



Presentation and discussion on scenarios of transport operations under the *lex specialis*

Expert group on posting of drivers in road transport

10 November 2021

Relevant legal provisions in Directive 2020/1057 – bilateral operations

- Art 1(3) first and second subparagraphs:

“Notwithstanding Article 2(1) of Directive 96/71/EC, a driver shall not be considered to be posted for the purpose of Directive 96/71/EC when performing bilateral transport operations in respect of goods.

*For the purpose of this Directive, **a bilateral transport operation in respect of goods means the movement of goods, based on a transport contract, from the Member State of establishment, as defined in Article 2(8) of Regulation (EC) No 1071/2009, to another Member State or to a third country, or from another Member State or a third country to the Member State of establishment.***”

- Recital (10):

*“When a driver engages in bilateral transport operations from the Member State where the undertaking is established (the ‘Member State of establishment’) to the territory of another Member State or a third country or back to the Member State of establishment, the nature of the service is closely linked with the Member State of establishment. **It is possible that a driver undertakes several bilateral transport operations during one journey.** It would be a disproportionate restriction to the freedom to provide cross-border road transport services if the posting rules, and therefore the terms and conditions of employment guaranteed in the host Member State, would apply to such bilateral operations.”*

A. delegowanie jest między granicami




- A. jak wchodzi wyjątek, to od niego zależą operacje delegowania
- B. jeśli jest 3ci crosstrade, to wtedy częściowo ta trasa podlega pod PM
- C. jeśli jest coś wymieszane to od podjeci lądunku podlega po PM do rozładunku

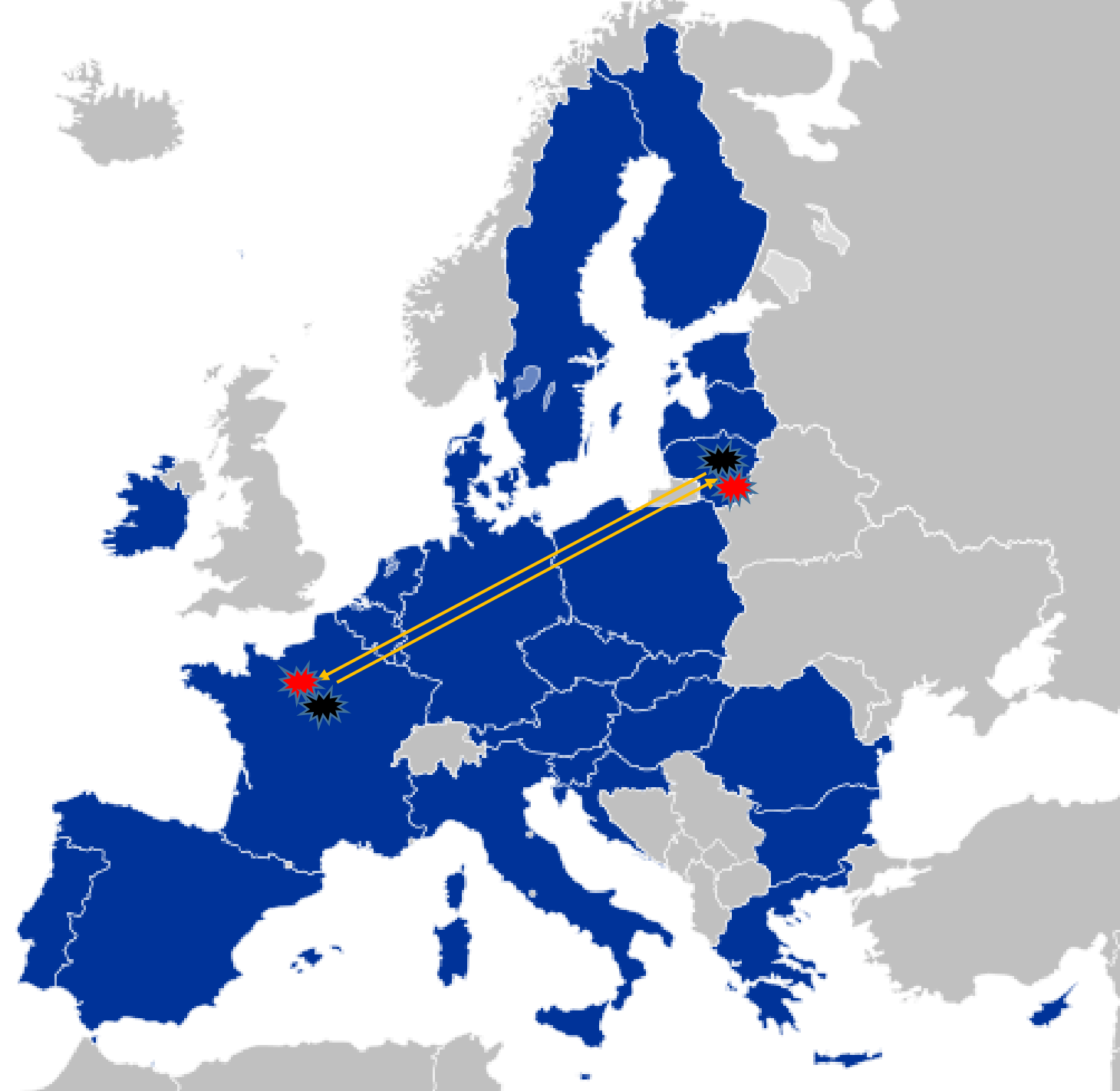
Scenario 1: bilateral

1) A driver whose company is based in LT loads a full truck with ceramics in Vilnius (LT) and unloads them in Paris (FR).

2) On the way back, the driver loads a full truck with wine in Paris (FR) and delivers it to Vilnius (LT)

Explanation: The driver performed two bilateral transport operations, and hence s/he was not subject to posting rules.

-  = Start and loading
-  = Bilateral transport
-  = Unloading end of transport



Scenario 2: bilateral

A driver based in LT loads a full truck with ceramics in Vilnius (LT). The driver drives to Berlin (DE) where he unloads 1/3 of the goods, then he travels to Antwerp (BE) and unloads 1/3 of goods. Then, the driver continues to drive to Lyon (FR) where he unloads the remaining 1/3 of the goods.

Explanation: The driver undertook several bilateral transport operations, all the goods are from LT. Hence, the driver was not subject to posting rules.

