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Met de vlam in de pijp door Europa: de arbeidssituatie van internationale vrachtwagenchauffeurs : constructies en percepties

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Summary

CROSSING THROUGH EUROPE AT FULL SPEED

The work situation of international truck drivers: constructions and perceptions

This dissertation is about intra-EU workers and labour law related (bogus) constructions under which they work in the Netherlands and other EU member states.

Through the following two main research questions this situation is outlined and analysed.

1. *To what extent do intra-EU workers in the Netherlands work under labour law related (bogus) constructions that (financially) disadvantage them?*
2. *What are the perceptions of intra-EU workers regarding the use of labour law related (bogus) constructions and their working conditions and circumstances under which they work in the Netherlands and other EU member states?*

In each chapter of this thesis, these questions are elaborated into more specific research questions.

In this research both legal and empirical research that fits within the *Empirical Legal Studies* (ELS) framework is conducted. Through this combination of research methods it was viable to link the collected empirical (interview) data to the legal data based on literature and case law research. Hence, the theory (*law in the books*) was tested against facts and observations (*law in action*). Moreover, by establishing this link the present research adds a new and valuable dimension to current academic legal and social scientific research. In this thesis (bogus)constructions are scrutinized while at the same time the perceptions of the workers involved are integrated. Bringing these two perspectives together is essential in order to develop policies and rules that do justice to workers' perceptions of their working situation.

In chapter 3, an overview is given of the legal situation of intra-EU workers working in the Netherlands. In this overview is national law, European law and international private law are discussed. Additionally, an inventory is made of (bogus) constructions under which these workers perform their work in the Netherlands. Based on this inventory, a typology of recurring (bogus) constructions was created. The findings in this part of the dissertation were purely based on literature and case law research.

Starting from chapter 4 a case study is conducted on the road transport sector and intra-EU truck drivers. The road transport sector was selected because of the many alarming reports in the media about the work situation of truck drivers working in road transport. A second motivation was the scarcity of scientific research on the work situation of truck drivers. In this research, the focus is on the perceptions of the truck drivers themselves about their work situation. Both working conditions and working circumstances are examined, and within this context the use of (bogus)constructions as a specific research topic.

To find out more about truck drivers' perceptions about these issues semi-structured in-depth interviews were conducted. As a guideline a topic list was used. A sample of 32 truck drivers was interviewed. All truck drivers were interviewed in their native language. All non-Dutch speaking truck drivers were interviewed with the assistance of interpreters.

In chapter 5 truck drivers' perceptions regarding the use of (bogus)constructions in road transport in general were addressed. Additionally, their views on the wage differences between Western and Eastern European truck drivers were discussed. A finding is that drivers are aware of the use of (bogus)constructions. However, they do not mention all the different types that are part of the typology. Constructions they do mention are e.g. working via letterbox companies and contracting. Another finding is that drivers recognize the existence of wage differences between West and East, but have very different views on the extent of that difference, the reason for it and how to approach it. According to some truck drivers the difference between wages are substantial and trigger the use of (bogus)constructions. Others take the view West and East European wages overtime are converging, resulting in less discrepancies.

In chapter 6 the work situation of each individual truck driver was analysed in order to find out whether or not the driver works under a construction that affects him or her in a (financially) negative way.

The methodology used for this purpose is developed in case law of the Court of Justice of the European Union. The case law in question is discussed in detail. Through this methodology it is possible to find out in which country the work is habitually carried out, and if the country where the work is habitually carried out is concealed, what type of (bogus)construction is used to do that.

