secondment: X Europe, based in Luxembourg, posted workers to entities in X France belonging to the same group. Employees under Luxembourgish employment contracts are therefore permanently made available in France to avoid social obligations and/or scales and probably, subject to verification, to reduce the risk of sanctioning illegal cabotage.

Another form of fraud, mentioned in the Nation plan against illegal work 2016-2018\textsuperscript{42}, is the use of false. self-employed drivers, who are escaping the legislation on posted work and therefore the application of the minimum wage.

**Germany**

The Customs’ Report to Government from 2017 lists the following sham constructions:

- Room and Board counted into the minimum wage
- Non-monetary contributions (such as food or tickets for purchasing consumer goods) counted into the minimum wage
- Lump sum remuneration not considering neither the minimum wage nor the working time
- MiLoG regulation excluding particular groups of employees from the minimum wage (for example, interns) applied to workers who are in fact covered by the MiLoG
- Incorrect use of time banks and working time accounts
- Misleading reporting: the actual working time is documented as rest period
- Working time for preparing the transport activity and for finalising it is not counted as working time (Rüstzeit, Vor- und Nacharbeiten)
- Driving the vehicle without passengers or goods (before loading or after the deloading) is not counted as working time
- Bogus documentation


According to information by the United Services Union (Vereinte Dienstleistungsgewerkschaft, ver.di) and by Faire Mobilität, the project run by the confederation of trade unions DGB in support of foreign workers, typical sham constructions are

- **With regard to pay:**
  - Employment of bogus self-employed drivers
  - Payment of cost allowances on top of the national minimum wage of the home country

\textsuperscript{41} Rapport sur l’inspection du travail 2016, p.103
\textsuperscript{42} Plan national de lutte contre le travail illégal 2016-2018
- German companies evade paying the German minimum wage by setting up companies abroad and employing foreign workers based on MW of foreign country

**With regard to working time:**
Duration of a task is specified (i.e. eight hours tourism bus tour), but actual working time is considerably longer.
Driving the passenger bus to the bus depot after the end of the tourism bus tour is not considered working time.

| Luxembourg | With regard to the regulation on the minimum wage in international road transport, Luxembourg faces the same breaches of law as those found in neighboring European countries. Carriers use a variety of stratagems to underpay their employees. Since Spain and Portugal joined the EU in 1987, all the major European freight companies established in Germany, France and Benelux have set up subsidiaries in low-wage European countries and are outsourcing important part of their activity to these subsidiaries. When the countries of Eastern Europe joined the EU, this trend continued. The use of subcontracting in the transport sector is relatively normal from an operational and legal point of view. The problem is that wage gaps give rise to frequent abuse through outsourcing to subsidiaries whose role is, above all, to provide drivers to the parent company. Although the major freight companies do operate in these countries, the main role of these subsidiaries is to provide drivers for transportation abroad.\(^{43}\)
The law stipulates that every posted employee must receive at least the minimum social wage applicable in Luxembourg. However, the drivers are given false documents indicating to the authorities that they receive the Luxembourg salary, whereas this is not the case. |

