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Ex-post evaluation of the social legislation in road transport: Regulation (EC) No 561/2006 on driving times, breaks and rest periods of drivers, Directive 2002/15/EC on the working time of road transport mobile workers and Directive 2006/22/EC on enforcement requirements.

FINAL REPORT

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 561/2006 as regards on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs

and

Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector

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1 INTRODUCTION

The EU social rules in road transport have been in place for quite a long time almost unchanged: the provisions on driving times and rest periods since 1969 and the working time rules since 2002. But the social environment of the road transport sector has changed significantly over last decade. These changes result from the effects of: the EU enlargements in 2004 and 2010, an economic downturn in 2007-2008 and the Eurozone crisis that started in 2009. This has led to increased competition in the sector, making the transport services even more time- and price-sensitive. On the one hand, this is regarded as a positive development as it made the sector more efficient. On the other hand, this may lead to distortions of competition between road transport undertakings at the expense of the employment and working conditions of road transport workers. Fierce competition on the internal market has also given rise to the adoption of unilaterally national measures, which may be justified on the social grounds, but may jeopardize the smooth functioning of the internal market. All these challenges should be addressed firstly by verifying the adequacy of the current EU legislative framework: whether it still meets the needs of the sector and serves its initial objectives of improving working conditions, road safety and ensuring fair competition.

1.1 Purpose of the evaluation

This ex-post evaluation concerns the EU social legislation in road transport, which consists of three interconnected and complementary legislative acts, which we are also referred to as the Social rules:

- Regulation (EC) No 561/2006¹ on the harmonisation of certain social legislation relating to road transport, called also **Driving Time Regulation**;
- Directive 2002/15/EC² on the organisation of the working time of persons performing mobile road transport activities, called also the Road Transport **Working Time Directive**. It therefore takes precedence over the general Working Time Directive³
- Directive 2006/22/EC⁴ on minimum conditions for the implementation of social legislation relating to road transport activities, called also the **Enforcement Directive**.

The provisions of these legislative acts apply to road transport operators and to professional drivers (employed and self-employed) engaged in carriage of goods by vehicles above 3.5 tons and those engaged in carriage of passenger by vehicles for more than 9 persons, including a driver.

The purpose of this evaluation is to analyse the actual performance of this legislative framework in terms of achieving its key objectives and assessing it by taking account of

¹ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulation (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, (OJ L 102, 11.4.2006, p. 1)

² Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35)

³ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9)

⁴ Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC, (OJ L 102, 11.4.2006, p. 35)

developments on the market and in the sector as well as relations with the internal market rules in road transport.

In particular, this evaluation aims to verify which provisions work well for the sector and which ones do not in terms of their substance and enforceability and why, whether there are any inconsistencies, legal loopholes, red tape or other internal or external factors, which hamper the achievement of the policy objectives.

The results of this evaluation should serve as a foundation for considerations on how to improve the current legislative framework and its implementation. They may be used as an input into an impact assessment of possible policy developments.

1.2 Scope of the evaluation

The evaluation assesses the implementation of the social legislation in the years 2007-2014 and its main effects taking account of the developments in the EU road transport market resulting from various overarching trends, such as the economic crisis, continued enlargement of the EU, internationalisation of transport operations.

The period for assessment starts when the actual implementation of the legal provisions of the above mentioned three legislative acts commenced in 2007. It continues through the period marked by the emergence of new business models and employment arrangements, complex and long sub-contracting chains and changes in the working conditions of drivers. It ends with the year 2014 for which the latest national statistics on the implementation of the legislation are available.

Specifically, the implementation of the following social rules has been evaluated:

Regulation (EC) No 561/2006 - repealed Regulation (EEC) 3820/85 and applied in full since 11 April 2007, with the exception of a limited set of provisions related to tachographs, which entered into force on 1 May 2006. It sets limits on drivers' permissible daily, weekly and fortnightly driving time, as well as minimum requirements for breaks from driving, and minimum daily and weekly rest periods.

Directive 2002/15/EC - supplements the provisions of Regulation (EC) No 561/2006 by setting a limit on mobile workers⁵ working time, i.e. time spent working whether or not this involves driving. It is a *lex specialis* to the general working time Directive 2003/88/EC and hence, as stipulated in Article 14 of the latter directive, takes precedence over the general working time Directive for the mobile workers included in its scope⁶. The deadline for transposition of Directive 2002/15/EC was 23 March 2005, but actually only in 2007, following the infringement proceedings; the majority of Member States had their transposition measures in place. As of 23 March 2009 the Directive had become also applicable to self-employed drivers, who until then were temporarily excluded from its scope.