- ★ = Start and loading
- = Bilateral transport
- ★ = Partial unloading
- ★ = Unloading end of transport







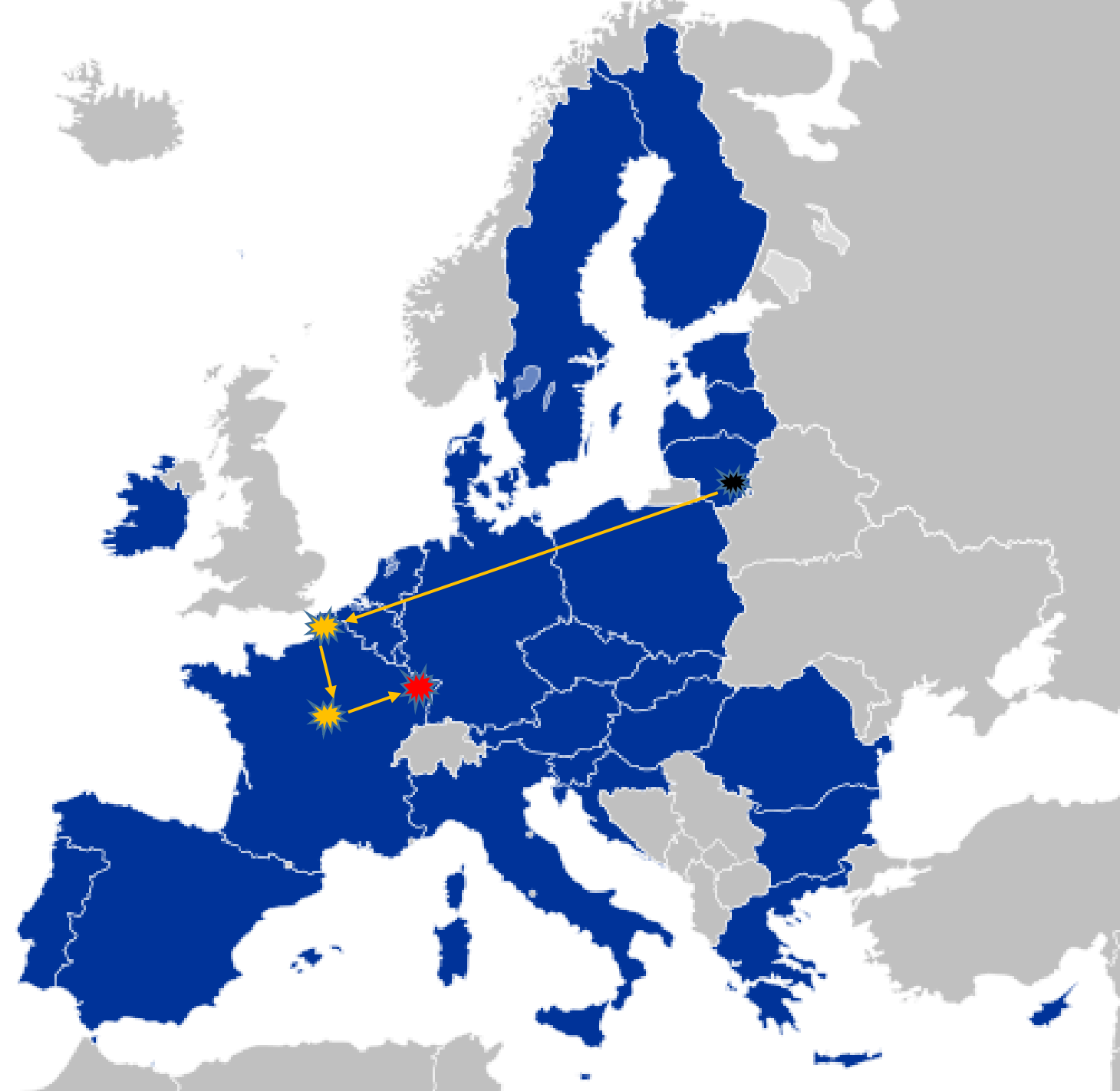
Scenario 3: bilateral

A driver based in LT loads a full truck with ceramics in Vilnius (LT).

The driver then drives to Calais (FR) and unloads 1/3 of the goods, then he drives to Paris (FR) and unloads 1/3 of the goods. He travels to Strasbourg (FR) and unloads the rest of the goods.

Explanation: The driver undertook several bilateral transport operations, all the goods are from LT. Hence the driver was not subject to posting rules.

-  = Start and loading
-  = Bilateral transport
-  = Partial unloading
-  = Unloading end of transport



Relevant legal provisions in Directive 2020/1057 - additional activities (exempt+non-exempt)

- Art 1 (3) third subparagraph:

*“Member States shall apply the exemption for bilateral transport operations in respect of goods set out in the first and second subparagraphs of this paragraph also where, in addition to performing a bilateral transport operation, the driver performs **one activity of loading and/or unloading** in the Member States or third countries that the driver crosses, provided that the driver does not load goods and unload them in the same Member State.”*

- Art 1 (3) fourth subparagraph:

*“Where a bilateral transport operation starting from the Member State of establishment during which no additional activity was performed is followed by a bilateral transport operation to the Member State of establishment, the exemption for additional activities set out in the third subparagraph shall apply to a **maximum of two additional activities of loading and/or unloading**, under the conditions set out in the third subparagraph.”*

