



'This is not a posted worker' – short-term cross-border mobility of logistics workers and spatio-temporal dimensions of exploitation in the EU: evidence from the case law of the Court of Justice

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Abstract

Since the 2018 revision of the Posting of Workers Directive, the debate on posting has once again been heated. The spark comes particularly from disputes concerning cross-border mobility of highly mobile workers employed in transnational logistics services (Dobersberger, FNV, Rapidsped, and to a different extent Gruber and Samidani and AFMB). In this set of case law, the Court of Justice of the EU had to consider whether or not, and to what extent, the workers in question should be considered posted workers. Thus, the case law came to revolve around the spatial and territorial attributes, and the cross-border nature of the work performed. By resorting to the analytical tools provided by legal geography, and in particular to the concept of 'chronotopes of law' elaborated by Mariana Valverde, the aim of this piece is to reflect upon assumptions and implications of the aforementioned rulings with a view of discussing both structural and contingent elements that possibly favour exploitation of posted work in the transnational logistics industry.

Keywords: logistics work; labour mobility; posting of workers; chronotopes of law

1. Introduction

It is beyond question that the regulation of the specific type of short-term cross-border labour mobility represented by posted work constitutes a controversial issue in the context of the European Union (EU) internal market. According to EU law, posting of workers is about temporarily sending employees in Member States other than the one in which their employer is established, within the context of a cross-border provision of services. Due to the diversity of labour law regimes and the gaps in working conditions, especially wage levels, and given the logic of EU internal market law, which entails that a company 'should be able to do business abroad as if it were at home',¹ the possibility to temporarily send workers abroad to fulfil a contract for the provision of services, opens up for the resort to a set of operations and practices that are usually defined under the broad notion of 'social dumping'.² In order to limit the social dumping

¹G Davies, 'The Law on the Free Movement of Services: Powerful, but Not Always Persuasive' in A Arnulf and D Chalmers (eds), *The Oxford Handbook of European Union Law* (Oxford University Press 2015) 562–85.

²See M Bernaciak, 'Introduction: Social Dumping and the EU Integration Process' in M Bernaciak (ed), *Market Expansion and Social Dumping in Europe* (Routledge 2015) 1–23. With specific regard to posting, see M Houwerzijl and L Bernsten, 'Posting of Workers. From a Blurred Notion Associated with "Cheap Labour" to a Tool for "Fair Labour Mobility"?' in © The Author(s), 2022. Published by Cambridge University Press. This is an Open Access article, distributed under the terms of the Creative Commons Attribution licence (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted re-use, distribution and reproduction, provided the original article is properly cited.

effect on national labour markets,³ the EU is equipped since 1996 with a legal instrument – Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (hereinafter, Posting of Worker Directive) – that states that it is the labour law of the State to which the worker is posted that applies during the period of posting (albeit, in a limited range of issues).⁴ Ever since its adoption, the interpretation and application of the Posting of Workers Directive have been the subject of a heated debate, involving judicial actors, trade unions, national and supranational policy-makers as well as academics.⁵ Among the outcomes of this debate, a directive clarifying the enforcement elements of the EU regulation of posting⁶ (2014) and a directive amending the original 1996 directive⁷ (2018) have been adopted. In addition, the debate has also led to the creation of a specialised EU agency on the application and enforcement of labour standards in cross-border mobility (the European Labour Authority),⁸ and to the adoption of specialised legal instruments devoted to the sectoral application of EU rules to posting of workers (as for instance with the 2020 Mobility Package).⁹

However, the debate is regularly fuelled by the emergence of new practices that expose the exploitative nature and effects of posting of workers and the evolving case law of the Court of Justice of the EU (CJEU), which keeps adding new elements to the regulatory framework. Since 2019, this case law has mostly concerned cross-border short term mobility of a certain type of highly mobile workers, ie logistics workers – mainly truck drivers, as in *FNV*,¹⁰ *Rapidsped*,¹¹ *Gruber and Samidani*¹² and *AFMB*,¹³ but also onboard train workers such as in *Dobersberger*.¹⁴ From this case law, it emerges that the nature of logistics work – as ‘labour on the move’ – challenges the application of the Posting of Workers Directive due to its unsteady relationship with the national-based territoriality of law – the logic that is behind the application of the Posting of Workers Directive.¹⁵

Considering the above discussion, the aim of this article is to shed light on the tension between cross-border short-term mobility of logistics work and the application of the Posting of Workers

N Lillie and J Arnholtz (eds), *Posted Work in the European Union. The Political Economy of Free Movement* (Routledge 2020) 147–66.