This methodology proved to be effective. For most of the truck drivers it was possible to determine whether or not they worked under a construction that had an (financially) adverse effect on their working conditions. In the sample of 32 truck drivers examined, seven of them appeared to work under a construction through which the country where they habitually performed their work was concealed. Consequently, a labour law regime solely to the advantage of the employer was – wrongly – applied to their work. As a result these truck drivers are (financially) duped. A striking finding is that not even

a third of the sample of truck drivers work under a construction. Given the framing of this problem in the public debate, this is an unexpected outcome. In chapter 7 the wages and working hours of the truck drivers are unfolded. A brief outline is given of Dutch and European regulations applicable to these two standard working conditions. Moreover, an analysis is presented to what extent a labour law related (bogus)construction affects truck drivers' wages and working hours. In order to be able to compare the wages and working hours of the sample of 32 truck drivers, five categories are defined. All five categories are both associated with the country where the truck drivers' companies are based and the truck drivers' country of residence. Truck drivers who do not reside in an EU member-state (so called third-country nationals) are singled out. One finding is that between specific categories major disparities exist in truck drivers' wages and working hours. However, there seems to be no relation between these differences and working under a (bogus)construction through which the country where a truck driver habitually works, is concealed. A second finding is that employers, in order to gain financial advantage, also in other ways apart from aforementioned constructions, act dishonestly regarding payment and working hours. As examples can be mentioned payment per kilometre or payment of daily allowances only when working abroad. The conclusion that particularly third country nationals work under a construction through which the country where the work is habitually carried out, is concealed, cannot be drawn. Nor can be concluded that they are disadvantaged regarding pay and working time.

In chapter 8 the judgement of the Court of Justice of the European Union regarding *Vaditrans* is scrutinized and linked with truck drivers' perceptions thereon. In *Vaditrans*, the Court put a ban on truck drivers taking regular weekly rest periods (45 hours) in their vehicle. This ban, in August 2020 codified in Regulation 561/2006, concerns truck drivers' rest periods and driving hours and thus important working circumstances. In general this ban was meant to guarantee the health and safety of truck drivers and other road users. Based on the interviews with the truck drivers the conclusion can be drawn that most of them still spend their normal weekly rest in their vehicle. Another finding is that a substantial part of the sample of 32 truck drivers do not experience the ban as protective but rather as burdensome. Furthermore, the drivers mention several practical impediments that prevent compliance with the ban.

In this dissertation (in chapter 9) multiple conclusions are drawn. One important conclusion is that the way truck drivers and their work situation are depicted in the public debate, is not reflected in this sample of 32 truck drivers. During the interviews, the drivers do not come across as passive victims with no clue about or opinion on their individual work situation. The same holds for the work situation in road transport in general. Another important conclusion is that counteracting the use of (bogus)constructions is relevant and necessary. However, creating more (complicated) rules does not

seem to be the most efficient and appropriate solution. In any case, the first step to be taken is assessing whether existing working conditions and working circumstances need improvement, and, if they do, in what way. In this research taking into account the views of the workers themselves proved to be crucial. Speaking *with* truck drivers and learning more about their perceptions, as was the case in this research, has opened up a new perspective on (bogus) constructions. The truck drivers also mentioned some specific wishes and needs regarding their work that had nothing to do with tackling (bogus) constructions. Meeting these preferences would definitely improve their work situation.

Also some recommendations are rendered. Among other things, developing rules that connect with truck drivers' everyday (social) reality is advocated. The only way to achieve this is, as said, to talk *with* truck drivers and getting to know how they feel about the use of (bogus) constructions in road transport in general as well as in their individual work situation. Acceptance of and compliance with rules truck drivers can understand and embrace, will without doubt make a difference. Another option to consider, is developing legislation including incentives for employers and contractors in order to refrain from using (bogus) constructions. For instance awarding a bonus or agreeing to participate in a tender under the condition the employer or contractor does not hire workers via an employment agency or outsources work to a maximum of three (sub)contractors.

Finally, the work performed by intra-EU workers should be facilitated. This should be emphasized, because local workers in general look down upon this type of – mostly manual and tough – work and are unwilling to do it themselves. In the case of international truck drivers carrying out road transport in the EU, this would mean the construction of more secured and equipped truck parks and/or accessible and affordable hotels.