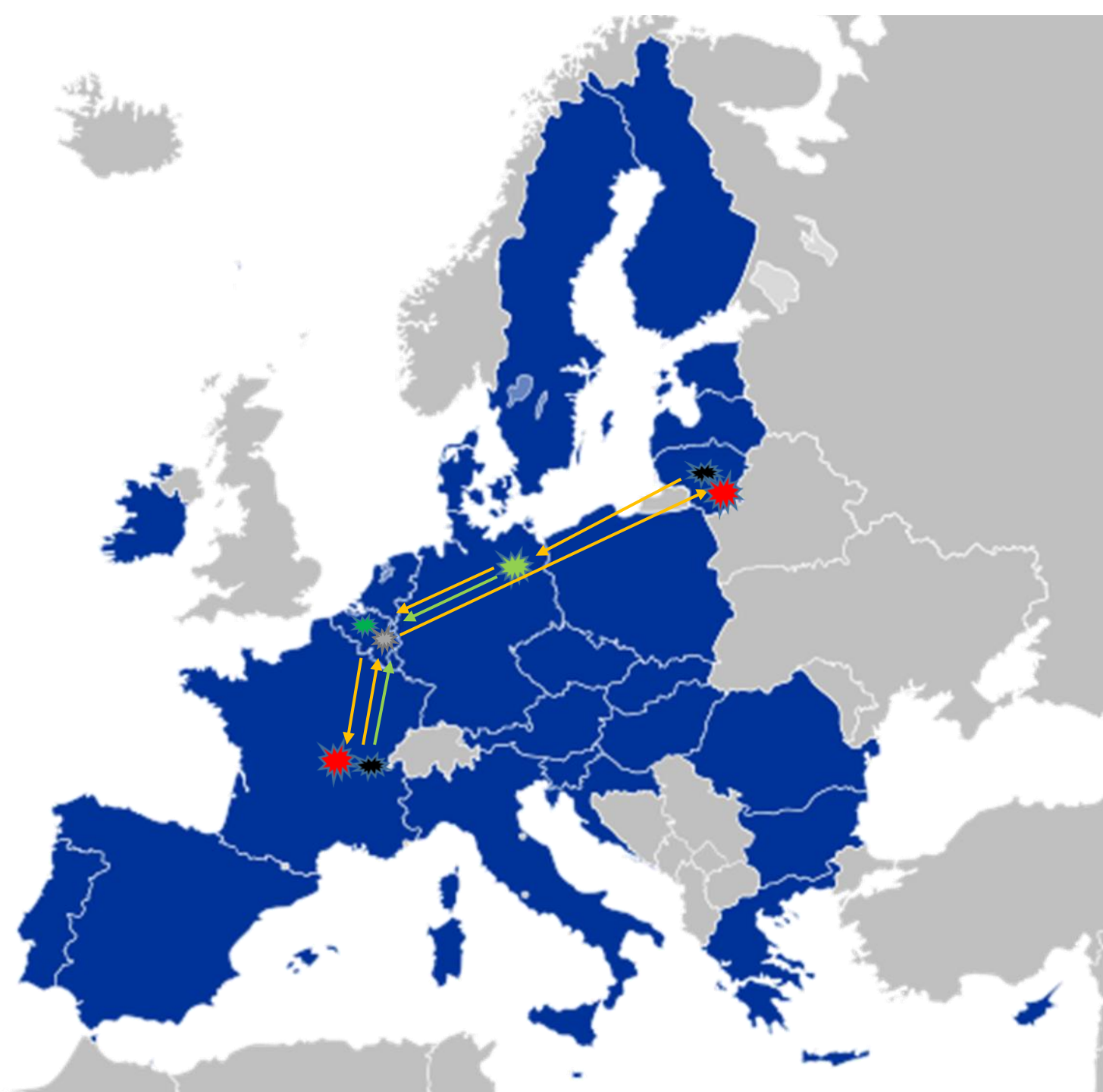
Scenario 4 – 1+1

1) A driver based in LT loads ½ a truck with ceramics in Vilnius (LT) to be delivered to Lyon (FR). The driver stops in Berlin (DE) and loads the remaining ½ a truck with sausages. The driver then goes to Brussels (BE) and unloads those sausages. The driver continues the journey and unloads the ceramics in Lyon.

2) For the return bilateral operation, the driver loads a full truck of cheese in Lyon (FR). The driver stops in Brussels to unload ½ of the cheese. The driver then continues to Vilnius (LT) and unloads the remaining ½ of the cheese.

Explanation: The driver performed two bilateral transport operations with two additional activities exempt from posting rules, since each additional activity may consist in one loading and one unloading operation. The first bilateral operation was performed from Vilnius (LT) to Lyon (FR), with one exempt additional activity (i.e. the loading of sausages in Berlin, and the unloading of the same sausages in Brussels). The second (return) bilateral operation was performed from Lyon (FR) to Vilnius (LT), also with one exempt additional activity (i.e. the unloading of ½ of the cheese in Brussels). Since one exempt additional activity of loading and unloading was performed during the first bilateral transport operation, only one additional activity of loading and/or unloading is allowed for the return bilateral operation. Hereby, the driver was not subject to posting rules.

- ✳ = Start and loading
- ✳ = One additional loading
- ✳ = One additional unloading
- ✳ = Second additional unloading
- ✳ = Unloading end of transport
- = Bilateral operation
- = Additional activity of loading/unloading