³P Davies, ‘Posted Workers: Single Market or Protection of National Labour Law Systems?’ 34 (1997) *Common Market Law Review* 571.

⁴Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L18, 1.

⁵Recently, see M Rocca, ‘Stepping Stones over Troubled Waters. Recent Legal Evolutions and the Reform of the Posting of Workers Directive’ in N Lillie and J Arnholtz (eds), *Posted Work in the European Union. The Political Economy of Free Movement* (Routledge 2020) 167–84.

⁶Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System, OJ L159 11.

⁷Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, OJ L173, 16.

⁸Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344, OJ L186, 21.

⁹Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012, OJ L249, 49.

¹⁰Case C-815/18 *Federatie Nederlandse Vakbeweging v Van den Bosch Transporten BV and Others* (2020) ECLI:EU:C:2020:976.

¹¹Case C-429/19 *OL and Others v Rapidsped Fuvarozási és Szállítványozási Zrt.* (2021) ECLI:EU:C:2021:548.

¹²Joined Cases C-152/20 and C-218/20 *DG and EH v SC Gruber Logistics SRL and Sindicatul Lucrătorilor din Transporturi v SC Samidani Trans SRL* (2021) ECLI:EU:C:2021:600.

¹³Case C-610/18 *AFMB e.a. Ltd v Raad van bestuur van de Sociale verzekeringsbank* (2020) ECLI:EU:C:2020:565.

¹⁴Case C-16/18 *Michael Dobersberger v Magistrat der Stadt Wien* (2019) ECLI:EU:C:2019:1110.

¹⁵As I have discussed elsewhere, see A Iossa, ‘Posting Highly Mobile Workers: Between Labour Law Territoriality and Supply Chains of Logistics Work—A Critical Reading of Dobersberger’ 51 (2022) *Industrial Law Journal* 138–65.

Directive in the case law of the CJEU. In light of the CJEU's argument in that set of cases – which focuses on the nature of logistics work in relation with the territory in which such a work is performed – and of the spatio-temporal nature of logistics work (Section 2),¹⁶ the article undertakes the endeavour to read the case law of the CJEU using the analytical tools provided by legal geography,¹⁷ and in particular to the concept of 'chronotopes of law' elaborated by Mariana Valverde (Section 3).¹⁸ The article argues that this concept enables us to understand the simultaneous workings of space and time in governing posted work and especially cross-border short-term mobility of logistics workers. This will eventually display the structural and contingent conditions that provide for the exploitation of logistics workers in the EU. The article then engages with the mentioned case law of the CJEU in order to highlight the spatio-temporal challenges that emerge in the regulation of logistics work as posted work (Section 4). A final Section (5) concludes.

2. Cross-border logistics work in the case law of the CJEU: spatio-temporal challenges

Between 2019 and 2021 several cases concerning cross-border mobility of logistics workers have reached the CJEU. More specifically, the CJEU was called to rule on the application of the Posting of Workers Directive to workers serving food and drinks onboard of international trains (*Dobersberger*) and on cross-border truck drivers (*FNV*), as well as on the rules on minimum wage for cross-border truck drivers according to the Posting of Workers Directive (*Rapidsped*) and according to the Rome I Regulation (*Gruber and Samidani*). A further case – *AFMB* – can be included in this list. Even though it did not directly involve the application of the Posting of Workers Directive, *AFMB* concerned logistics workers (again, truck drivers) formally employed by an employment agency located in Cyprus and hired out to several companies based in the Netherlands. What these cases have in common are the challenges they raise to the application of EU law in the context of cross-border mobility of highly mobile workers due to the interplay between EU internal market law and the spatio-temporal dimensions of logistics work.