Directive 2006/22/EC - repealed Directive 88/599 and specified that the relevant national transposing measures shall be effective as of 1 April 2007. It imposes minimum requirements for Member States to check compliance with the provisions of Regulation (EC) No 561/2006 and Regulation (EU) No 165/2014.

⁵ According to Article 3(2)(d) of the Directive 2002/15/EC, 'mobile worker' is defined as "any worker forming part of the travelling staff, including trainees and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road for hire or reward or on its own account".

⁶ Certain mobile workers are expressly excluded from the scope of the Directive 2002/15/EC and Regulation EC 561/2006. The main exceptions are: mobile workers in vehicles weighing less than 3.5 tonnes, vehicles suited to carrying fewer than 10 passengers, and in regular passenger transport services whose route is less than 50 km.

The road social legislation works together with tachograph **Regulation (EU) No 165/2014**, which sets the requirements on the installation and the use of tachographs in road transport. The provisions of Regulation (EU) No 165/2014 (which repealed the Regulation (EEC) 3821/85) are out of scope of this study. However, the tachograph rules are important element in this evaluation as they provide basic tools for monitoring and control of compliance with the provisions of driving time Regulation (EC) No 561/2006.

2 BACKGROUND TO THE ROAD TRANSPORT SOCIAL LEGISLATION

2.1 Description of the initiative and objectives

The three legislative acts constituting the EU social legislation framework in road transport share the same policy objectives: (1) improving working conditions of drivers, (2) enhancing road safety by averting driver's fatigue and (3) ensuring undistorted competition among companies. As a global cross-cutting objective, these legal acts aim to support the completion of common market for road transport services ensuring at the same time the adequate working conditions of drivers. In particular, Directive 2002/15/EC identifies the need to protect workers against adverse effects on their health and safety caused by working excessively long hours, having inadequate rest or disruptive working pattern.

As specific objectives, the social legislation aimed at preventing infringements and ensuring that the existing social provisions are interpreted, applied and enforced in a uniform manner in all Member States. In particular, Regulation (EC) No 561/2006 identifies in its recitals that effective and uniform enforcement of the provisions is crucial if the objectives are to be achieved and the application of the rules is not to be brought into disrepute. By setting minimum common standards for checking compliance with the Regulation's provisions (through Directive 2006/22/EC) and introducing co-liability and exteriority of infringements principles it also aimed to create a common enforcement space and promote compliance culture.

As operational objectives, the legislative acts aimed at laying down common, simplified, clear and enforceable rules, determining the responsibilities of Member States authorities, transport operators and of drivers with regard to compliance with the provisions and introducing measures to facilitate more effective and uniform checks and sanctions throughout the European Union as well as to promote cooperation between the Member States in this regard.

The intervention logic diagram in annex 1 describes the links and causal relationships between the problems and/or needs, broader policy goals, the general, specific and operational objectives that the specific policy measures were designed to address, and the specific actions for addressing those problems and/or needs.

In order to achieve these objectives, the following provisions have been introduced to the existing general legislative framework:

- an obligation of a transport undertaking to **organise the driver's work** in such a way that he/she is able to comply with the Regulation's provisions;
- **co-liability principle** throughout the transport chain for infringements committed against the Regulation;
- specific provisions for **night work** of road transport mobile workers;
- requirement on Member States to ensure that mobile workers are **informed** of the **national working time restrictions** and that **records are kept** of working time;
- **uniform enforcement requirements**:

- requirement on Member States to establish national risk rating system that can be used to enhance the effectiveness of enforcement by targeting the controls;
- requirement to carry out a minimum number of controls at roadside and at the premises of the undertakings in order to verify the driver's and operator's compliance with driving times provisions and tachograph rules;
- obligation to establish a common range of infringements divided into categories according to their gravity;
- obligation to carry out concerted cross-border control activities and joint training programmes for enforcers;
- **administrative cooperation requirements:**
 - a principle of extraterritoriality of controls and sanctions;
 - establishment of national bodies for intracommunity liaison to exchange information and data between Member States.