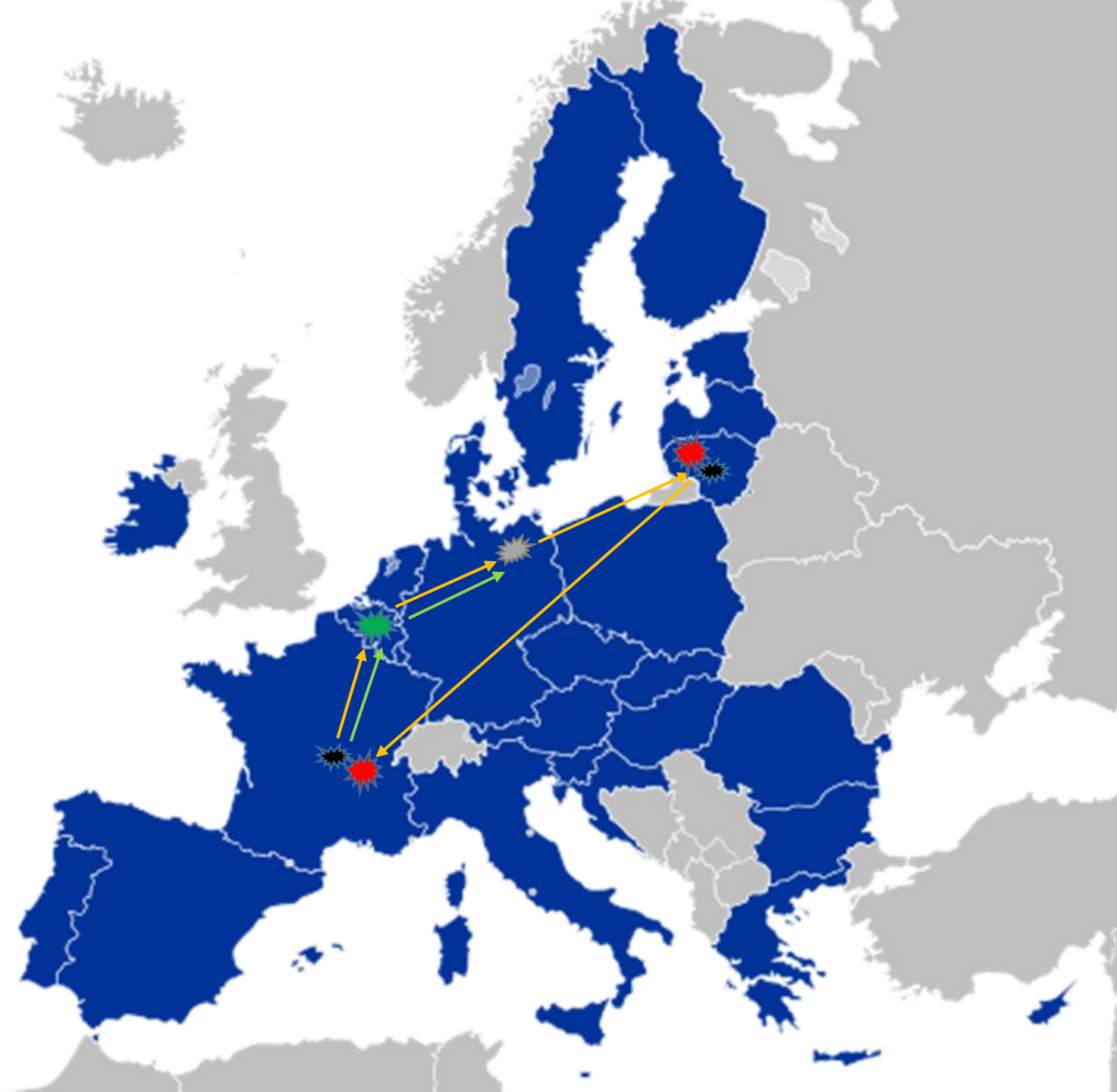
Scenario 5 – 0+2

1) A driver based in LT loads a full truck with ceramics in Vilnius (LT) and delivers them in Lyon (FR).

2) The driver loads a full truck of cheese in Lyon (FR). He stops in Brussels (BE) and unloads $\frac{1}{4}$ of cheese. The driver drives to Berlin (DE) and unloads $\frac{1}{4}$ of cheese. The driver then continues to Vilnius (LT) to unload the remaining $\frac{1}{2}$ of the cheese.

Explanation: The driver performed two bilateral transport operations with two additional activities exempt from posting rules. The first bilateral operation was performed from Vilnius (LT) to Lyon (FR), with no additional activity. The second (return) bilateral operation was performed from Lyon (FR) to Vilnius (LT), with two exempt additional activities (i.e. the unloading of $\frac{1}{4}$ of the cheese in Brussels and $\frac{1}{4}$ of cheese in Berlin). Since no exempt additional activity was performed during the first bilateral transport operation, two additional activities of unloading were allowed for the return bilateral operation. Hereby, the driver was not subject to posting rules.

-  = Start and loading
-  = Unloading end of transport
-  = One additional unloading
-  = Second additional unloading
-  = Bilateral operation
-  = Additional activity of loading/unloading











Scenario 6 – 0+2

1) A driver based in LT loads a full truck with ceramics in Vilnius (LT) and delivers them in Barcelona (ES).

2) The driver loads $\frac{1}{2}$ a truck with biscuits in Barcelona (ES). S/he stops in Lyon (FR) and loads $\frac{1}{2}$ a truck with cheese. The driver drives to Brussels (BE) and unloads the cheese. The driver then continues to Berlin (DE) where s/he loads $\frac{1}{2}$ a truck with beer and unloads it in Warsaw (PL). The driver continues to Vilnius where he unloads biscuits.

Explanation: The driver performed two bilateral transport operations with two additional activities exempt from posting rules. The first bilateral operation was performed from Vilnius (LT) to Barcelona (ES), with no additional activity. The second (return) bilateral operation was performed from Barcelona (ES) to Vilnius (LT), with two exempt additional activities: (1) the loading of $\frac{1}{2}$ of the cheese in Lyon and unloading it in Brussels and (2) the loading of $\frac{1}{2}$ of the beer in Berlin and unloading it in Warsaw). Since no exempt additional activity was performed during the first bilateral transport operation, two additional activities of loading and unloading were allowed for the return bilateral operation. Hereby, the driver was not subject to posting rules.

-  = Start and loading
-  = Unloading end of transport
-  = One additional loading
-  = One additional unloading
-  = Second additional loading
-  = Second additional unloading
-  = Bilateral operation
-  = Additional activity of loading/unloading



Relevant legal provisions in Directive 2020/1057 – Start and end of posting situation

- Article 1(8):

*“A **posting** shall, for the purpose of Article 3(1a) of Directive 96/71/EC, be considered to be **ending when the driver leaves the host Member State** in the performance of the international carriage of goods or passengers”.*

- Article 1(11) point (b)(iii):

*“the tachograph record and in particular the country symbols of the **Member States in which the driver was present when carrying out international road transport operations or cabotage operations**”*

Scenario 7: exempt + non-exempt

A driver based in LT loads 1/2 a truck with apples in Vilnius (LT), to be delivered to Lyon (FR). While driving to Lyon, the driver stops in Warsaw (PL) to load 1/2 a truck with milk.

The driver then drives to Berlin (DE), where s/he unloads the milk. The driver then loads 1/2 a truck with sausages and unloads them in Brussels (BE).

Afterwards, the driver continues to Lyon (FR), where he unloads the apples.

Explanation: The driver performed one bilateral transport operation with two additional exempt and non-exempt activities. The first additional activity of loading milk in Warsaw and unloading it in Berlin is exempt from posting rules, while the second additional activity of unloading milk in Brussels falls within the posting rules, because the driver has already used the possibility for one exempt additional activity of loading and unloading. The operation falling within the **posting rules takes precedence** over the one which is exempt (the bilateral operation). The **posting rules** start applying **when** the driver enters DE territory and they end when the driver ends the non-exempt operation by unloading sausages in Brussels.

- ★ = Start and loading
- ★ = One additional loading
- ★ = One additional unloading
- ★ = Second additional loading
- ★ = Second additional unloading
- ★ = Unloading end of transport
- = Bilateral operation
- = Additional activity of loading/unloading
- = Posting situation



Scenario 8: bilateral + non-exempt

1) A driver based in PT loads a full truck with wine in Lisbon (PT) and delivers them in Budapest (HU).

2) In Budapest (HU), the driver loads a 1/2 truck with apples to be delivered to Barcelona (ES).

While driving to Barcelona, the driver stops in Zagreb (HR) to load 1/2 of the truck with milk.