Both in its original application to military operations and in its subsequent application to corporate management strategies, logistics is identified as the science of organising circulation of goods, materials, and people as to reduce costs and increase profit.¹⁹ The evolution of business strategies and company organisational structure towards methods like 'lean production' and 'just-in-time' has increased the relevance of logistics operations – a process that is defined as a 'logistics revolution'.²⁰ In practical terms, this means that the faster a product moves, the more profit it generates – which means that the less time a product spends on the shelves of a warehouse, the more its value increases. The management principles of 'lean production' and 'just-in-time' call for certain strategies: on the one hand, companies need to outsource as much as possible in terms of services necessary in the production process, including labour, and to eliminate downtimes; on the other hand, the time between production and consumption needs to be reduced to the minimum. In this sense, logistics is concerned with how to make the ratio between space and time more efficient, ie how to extract profit from the equation between space and time. In a cross-border perspective, logistics services allow companies to make profit out of costs differentials between countries, including labour costs, by moving goods from the place of production to the place of consumption. At the same time, though, logistics services are also those elements of the production process subject to company practices like offshore relocation and outsourcing, which

¹⁶See D Cowen, *The Deadly Life of Logistics. Mapping Violence in Global Trade* (Minnesota University Press 2014).

¹⁷On the usefulness of using legal geographic analytical tools in studying EU law questions, see F De Witte, 'Here be Dragons: Legal geography and EU law' 1 (2022) *European Law Open* 113–25; M Persdotter and A Iossa, 'On Legal Geography as an Analytical Toolbox for EU Legal Studies' 1 (2022) *European Law Open* 126–30.

¹⁸M Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (Routledge 2015).

¹⁹Cowen (n 16); G Grappi, *Logistica* (Ediesse 2016).

²⁰E Bonacich and JB Wilson, *Getting the Goods. Ports, Labor, and the Logistics Revolution* (Cornell University Press 2008).

bring about relations and dynamics that can be classified as ‘social dumping’. From the perspective of labour, the spatio-temporal efficiency logic of logistics entails two main and intertwined consequences: first, workers have to be employed – and therefore paid – only for the time in which their labour is necessary;²¹ second, logistics services have to be outsourced, that is displaced from the core business of big companies to smaller companies, possibly established where labour costs are lower.²² According to this logic, logistics work needs to be flexible, outsourced, and possibly relocated offshore – all processes that combine spatial and temporal elements. As put by Brett Neilson, logistics ‘negotiates the heterogeneity of global space and time’.²³ In the context of the EU internal market, logistics is the key to navigate the variety of labour law regimes and employment conditions.

Coming back to the mentioned case law of the CJEU, the facts of the disputes from which those cases arose display these spatio-temporal dimensions characterising logistics work. In *Dobersberger*, a Hungary-based company was subcontracted by an Austria-based company that had been awarded a tender by the Austrian railway company to provide catering services onboard of international trains running along the Budapest–Munich route. The employees of the Hungary-based company – some of whom were even employed via Hungary-based temporary employment agencies – were employed under the Hungarian labour law regime, while performing their job tasks across borders on the international train. In *AFMB*, truck drivers living and operating in the Netherlands and neighbour countries under the direction of Netherland-based companies were formally employed – under the Cypriot labour law regime – by a Cyprus-based employment agency which had fleet management agreements with the Dutch companies for the provision and management of personnel. In *FNV*, a Netherland-based transport company had charter contracts for international transport operations with Germany- and Hungary-based companies – which happened to be sister companies with identical directors and shareholders. These latter companies then posted truck drivers employed under German and Hungarian labour law to the Netherlands to fulfil the contracts and operate under the direction of the Netherland-based company. In *Rapidsped* and *Gruber and Samidani*, truck drivers employed by Hungary- and Romanian-based companies mainly operated in France and Italy respectively. The disputes concerned the application of the minimum wage in cross-border situations according to the Posting of Workers Directive and the Rome I Regulation respectively.²⁴

By and large, all those cases concern flexible, outsourced, and relocated labour. The services those workers provided (mainly international transport services), were not provided in the country of formal employment. Furthermore, those services were provided to fulfil contracts that their employers had concluded with other companies, which were the ultimate beneficiaries of the work performed by the workers and often managed their work directly. In addition, the workers performed their work mainly across and in between legal and geographical borders. These spatio-temporal elements derive from the nature of the logistics services the workers provided in the prism of the regulation of cross-border posting of workers. To sum up, logistics work emerges as simultaneously spatially dislocated – across borders and legal regimes – as well as temporally contingent – as bound to the fulfilment of a service abroad only for a limited amount of time. The decisions of the CJEU in those rulings – especially those in which the Court refuses to recognise those workers as posted workers (*Dobersberger* and *FNV*) – seem to struggle to understand the spatio-temporal reconfiguration of labour (law) territoriality that highly mobile work – logistics work – brings about in the context of the EU internal market.²⁵ This reconfiguration is the element that produces the conditions for structural and contingent exploitation of logistics work.