2.2 Baseline

The Regulation (EC) No 561/2006 repealed a 20-year old legislation (Regulation (EEC) No 3820/85) and was accompanied by the introduction, for the first time, of the EU minimum requirements for enforcement set out in Directive 2006/22/EC. In the same decade the first sector-specific working time Directive 2002/15/EC was adopted. It was based on the Commission's initiative following the failure of the social dialogue launched in the nineties to reach the social partners agreement in this field.

The adoption of these EU social rules was neither preceded by a comprehensive ex-post evaluation nor accompanied by a full-fledged impact assessment. Therefore, the quantified information on the baseline situation prior to adoption of the legislation is not available. The need for introduction of new or revised provisions had been emerging on a case-by-case basis in response to complaints, petitions, infringements ascertained, implementation difficulties raised by national authorities or other stakeholder organisations⁷, as well as requests for clarifications by the Commission or interpretations by the European Court of Justice. The European Court of Justice issued⁸ 27 rulings concerning the interpretations of the provisions of the previous legal acts, namely: Regulation 543/69 and then Regulation (EEC) 3820/85 as well as a related tachograph Regulation (EEC) No 3821/85.

The problems and needs that this legislation was originally intended to address are outlined below:

- **Unclear or inconsistent provisions on organisation of driving time, rest periods, and other work of drivers.**

The flexibility allowed by the preceding legislative act had often been at the expense of consistent interpretation and effective enforcement. For instance, the provisions on compensation for reduced daily or weekly rest made the calculation of permissible schedules very complex. The absence of specific definitions had led to individual interpretations, which

⁷ Source: Commission, DG MOVE databases: NIF (infringements), Themis/EU Pilot (pre-infringement communication with Member States) and CHAP (complaints), ARES (correspondence and reports from the meetings of Committee on Road Transport).

⁸ The overview of relevant Court rulings is available under the following link: https://ec.europa.eu/transport/sites/transport/files/modes/road/social_provisions/driving_time/doc/european-court-judgements.pdf

in turn resulted in variations in enforcement and four cases⁹ being referred to the European Court of Justice. For example, there was a lack of clarity as to which activities counted as a period of work, rest, or availability time for mobile workers. The daily and weekly driving times, accumulated and continuous driving periods were not defined in clear terms what each period comprises, which lead to divergent application. Finally, there was a need to update the rules in order to reflect changes that had occurred in the transport sector since the prior legislation was drafted in the 1980s. Since then, certain activities¹⁰ traditionally undertaken by government had been privatised, and therefore the number of activities subject to commercial competition had increased. The fact that the rules did not reflect those 'privatisation' developments lead to increasing number of commercial transport activities being excluded from the driving and resting time rules. In addition, some of the vehicles that had previously been granted exemptions from the rules, because they undertook short distance journeys or operated within a restricted area (such as specialised breakdown vehicles) were actually being used in other ways, and hence there was a need to update the list of exemptions permitted to reflect the market conditions.

- **Lacking or ineffective and inconsistent enforcement of existing social rules.**

Compliance with the social rules in road transport was considered to be low, as shown in the biennial implementation reports¹¹, mainly due to laxity by national authorities in enforcing the rules. The 2001 Transport White Paper highlighted that controls and penalties needed to be tightened up by making controls and penalties more consistent across Member States, and by also increasing the number of controls. The European Parliament had also often called¹² for better enforcement of the social rules, particularly during debates on the biennial Commission report on the implementation of Regulation (EEC) No 3820/85. Within the road transport sector the social partners had long called for better enforcement¹³ of the rules to promote a level playing field within the single market and ensure that the driver's working conditions provided for in the legislation are respected.

There were also problems with enforcement caused by "loopholes" in the rules themselves. One such loophole was the fact that drivers who switched between vehicles that were within and outside the scope of the Regulation were not required to provide records of all of their driving activities. This created a risk that drivers could be driving in-scope vehicles without having taken sufficient rest and not be detected. There was therefore a need to require drivers of in-scope vehicles to provide records of all their driving activities, including the driving of out-of-scope vehicles. A second apparent "loophole" in the rules was that offences detected in one Member State were not being sanctioned simply because they were committed on the territory of another Member State. There was therefore a need for Member States to enable their enforcement authorities to sanction infringements that had been committed on the territory of another Member State and not previously sanctioned.

⁹ idem

¹⁰ Concerns transport operations in previously state owned sectors: gas and electricity sectors, telegraph and telephone services, carriage of postal articles, radio and television broadcasting and detection of radio or television transmitters or receivers.