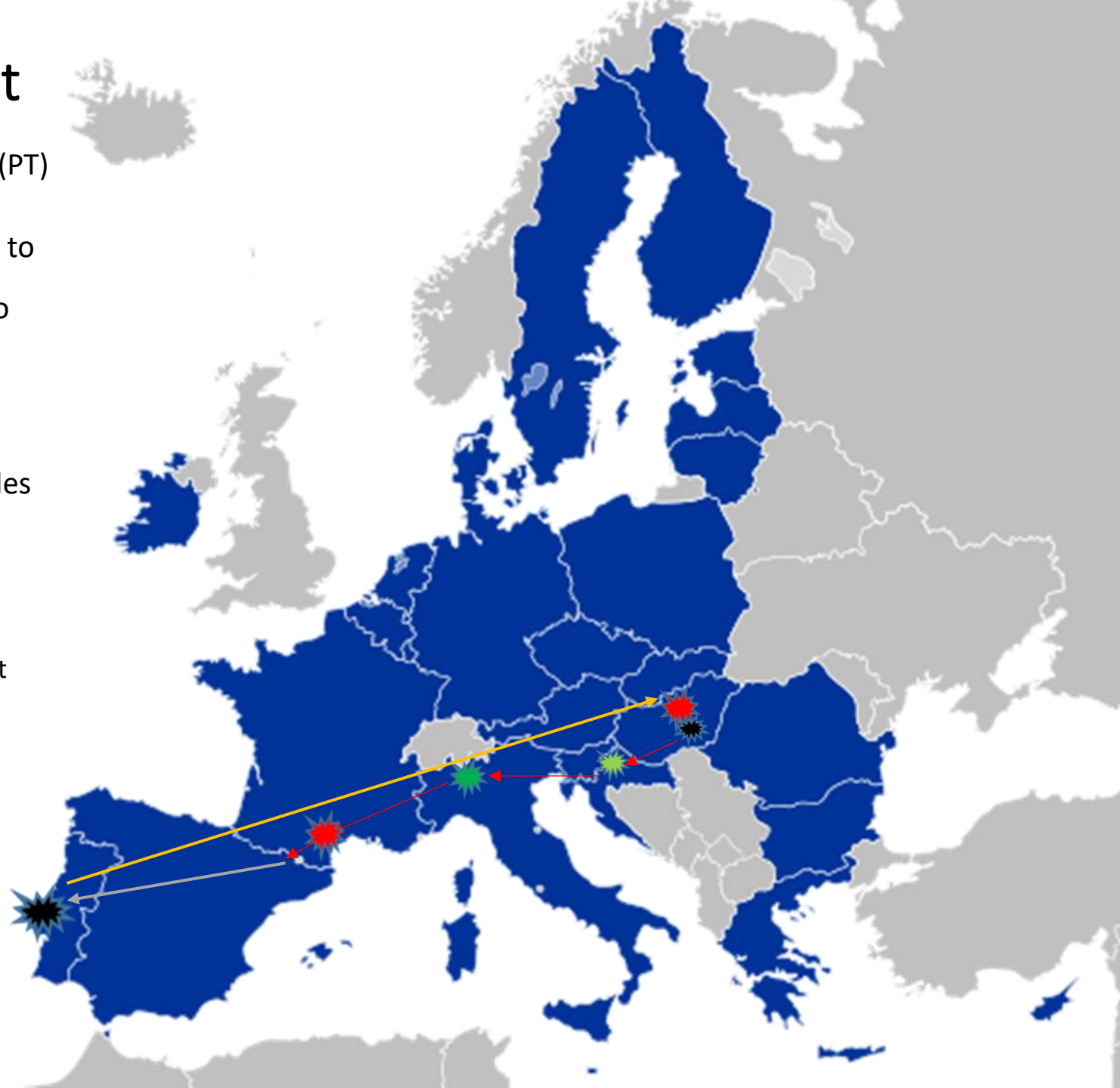
The driver then drives to Milan (IT), where s/he unloads the milk.

The driver drives to Barcelona (ES), where s/he unloads apples and then drives back to Lisbon with an empty truck.

Explanation: The driver performed one bilateral transport operation exempt from posting rules: from Lisbon (PT) to Budapest (HU). The posting rules **start** applying when the driver loads apples in Budapest (HU) and **stop** applying when s/he leaves ES territory.

- ★ = Loading start of transport
- ★ = Unloading end of transport
- ★ = One additional loading
- ★ = One additional unloading

- ★ = Unloading end of transport
- = Bilateral operation
- = Additional activity of loading/unloading
- = Posting situation





Relevant legal provisions – unladen journey / transit

Directive 2020/1057:

- Recital (11)

*“It should be clarified that international carriage in transit across the territory of a Member State does not constitute a posting situation. **Such operations are characterised by the fact that the driver passes the Member State without loading or unloading freight and without picking up or setting down passengers and there is therefore no significant link between the driver’s activities and the Member State transited.** The qualification of the driver’s presence in a Member State as transit is, therefore, not affected by stops, for example, for hygiene reasons.”*

- Art 1(5):

“Notwithstanding Article 2(1) of Directive 96/71/EC, a driver shall not be considered to be posted for the purpose of Directive 96/71/EC when the driver transits through the territory of a Member State without loading or unloading freight and without picking up or setting down passengers.”

Regulation (EC) No 1072/2009:

- Article 2(2)(d)

‘international carriage’ means “an unladen journey in conjunction with the carriage referred to in points (a), (b) and (c)”.

Regulation (EC) No 1071/2009:

- Article 8(2), second paragraph:

the time limit for carrying a cabotage operation in a Member State other than the one where the international carriage ended starts from the “unladen entry into the territory of that Member State”