²¹See J De Lara, *Inland Shift. Race Space, and Capital in Southern California* (The University of California Press 2018).

²²See J Peck, *Offshore: Exploring the Worlds of Global Outsourcing* (Oxford University Press 2017).

²³B Neilson, ‘Five Theses on Understanding Logistics as Power’ 13 (2012) *Distinktion: Scandinavian Journal of Social Theory* 323–40, 333.

²⁴Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) OJ L177, 6.

²⁵See also A Iossa and M Persdotter, ‘Cross-Border Social Dumping as a Game of Jurisdiction – Towards a Legal Geography of Labour Relations in the EU Internal Market’ 59 (2021) *Journal of Common Market Studies* 1086–102.

3. Cross-border logistics work as a ‘chronotope of law’?

In the EU regulatory framework on cross-border posting of workers, the territoriality of law is key.²⁶ In order to be recognised as posted worker, a worker needs to be formally employed within the labour law regime of one state and posted to the territory of another state, where their employer provides the service. This recognition would provide that the posted worker falls within the scope of application of the Directive; and therefore the state of destination’s labour law regime – in a limited range of issues and for the limited time of posting – would be applicable to the work performed. Space and time are thus the coordinates along which the legal construction of posted work occurs.

The characteristics of the logistics industry, though, alter those coordinates by re-shifting ‘the relationship between *making and moving*, or production and distribution’.²⁷ Logistics has the prerogatives of re-designing the space of production, by, as Cowen observes, ‘stretching the factory’ or, in other words, spatially dis-assembling the production chain and re-assembling it into global supply chains,²⁸ and of re-scaling its temporal dimension (as in ‘just-in-time’ management). In this process, the CJEU seems to lose its bearings.

Space and time are also the constitutive elements of the concept of ‘chronotopes of law’ elaborated by Mariana Valverde. Valverde borrows the concept from the work of philosopher and literary critic Mikhail Bakhtin and applies it to the legal realm and socio-legal scholarship. Valverde intends to use it to illustrate the simultaneous working of space and time (or better, spatiality and temporality) as mechanisms of legal governance. Bakhtin – Valverde explains – described language as dialogically constructed. With specific reference to how the meaning of a text is constructed in the context of literary genres, ‘Bakhtin devised a notion – the chronotope – for the precise purpose of analysing how the temporal and the spatial dimensions of life and governance affect each other’.²⁹ By translating the notion of the ‘chronotope’ in socio-legal contexts, Valverde contends that ‘like in literary genres, different legal processes are shaped and given meaning by particular spacetimes’.³⁰ In this sense, she develops the concept of the ‘chronotopes of law’ to identify and explain spacetime interactions in legal processes – that is, as not to separate the spatial and the temporal scales in socio-legal observations. While not claiming that ‘chronotopes actually exist’, Valverde affirms that ‘the workings of governance processes can be illuminated by viewing them as chronotopes’.³¹ As other social phenomena, also law works through spatial and temporal scales to understand reality. Spatial and temporal scales work together and simultaneously to create legal meaning.

In relation to the regulation of labour, the concept of the ‘chronotopes of law’ has been fruitfully applied to understand how English law – and in particular property law – reproduces gender roles in domestic work. Gordon-Bouvier explains how the ‘spatio-temporal ordering of the home’ – in relation to the public/private space dichotomy and the temporality of housework – informs the notion of ‘domesticity’, which distinguishes between the kind of work at home performed by women and that performed by men, by making the former invisible or at least less worthy of legal recognition.³² This then influences legal reasoning by courts in property rights claims. Given the simultaneous interaction of space and time in the regulation of

²⁶See Iossa (n 15) 153–4. See also G Mundlak, ‘De-territorializing Labor Law’ 3 (2009) *Law & Ethics of Human Rights* 189–222.