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<th>Country</th>
<th>Bottlenecks Experienced</th>
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<tbody>
<tr>
<td>Austria</td>
<td>One of the key obstacles to enforcement is the scattered nature of nationally based inspection bodies falling under different jurisdiction. There is a variety of authorities including financial police, traffic police and labour inspectors that govern and regulate truck drivers, haulage companies and other vehicles. In any case where an infringement has occurred, the correct legal procedure has to be decided and how many control bodies in different countries can be considered ‘competent’ to address it. Hence, the detection of cross border infringements makes information exchange and cooperation between authorities in several countries, necessary. Enhanced cooperation, including efficient data-sharing via existing tools such as the Internal Market Information System (IMI), would be necessary to verify the employment and social security status of workers on international journeys, to impose and collect penalties. Up until now, it is not possible to check the social security status of employees via the IMI system since it is only set up to exchange information about labour and trade law related issues. At road side checks, queries into foreign company registers are possible, other databases are not accessible. IMI can be used to ask the competent authority for information afterwards. What is lacking according to the financial police is a valid database on the social security status of the respective employee (including among others information on duration and time of employment, working hours, assessment base). The actual proof of underpayment is extremely cumbersome and difficult with the current and available systems. The financial police must qualify wage documents that have been drawn up in accordance with the respective national regulations. To reconcile the already very complex system of collective agreements in Austria with the logic of foreign salary systems is a major challenge for the competent authorities.</td>
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<tr>
<td>Belgium</td>
<td>Although the procedures for controlling and sanctioning are in place and the sector has expressed its determination to tackle the issue of social dumping through sham constructions, there are insufficient means available and the speed at which new constructions are set up or change is too fast for the inspection to keep up. Strong sanctions may act as a deterrent for future circumvention of legislation. The enforceability of the Rome I principle is not strictly defined in Belgian law, so that foreign workers could claim Belgian minimum wages before a Belgian court. An attempt to establish this law has been rejected by the Council of State. Social inspectorates have difficulty obtaining information on wages and working time from sending countries with less comprehensive administrative registration procedures. Also, during a court case, a retroactively delivered A1 certificate will stop the persecution in social law (but not labour law or criminal law), and this is a common practice that can only be made undone in large fraud cases (cf. Altun ruling of the European Court of Justice, C-359/16).</td>
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<tr>
<td>France</td>
<td>The bottlenecks seems quite similar than those mentioned in The Netherlands, even there is very few literature on this sensitive issue. Problematic in enforcement of the statutory minimum wage in international road transport is that often drivers do not work for a whole wage period in France. ‘In order to prove its compliance with the legal or agreed minimum wage, explains the Ministry of Labour on its website (in French, in English) the employer must produce a payslip for a posting equal to or exceeding one month ; or an equivalent document testifying to payment for a posting of less than one month. But, even if it is clear in what period they have been working in the</td>
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10. What are the bottlenecks that inspectorates are experiencing with respect to enforcement of the statutory minimum wage in international road transport?
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<tr>
<th>Country</th>
<th>Description</th>
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<tbody>
<tr>
<td>France</td>
<td>One cannot deduce from the pay slip whether the statutory minimum wage was paid for that period. An elaborate administrative investigation can in theory give a final answer here. Aside from the complexity and the large capacity requirement of supervisors, the fact that this administration is mostly based abroad increases difficulties. Because of this, in the case of drivers in international road transport it cannot be determined on the road or on any other location in France if this driver is paid in line with the statutory minimum wage.</td>
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<tr>
<td>Germany</td>
<td>According to the Customs Service, the right to keep the documentation in the home country is a bottleneck and administrative burden as it costs worktime and efforts to get a hold of the information from the employers in foreign countries. More generally speaking, the Customs Service lacks staff for fulfilling all its tasks. The number of staff has been an ongoing issue of debates in Parliament.</td>
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<tr>
<td>Luxembourg</td>
<td>Luxembourg is in a situation that is relatively similar to that of neighboring countries. The application of the legal minimum wage in international road transport is not easy to verify, because carriers use all the stratagems to circumvent the law or convention on the minimum wage. As mentioned in the answer to question 8, the employer must submit to the “Inspection du Travail et des Mines” certain documents related to the employee’s wages. The “Inspection du Travail et des Mines” must sometimes address several injunctions to obtain the requested documents. The documents should be the subject of a careful examination to identify fraud. One example is the legal complaint lodged by the “Inspection du Travail et des Mines” to the Diekirchs public prosecutor’s office against a transport company, headquartered in Luxembourg, alleged to have established false salary statements.</td>
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</tbody>
</table>

11. What happens in case an inspectorate finds that payment is below the level of the statutory minimum wage in international road transport?