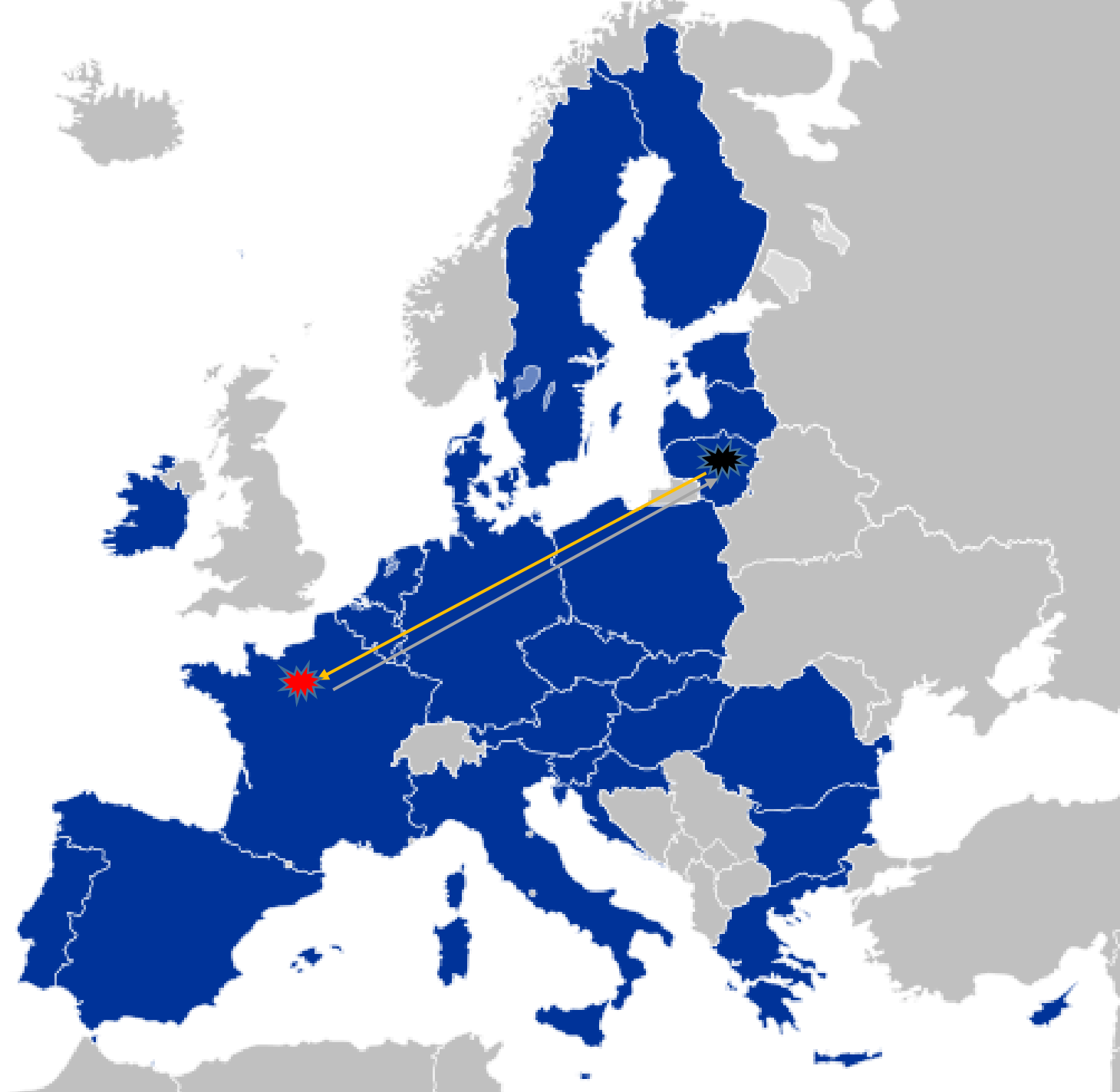
Scenario 9: empty trip:

1) A driver whose company is based in LT loads a full truck with ceramics in Vilnius (LT) and unloads them in Paris (FR).

2) On the way back, the driver drives empty.

Explanation: The driver performed one bilateral transport operation followed by an empty journey. Hence, the driver was not subject to posting rules.

- ★ = Start and loading
- = Bilateral transport
- ★ = Unloading end of transport
- = Transit



Scenario 10: empty trip

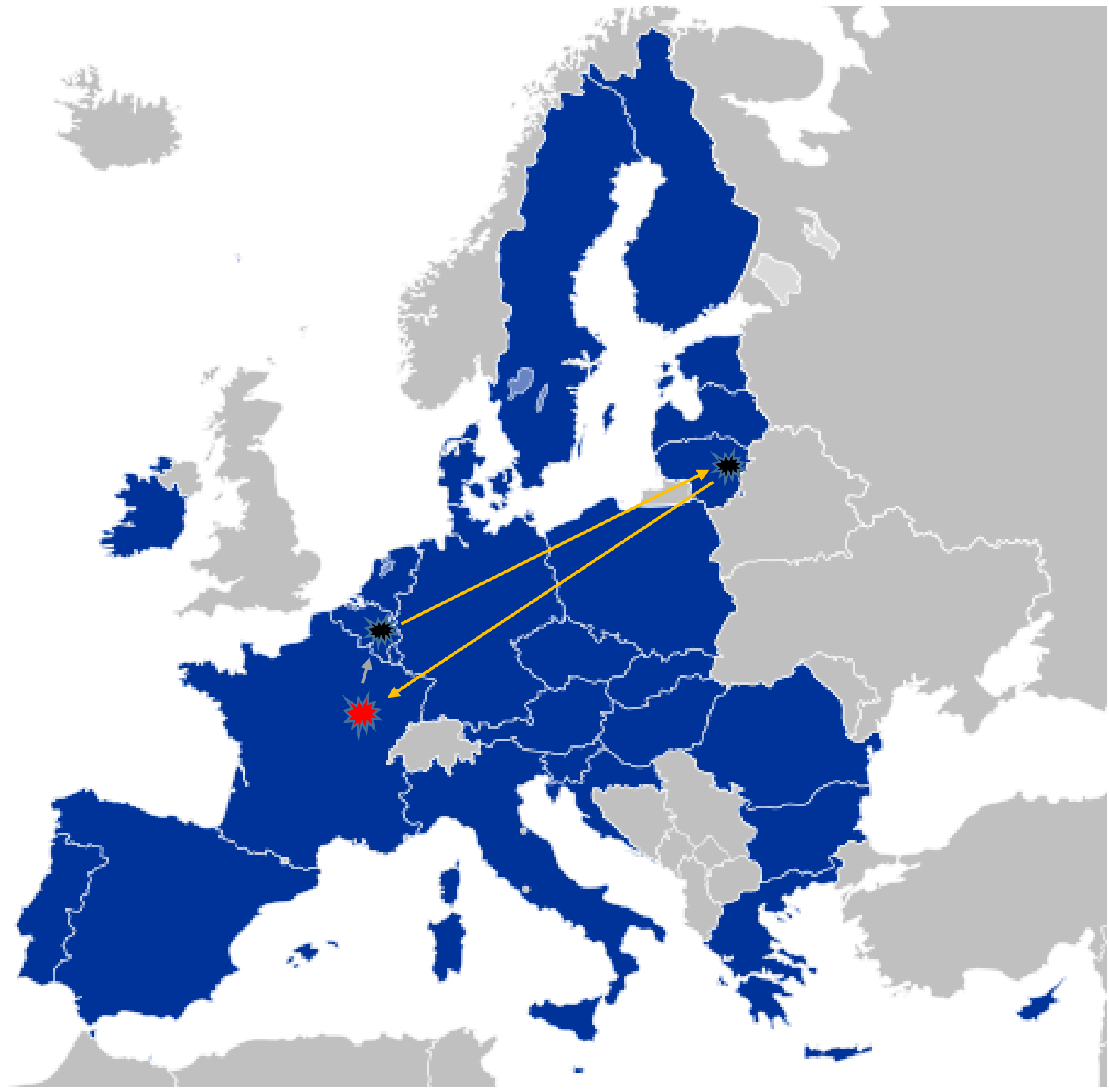
1) A driver based in LT loads goods in Vilnius and unloads them in Paris

2) The driver drives with an empty truck from FR to BE.