¹¹ Reports from the Commission: COM(95)713, COM(97)698, COM(2000)84, COM(2001)767, COM(2004)360, SEC(2006)791, COM(2007)622

¹² Studies: Social and working conditions in the transport sector of the European Union, 2009; Overview and evaluation of enforcement in the EU social legislation for professional road transport sector, 2012; Social and working conditions of road transport hauliers, 2013; Employment Conditions in road haulage sector, 2015;

¹³ Joint position of ETF and IRU on clarification and enforcement of Regulation (EC) No 561.2006, 2007; Campaign: "Respect for professional drivers", ETF 2012; Working Time Directive Campaign, ETF 2008-2010; Sectoral Social Dialogue Committee Road Transport annual work programmes and minutes from the meetings

- **Unclear liabilities of drivers, operators, and others in the logistics chain.**

There was a lack of clarity about the extent to which drivers, operators, and others in the logistics chain could be held liable for infringements of the social rules. For example, Regulation (EEC) No 3820/85 stated that undertakings should organise drivers' work in such a way that drivers are able to comply with the driving time rules, but it was still unclear about the extent to which undertakings could be held liable for infringements committed by drivers acting contrary to the instructions of the undertaking. The responsibilities of others in the logistics chain, such as consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies, whose demands could have also incited drivers' non-compliance with the driving and resting time thresholds, were also not specified. Therefore, there was a need for clearer legal provisions on the responsibilities of different parties in the logistics chain and the extent to which these parties could be held liable for infringements. The need to address the issue of liability was also identified as a means to ensure a uniform and effective approach to enforcement.

- **Poor cooperation between Member States on uniform application of the rules.**

The 2001 Transport White Paper indicated the need to encourage the systematic exchange of information between Member States, to co-ordinate inspection activities and to promote the training of inspecting officers. A number of various authorities within a Member State were typically responsible for enforcing European road transport social legislation, rather than having a single coordination point. This led to a lack of coordination of checks within the Member State as well as difficulties for the enforcement authorities of neighbouring Member States to identify correctly the competent authority with which they should cooperate. Another problem with achieving a uniform application of the rules was that Member States had devised their own individual interpretations of the EU provisions and a regular exchange of information and good practices between Member States was not existent which further hampered the consistency and efficacy of enforcement throughout the EU.

The identified issues could not be quantified due to non-existence of data or only very limited documentation on state of play and effects of the preceding legislation in terms of working conditions, road safety and level playing field. Information on the previous situation was also sought from stakeholders and literature to inform this study, but results could not be obtained.

Hence, only a qualitative description of the baseline is possible. It was expected that the lack of EU action to revise the road social legislation would lead to the following difficulties:

(a) enforcement would be less effective due to:

- the continued use of flexibilities (particularly the provisions on compensation for reduced daily or weekly rest), which would have been difficult to compute using digital tachographs;
- continued different interpretations of the provisions, owing to the absence of specific definitions;
- inconsistent controls and penalties;
- poor cooperation between Member States.

(b) scope would be inappropriate due to:

- trends toward privatisation of activities in the transport sector;
- changes in the usage patterns of vehicles that have been previously exempted or derogated;
- loopholes in the provisions that would be increasingly exploited.

(c) responsibilities would be unclear due to:

- unclear provisions on liability;
- inconsistent enforcement practices concerning liability.

Incoherent enforcement systems would have contributed to distortions in the market. As a result, this would create a risk that compliant undertakings would be in a disadvantaged competitive position in comparison with others who would increasingly infringe the rules in order to gain competitive advantage. In addition, the non-compliant operators would exploit the situation in countries with weak enforcement and/or low level of penalties where the infringements are less prone to be detected and/or sanctioned. Eventually, this would lead to increases in working hours and applying disruptive working patterns, have adverse effects on drivers' working conditions, contribute to their fatigue and consequently impact road safety.

The intervention logic in annex 1 describes the links and casual relationships between the problems and/or needs, broader policy goals, the general, specific and operational objectives that the specific policy measures were designed to address as well as the expected outputs and results of the actions undertaken to achieve the objectives.

3 EVALUATION QUESTIONS

The evaluation addressed five following evaluation criteria: relevance, effectiveness, efficiency, coherence and coordination, EU added value. The 12 main evaluation questions cover all the evaluation criteria as described below.

- **Relevance**

The evaluation looked at whether the current legislative framework remains adequate to address the social, safety and competition issues identified and whether it still responds to the needs of the sector in view of the changes in the road transport market.