²⁷Cowen (n 16) 103 (italics in the original). See also R Sealey, ‘Logistics Workers and Global Logistics: The Heavy Lifters of Globalisation’ 4 (2010) *Work Organisation, Labour, & Globalisation* 25–38.

²⁸Cowen (n 16) 102.

²⁹Valverde (n 18) 9.

³⁰*Ibid.*, 11.

³¹*Ibid.*, 57.

³²E Gordon-Bouvier, ‘Crossing the Boundaries of the Home: A Chronotopical Analysis of the Legal Status of Women’s Domestic Work’ 15 (2019) *International Journal of Law in Context* 479–94, quote at 487.

migration,³³ the concept also seems to be particularly suitable to analyse regulatory dynamics of labour migration and the ensuing exposure to vulnerability and possibly exploitation.³⁴

Cross-border posting of workers in the EU appears then as a suited realm for using the concept of ‘chronotopes of law’ as an analytical lens to understand structural and contingent regulatory elements that create the conditions for exploitation.³⁵ Spatial elements (the place of recruitment and employment, the place of work, the cross-border movement) and temporal elements (the temporary nature of the service provided, the duration of posting) are at the core of the EU regulatory framework for cross-border posted work.³⁶ Yet the multiple spacetime possibilities that EU internal market law gives to companies as for the combination of the exercise of freedom of establishment and freedom to provide services, open up for structural and contingent leeway to circumvent (by re-scaling both spatially and temporally) the national-based territoriality of labour law.³⁷ Labour recruitment and cross-border posting become then the core elements of business that profits from the labour costs differentials across EU Member States.³⁸ The multiple possible configurations of cross-border posting in the international transport sector make this sector particularly exposed.³⁹

Overall, the posted worker is legally constructed and defined through the simultaneous workings of a spatial and a temporal scale. The posted worker is spatially embedded in the labour law regime of the country of employment (home state), while, at the same time, being temporarily embedded in the territory of the country of destination (host state) – without however gaining full access to the labour market of this latter country, as famously stated by the CJEU in *Rush Portuguesa*.⁴⁰ Yet, during the time of posting and in a limited range of matters, the labour law regime of the country of destination applies to the posted worker. The consequence is a re-shifting of borders between states and between labour law regimes that limits the full enjoyment of labour and employment rights by posted workers as well as re-configuring (by constraining) solidarity.⁴¹ In this regard, the notion of the ‘chronotopes of law’ helps us understand the simultaneous workings of spatial and temporal scales in governing posted work in the EU. While usually analysed in relation to spatial dynamics – as for instance the dis-embedding of work and its regulation from national labour law regimes – posted work is simultaneously temporally re-scaled too, especially when recruited via temporary work agencies. The notion elaborated by Valverde equips us then with a conceptual tool able to hold up together and understand the simultaneous working of spatial and temporal scales that derive from the application of the EU cross-border posting of workers regulatory regime. This element is particularly relevant in relation with short-term cross-border mobility of logistics work. The logistics industry organises work along space and time. The EU framework of cross-border posting of workers provides for a regulatory tool to both

³³See M Persdotter, ‘Free to Move Along. On the Urbanisation of Cross-border Mobility Controls: A Case of Roma “EU Migrants” in Malmö, Sweden’ (PhD thesis, Malmö University 2019).

³⁴A Iossa and N Selberg, ‘Socio-Legal Aspects of Labour Market Segmentation in the Agri-Food Sector in Sweden: Spatio-Temporal Dimensions’ (2022) *European Journal of Migration and Law* 241–264.

³⁵See R Andrijasevic and T Novitz, ‘Supply Chains and Unfree Labor: Regulatory Failure in the Case of Samsung Electronics in Slovakia’ 6 (2020) *Journal of Human Trafficking* 195–208.

³⁶For a accurate overview see A van Hoek, ‘Re-embedding the Transnational Employment Relationship: A tale about the Limitations of (EU) Law?’ 55 (2018) *Common Market Law Review* 449–88; M Houwerzijl and A van Hoek, ‘Where do EU Mobile Workers Belong. According to Rome I and the (E)PWD’ in H Verschuere (ed), *Residence, Employment and Social Rights of Mobile Persons: On How EU Law Defines Where They Belong* (Intersentia 2016) 215–53.