3) The driver loads goods in Antwerp (BE) and unloads them in Vilnius (LT)

Explanation: The driver performed two bilateral transport operations (outbound and inbound), with an empty journey. Such empty journey should be considered as completing the bilateral transport activity and therefore posting rules do not apply.

- ✳ = Start and loading
- = Bilateral transport
- ✳ = Unloading end of transport
- = Unladen/transit



Scenario 11: empty trip

1) A driver based in LT loads goods in Vilnius and unloads them in Lyon (FR).

2) The driver drives from Lyon to Brussels (BE) with an empty truck. In Brussels, the driver loads 1/2 a truck with wine. The driver then drives to Hamburg and loads 1/2 truck with beer. The driver then drives to Vilnius (LT) and unloads all the goods.

Explanation: The driver performed one outbound bilateral transport operation (from Lt to FR) and two inbound bilateral operations, with an empty journey between outbound and inbound bilateral operations. Such empty journey should be considered as completing the bilateral transport activity and therefore posting rules do not apply.

- ★ = Start, loading
- = Bilateral transport
- ★ = Unloading end of transport
- = Unladen/transit
- ★ = Partial loading



Scenario 12: empty trip






1) A driver based in DE loads a full truck with sausages in Berlin (DE) and drives to Paris (FR) where he unloads all sausages.

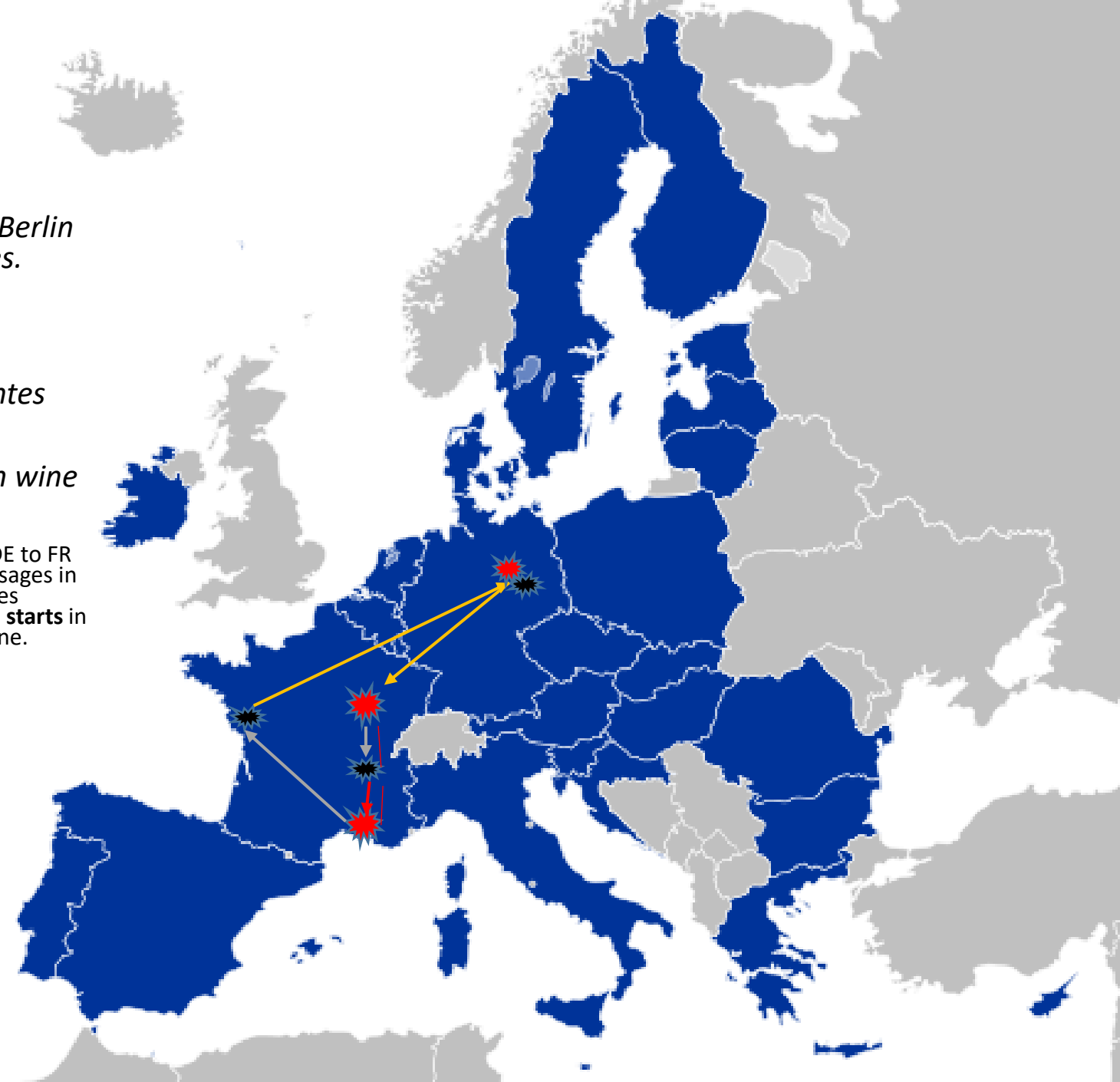
Then he drives empty to Lyon (FR).

In Lyon (FR), the driver loads apples and unloads them in Marseille (FR). He drives empty from Marseille (FR) to Nantes (FR).

2) On the way back to DE, the driver loads a full truck with wine in Nantes (FR) and unloads it in Berlin (DE).

Explanation: The driver performed two bilateral transport operations: from DE to FR and from FR to DE. The first bilateral operation ended with the unload of sausages in Paris (FR). The empty journey between Paris and Lyon falls within posting rules because it is connected to the cabotage situation. Then the **posting** situation **starts** in Lyon (FR) with the load of apples and **ends** in Nantes (FR) with the load of wine.

-  = Start and loading
-  = Bilateral transport
-  = Unloading end of transport
-  = Unladen/transit
-  = Posting situation



Relevant legal provisions in Directive 2020/1057 - additional activities (exempt) meaning of “is followed” and ‘in addition’

- Art 1 (3) fourth subparagraph:

*“Where a bilateral transport operation starting from the Member State of establishment during which no additional activity was performed **is followed** by a bilateral transport operation to the Member State of establishment, the exemption for additional activities set out in the third subparagraph shall apply to a maximum of two additional activities of loading and/or unloading, under the conditions set out in the third subparagraph.”*

- Art 1 (3) third subparagraph:

*“Member States shall apply the exemption for bilateral transport operations in respect of goods set out in the first and second subparagraphs of this paragraph also where, **in addition to** performing a bilateral transport operation, the driver performs one activity of loading and/or unloading in the Member States or third countries that the driver crosses, provided that the driver does not load goods and unload them in the same Member State.”*

Scenario 13: 'is followed' :

1) A driver based in LT loads a full truck of ceramics in Vilnius (LT) and drives to Berlin where he unloads all of the goods (DE). The driver then performs an unladen journey (transit) from Berlin (DE) to Lyon (FR).