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<tr>
<th>Country</th>
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<tr>
<td>Austria</td>
<td>As mentioned above, the financial police (the inspecting authority) announces suspicious cases to the competence centre for verification and for filing complaints against the employer in an administrative penalty procedure. The payment of due remuneration is related in Austria to aspects of both private and public law. Under private law, the posted or hired-out employee is entitled to receive from their employer at least the level of remuneration specified as a minimum by law, ordinance or collective agreement in Austria. If the employer fails to (fully) satisfy that claim, the employee can take action to enforce the claim before the regionally competent Labour and Social Court. The administrative authorities verify whether posted or hired-out employees are in fact being paid that minimum wage. If the employer refuses to provide proof of due remuneration or actually pays less than the minimum wage, this breach of employment law additionally entails legal consequences under public law. Specifically, a fine will be imposed on the employer and, in serious cases, a ruling will be issued that prohibits that employer from deploying in future any posted workers in Austria. The district administration authority issues the administrative penalty that must be collected in the sending country by the responsible authority. However, often such cross-border administrative penalties are not collectible.</td>
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<td>Belgium</td>
<td>There will first be an attempt to regulate the case, and administrative fines are applicable. Non-compliance will lead to public prosecution by the ‘Labour Auditor’ before the labour court, or before other courts depending on the nature of the violation (e.g. police court, criminal court in case of human trafficking). The Labour Auditor is the president of the regional unit consisting of the social inspectorates and police services that undertake the coordinated action.</td>
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<td>France</td>
<td>Where an employer fails to pay the minimum wage due to a posted worker, it shall (principally) be subject to the following measures: - Either a criminal sanction: where the employer fails to pay the statutory minimum wage (SMIC) or the statutory minimum monthly salary, it shall be subject to a class 5 fine (up to a maximum of €1,500), pursuant to article R. 3233-1 of the Labour Code. This is a sanction under common law and is not specific to posted workers. - Or an administrative sanction: where the employer fails to pay the statutory minimum wage or the minimum wage set by collective bargaining agreement, it shall be subject to a maximum administrative fine of €2,000, pursuant to article L. 8115-1 of the Labour Code. Again, this is a sanction under common law and is not specific to posted workers. The following measures may also be taken: - Suspension of the transnational service for a duration of up to one month where the employer fails to remedy a severe breach involving payment of a wage below the statutory minimum wage (SMIC), pursuant to articles L. 1263-3 and L. 1263-4 of the Labour Code. Where the employer fails to comply with the suspension, it shall be subject to an administrative fine up to a maximum of €10,000 per employee concerned. However, the scope of this measure is limited in the transport sector, except for regular lines covered by a contract between the contractor and the carrier.</td>
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45 Overview of the authorities you can address to enforce claims in Austria: [https://www.entsendeplattform.at/cms/Z04/Z04_10_999.9/downloads](https://www.entsendeplattform.at/cms/Z04/Z04_10_999.9/downloads), accessed April 8, 2019

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<td>Germany</td>
<td>If the minimum wage is not paid or not paid in time, the employer can be fined up to 500,000 Euro. Also, if the employer does not provide the documents that are requested, as a consequence of which it cannot checked whether there was under-payment in this case, the employer can be fined up to 30,000 Euro (MiLoG). Moreover, the employer can be excluded from public procurement. Statistics on administrative fines by the Customs Service show that in practice, administrative fines or sanctions for not paying the MW are very rare compared to fines for not complying to reporting obligations (MiLoGMeldeV; MiLoGAufZV) and to other administrative issues such as – in case of the worker - missing residence permits or – in case of employers - employment of workers without permission to work in Germany (Bundestagsdrucksache 19/9210, table, response to question 7).</td>
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<tr>
<td>Luxembourg</td>
<td>Employers who have paid out wages lower than the rates applicable under provisions of the Act are subject to a fine of €251 to €25,000. However, in the event of renewed breaches within two years, the sanctions provided could be increased to twice the maximum amount. (^{47})</td>
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