³⁷Iossa and Persdotter (n 25).

³⁸A Lo Faro, ‘Posting from a Letterbox: Transnational Mobility of Workers, Social Dumping and the Economic Fundamental Freedoms’ Veil’ in A-C Hartzén, Aa Iossa, and E Karageorgiou (eds), *Law, Solidarity and the Limits of Social Europe. Constitutional Tensions for EU Integration* (Edward Elgar Publishing 2022) 22–42, 39–40; J Cremers, ‘Economic Freedoms and Labour Standards in the European Union’ 22 (2016) *Transfer* 149–62.

³⁹F van Overbeeke, ‘Posting Drivers in the EU Road Transport Sector’ 20 (2020) *ERA Forum* 9–20.

⁴⁰Case C-113/89 *Rush Portuguesa*, ECLI:EU:C:1990:142. See Iossa and Persdotter (n 25) 1093.

⁴¹I Wagner, *Workers without Borders. Posted Work and Precarity in the EU* (ILR Press 2018) 107–8.

spatially and temporally re-scale the operations of logistics workers in order to become more profitable.

4. The rulings of the CJEU

Regardless of the questions referred and of the decisions, the rulings of the CJEU in those cases have a common trait: they focus on the spatio-temporal elements of logistics work in relation to the territory in which such work is performed. In *Dobersberger*, the CJEU rules that the onboard catering workers employed by a Hungary-based company in the context of a cross-border subcontract for fulfilling a tender between two Austria-based companies, cannot be considered posted workers under the scope of the Posting of Workers Directive – and therefore they are not entitled to the working conditions set by Austrian labour law according to the EU rules on cross-border posting. This decision is based on the observation that the work performed by those workers lacked ‘sufficient connection’ with the territory of Austria to be considered ‘posted work’. The lack of territorial connection – according to the CJEU – derived from the fact that most of the working tasks (loading and unloading food and drinks from the trains) was performed in Budapest as well as because the working shifts started and ended in the Hungarian capital.⁴²

In *AFMB*, the ruling stated that the ‘real’ employers of the truck drivers were the Netherlands-based transport companies, which performed most of the employer’s prerogatives – monitoring, issuing orders, payment via the employment agency, etc – rather than the Cyprus-based employment agency, which figured as the formal employer on the employment contracts. The decision is therefore based on the observation of which subject actually performs the tasks usually deriving from the employer’s authority.⁴³ It must be said that the request for preliminary ruling did not concern the application of the Posting of Workers Directive, but rather the interpretation of the notion of ‘employer’ according to two EU regulations on social security coordination.⁴⁴ Yet it must be observed that the cross-border elements of the formal employment contracts have been overruled by an examination of the nature of the authority of the employer, which spatio-temporal actual elements contradicted the formal ones expressed by the employment contracts.

Like in *Dobersberger*, the ruling of the CJEU in *FNV* also concerned the application of the Posting of Workers Directive to highly mobile logistics workers – truck drivers in this case. And like in *Dobersberger* (to which the CJEU refers⁴⁵), the decision of the Court not to recognise the workers as posted workers (and therefore to exclude them from the scope of application of the Dutch collective agreement for road haulage transport workers) is based on the observation of the spatio-temporal nature of the work performed in relation to the territory in which it is performed. After stating that in principle the Directive applies to ‘any transnational provision of services involving the posting of workers, irrespective of the economic sector [. . .] including, therefore, in the road transport sector’,⁴⁶ the CJEU suggests that what matters in specific situations is the ‘the degree of connection between the activities carried out by such a worker, in the framework of the provision of the transport service to which that worker has been assigned, and the territory of each Member State’.⁴⁷ In international transport operations, ie cross-border operations in which loading and unloading occur in different states, this connection lacks – according to the Court – because only a limited amount of the activities are carried out in the state of destination.

⁴²*Dobersberger*, para 50.

⁴³*AFMB*, para 75. For a comment on the case see Lo Faro (n 38).

⁴⁴Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, OJ L149/2, and Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L166/1.

⁴⁵*FNV* (n 10), para 45.

⁴⁶*Ibid.*, para 33.

⁴⁷*Ibid.*, para 47.