2) The driver loads a 1/2 of the truck with cheese in Lyon (FR) and drives to Milan (IT). In Milan, the driver loads 1/2 of pasta. Then, the driver drives to Vienna (AT) where he unloads the pasta and loads 1/2 of the truck with Schnaps. The driver then drives to Bratislava (SK) where he unloads the Schnaps. The driver drives to Kaunas where he unloads the cheese.

Explanation: The driver performed two bilateral transport operations: one outbound bilateral operation from LT to DE and one inbound bilateral operation from FR to LT. The first bilateral operation was followed by an empty journey. In this case, the unladen journey between two bilateral operations does not affect the possibility to carry out two additional exempt activities of loading and/or unloading on the way from FR to LT, since no exempt additional activity was performed during the first bilateral transport operation. Hence, the driver was not subject to posting rules.

- ★ = Start and loading
- ★ = Unloading end of transport
- ★ = One additional loading
- ★ = One additional unloading
- ★ = Second additional loading
- ★ = Second additional unloading
- = Bilateral operation
- = Unladen/transit
- = Additional activity of loading/unloading










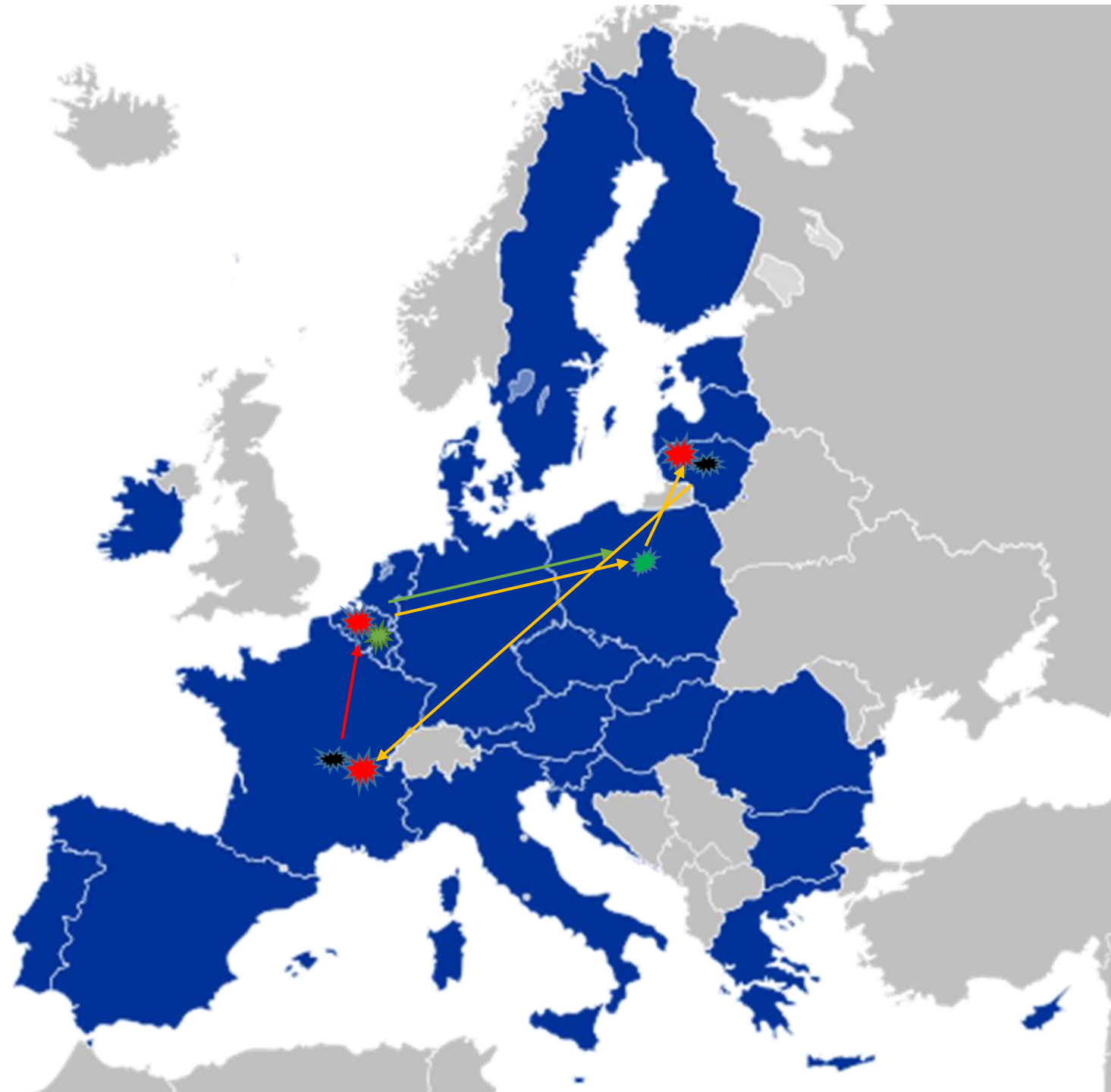
Scenario 14: 'is followed'

1) A driver based in LT loads a full truck with ceramics in Vilnius (LT) and delivers them in Lyon (FR).

2) In Lyon (FR), the driver loads a full truck with cheese and unloads it in Brussels (BE). In Brussels, the driver loads a full truck with beer. The driver continues to Warsaw (PL) where he unloads ½ of the beer. The driver then continues to Vilnius (LT) to unload the remaining beer.

Explanation: The driver performed two bilateral transport operations. The first bilateral operation was performed from Vilnius (LT) to Lyon (FR), with no additional activity. Hereby, the driver was not subject to posting rules. The second bilateral operation was performed from Brussels (BE) to Vilnius (LT). The cross trade between Lyon and Brussels is subject to posting rules. Since no other services should be provided in between the two bilateral operations, only one additional activity is allowed during inbound journey, even though no exempt additional activity was performed during the first bilateral transport operation.

-  = Start and loading
-  = Unloading end of transport
-  = One additional loading
-  = One additional unloading
-  = Bilateral operation
-  = Additional activity of loading/unloading
-  = Posting situation





Thank you for the discussion!