Even the fact that drivers who have been hired out to a company established in the host state receive instructions related to the tasks and start and end the shift in that state, would not be enough to create the territorial connection needed to recognise those drivers as posted workers given that the working activities lack that connection.⁴⁸

Finally, *Rapidsped* and *Gruber and Samidani* highlight the key question of minimum wages in cross-border posting of workers in the context of international transport operations. In *Rapidsped*, the CJEU states that daily allowances corresponded to posted workers have to be considered as part of the minimum wage according to the definition of the Posting of Workers Directive if those allowances are not paid to cover expenses afforded by the workers but rather as compensation for the posting.⁴⁹ A crucial element for this decision in the case was the fact that the allowances increased in connection with the duration of the posting. In *Gruber and Samidani*, which, as said, does not concern the application of the Posting of Workers Directive,⁵⁰ the CJEU acknowledges that rules on minimum wage are among those rules that cannot be waived by the free choice of the applicable law made by the parts in a contract according to Article 3 of the Rome I Regulation. In this sense, minimum wage rules fall within the scope of paragraphs 2, 3, and 4 of Article 8 of the Rome I Regulation and have to be applied to employment contracts where ‘work is carried out in at least one State other than that in which the chosen law applies’.⁵¹

Those decisions of the CJEU leave us with an understanding that the work performed by posted workers needs to be spatially and temporally embedded into the territory of the state in which the service is provided in order for the Posting of Workers Directive to be applicable.⁵² This raises questions concerning the spatio-temporal legal construction of posted work and its adequacy in regulating cross-border logistics work. In the case law illustrated above, the spatiality of posting (ie the connection between the nature of work and the territory of the state in which the service is provided) and the temporality of posting (ie the duration of posting in relation to the minimum wage, but also the exercise of managerial prerogatives on the posted workers) are the coordinates that the CJEU follows in order to assess whether the Posting of Workers Directive is applicable. Yet the Court seems to privilege the spatial analysis of posting in order to assess the possible application of the PWD – the ‘sufficient connection with the territory of the Member State’. Temporal elements are relegated to the duration of posting, where instead they constitute a fundamental component of posting practices in particular in relation with the spatiality of work. The connection with the territory falls through exactly because of the temporal re-scaling of posted work. In rulings like *Dobersberger* and *FNV*, temporal elements such as work shifts allow the CJEU to exclude the workers from the PWD regime.

While being suitable to regulate spatially bounded work such as for instance construction, the PWD regulatory framework struggles in covering cross-border logistics work due to the simultaneous temporal and spatial re-scaling of work logistics entails. The spacetime of logistics services reconfigures the spacetime of logistics work to the extent that the CJEU does not recognise the status of posted workers to logistics workers operating across borders. The paradox lies in the fact that, while the services those workers provide are actually cross-border (like in *Dobersberger* and *FNV*) because provided and received by companies established in different countries, the work they perform is not – according to the CJEU – even though those workers physically cross borders.

⁴⁸*Ibid.*, para 50.

⁴⁹*Rapidsped*, para 50.

⁵⁰Given the circumstances of the cases, the CJEU even recalls this by observing that the cases might well be posting of workers cases but the fact that the reference for preliminary ruling does not demand the interpretation of the directive, this would be left out of the decision, see *Gruber and Samidani*, para 21.

⁵¹*Gruber and Samidani*, para 22. On the application of private international law to cross-border employment, see A van Hoek, ‘Private International Law: An Appropriate Means to Regulate Transnational Employment in the European Union?’ 7 (2014) *Erasmus Law Review* 157–9.

⁵²See also A van Hoek, ‘Re-embedding the Transnational Employment Relationship: A Tale about the Limitations of (EU) Law?’ 55 (2018) *Common Market Law Review* 449–87.

In *AFMB*, the Court reaches a different conclusion – even though the premises were different than in the other cases. By rejecting the claim of the Cyprus-based employment agencies, the CJEU, de facto, denies the truck drivers the status of posted workers, with the consequence of re-embedding the employment relationship in the country (and labour law regime) where the service is provided. *Rapidsped and Gruber* and *Samidani* highlight the question at stake: the spatial and temporal dimensions of cross-border logistics work in the light of EU internal market law expose logistics workers to exploitation, in terms of underpayment and, generally, lower labour rights protection than the one formally applicable under the Directive on Posting of Workers. The conceptual approach put forward by the notion of the ‘chronotopes of law’ is useful in this regard because of its reminder that socio-legal phenomenon – work in our case – are simultaneously the objects of temporal and spatial regulatory scales.

5. Concluding remarks

This piece has provided a legal geographic reading of the recent case law of the CJEU on short-term cross-border (posted) logistics work. In doing so, it has adopted the analytical lens provided by the concept of ‘chronotopes of law’ to understand how posted work in the EU is legally defined by the simultaneous workings of spatial and temporal scales and how such a legal construction is challenged by the spatio-temporal elements that characterises the nature of logistics work. The rulings of the CJEU taken into consideration here, show that the interplay between these two spacetimes – the one of EU cross-border posting of worker and the one of cross-border logistics work – produces the structural and contingent conditions for exploitation of logistics workers. While focusing on recent cases concerning posting in logistics, this article developed a specific conceptual approach to the analysis of labour migration in the EU and of the impact of the EU regulatory framework on living and working conditions of migrant workers.⁵³ An understanding of the simultaneous workings of temporal and spatial scales in regulating labour migration can also be of interest for analysing cases concerning the resort to letterbox companies, as well as to investigate conflict of rules in situations of cross-border employment in certain professions such as cabin crew and pilots⁵⁴ and, again, truck drivers,⁵⁵ in which temporary work agencies play a central role.

Despite the centrality of logistics in contemporary capitalist production,⁵⁶ logistics workers are at the margin of labour markets – precariously working in conditions of subcontracting and outsourcing, and they are often migrants.⁵⁷ The Covid-19 pandemic has only, on the one hand, highlighted the importance of logistics workers, and, on the other hand, sharpened their vulnerability.

Given the degree of socio-economic integration in the EU, the governance of short-term cross-border labour mobility of logistics work constitutes a major aspect to be investigated in order to discuss questions of transnational social justice.⁵⁸ To this end, geographical concepts and analytical tools seems particularly suitable to analyse the role of law in producing – and reproducing – the conditions for exploitation of migrant labour, especially those at the margins of labour market

⁵³See lately J Cremers, ‘Invisible But Not Unlimited – Migrant Workers and Their Working and Living Conditions’ 28 (2022) *Transfer: European Review of Labour and Research* 285–9.

⁵⁴See for instance the Joined Cases C-168/16 and C-169/16 *Nogueira and Others v. Crewlink and Ryanair* (2017) ECLI:EU:C:2017:688.

⁵⁵As for the case law of the CJEU, see Case C-29/10 *Heiko Koelzsch v État du Grand-Duché de Luxembourg* (2011) ECLI:EU:C:2011:151.

⁵⁶See S Mezzadra and B Neilson, *The Politics of Operations. Excavating Contemporary Capitalism* (Duke University Press 2019).

⁵⁷See the contribution in J Alimahomed-Wilson and I Ness (eds) *Choke Points: Logistics Workers Disrupting the Global Supply Chain* (Pluto Press 2018).

⁵⁸N Fraser, *Scale of Justice. Reimagining Political Space in a Globalizing World* (Polity Press 2008).

regulation.⁵⁹ With the raise of ‘supply chain capitalism’,⁶⁰ the formation and structure of labour markets does not follow a national-territorial logic.⁶¹ Legal geographic investigations on temporal and spatial re-scaling of regulation of work in the global economy will eventually contribute to investigating working and employment conditions of labour migrants along supply chains – and the role of law in producing them – as a way to understand cross-border mechanisms of labour exploitation.⁶²

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⁵⁹MB McKenna and M Grasten, ‘Legal Borderlands in the Global Economy of Care’ 13 (2022) *Transnational Legal Theory* 131–56.

⁶⁰A Tsing, ‘Supply Chain and the Human Conditions’ 21 (2009) *Rethinking Marxism* 148–76.

⁶¹R Gumbrell-McCormick and R Hyman, ‘In Search of Global Labour Markets’ 62 (2020) *Journal of Industrial Relations* 167–84.

⁶²T Novitz, ‘Supply Chains and Temporary Migrant Labour: The Relevance of Trade and Sustainability Frameworks’ in D Ashiagbor (ed), *Re-imagining Labour Law for Development: Informal Work in the Global North and South* (Hart Publishing 2019) 191–211.

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