- **Effectiveness**

The effectiveness of the social legislation refers to the realisation of the expected effects. The evaluation looked at whether the legislation contributed to more uniform application and enforcement and to better compliance with the rules in force. Under this criterion, the contribution of various inputs to achieving policy objectives of increasing road safety levels, improving working conditions and ensuring level playing field was also carefully assessed. Unintended positive and negative effects were also investigated.

- **Efficiency**

Under the efficiency criterion, the analysis covered the regulatory cost components involved for the different stakeholders (national administrations, transport operators, drivers) to comply with the provisions of the social legislation. This includes compliance costs and administrative burden in relation to enforcement and implementation of the measures.

- **Coherence and coordination**

The evaluation looked at the coherence of the framework of social rules in road transport, both internally (e.g. gaps or overlaps between the relevant legal acts and with other road transport legislation) and externally in terms of coherence with challenges and objectives of EU transport and social policies.

- **European Added Value**

Finally, the analysis of EU added value looked at whether action at the EU level was the most appropriate.

4 METHODOLOGY

As a first step, the Commission made its preliminary assessment on the implementation of the social provisions and the enforcement regime based on information collected over years 2007-2014 from various stakeholders: national administrations, trade unions, road transport associations, enforcement organisations, drivers and citizens. The rules in force have been assessed on case-by-case basis by analysing various petitions, complaints, requests for clarifications, discussions at the Committee on Road Transport as well as interpreting judgements of the Court of Justice¹⁴, which have had an important impact on the implementation of the relevant social provisions. The implementation reports submitted by Member States regularly every two years also served as a relevant source of quantitative and qualitative data for assessing implementation efforts and challenges and level of compliance with the rules in force.

Secondly, to collect hard data and to analyse the effects of the legislation an external consultant was commissioned. The aim of the support study was to provide an independent evidence-based assessment of the implementation of the social legislation in road transport over the period of 2007-2014 as well as of its effects on the road transport market and the needs it aim to satisfy. The support study was executed by the consultant over the period of 12 months and ended with a publication of the final report in June 2016¹⁵.

4.1 Quantitative and qualitative data collection

The consultant used a wide range of research tools during the study, starting from a **desk research**, where almost 150 pieces of literature were reviewed, including Commissions implementation reports, and **exploratory interviews** with 6 organisations at EU and national level¹⁶. Then **tailored surveys** were performed addressing 5 different target groups, namely: national transport ministries, enforcement authorities, road transport undertakings, trade unions and industry associations. Each survey was pilot-tested before it was distributed more widely among stakeholders.

Then the **main interview programme**, including follow-up interviews from the survey, was performed to gather further insights into experiences of stakeholders. This related in particular to the functioning and effectiveness of national enforcement and the reasons for trends in infringement rates seen (for ministries and enforcers), and a better understanding of challenges and best practices in compliance (for undertakings and associations).

The consultant also carried out **8 study visits**, including a participation in roadside controls and check at premises, visit to French and Belgian transport undertakings, drivers' interviews at parking areas in Italy.

In addition **case study** investigations were carried out in 9 Member States: Belgium (7 interviewees), France (6), Germany (5), Italy (12), Sweden (4), Spain (1), Poland (4),

¹⁴ The majority of ECJ rulings relate to old Regulation (EEC) 3820/85 repealed by Regulation (EC) No 561/2006, however certain Court judgments remain relevant as interpretative guidance on key provisions carried over into the current legislation. The relevance of Court rulings for the application and interpretation of Regulation 561/2006 should be assessed on a case by case basis.

The overview of relevant Court rulings is available here:

http://ec.europa.eu/transport/modes/road/social_provisions/driving_time/doc/european-court-judgements.pdf

¹⁵ The final report of the study on ex-post evaluation of social legislation in road transport and enforcement is available on the Commission's website: <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-eval-road-transport-social-legislation-final-report.pdf>

¹⁶ Three EU-level organisations, two national enforcement authorities and one national ministry.

Romania (3) and UK (5). The analysis involved a detailed review of national legislation and enforcement practices, a study of issues/problems encountered by each country and a review of national market conditions and a review of additional datasets/reports that were available at the national level.

The stakeholder engagement activities are summarised in Table 1. The provided numbers do not include the six exploratory and eight pilot testing interviews that were carried out before launching the stakeholder questionnaires. Responses were received from the national ministries of 15 Member States, with eight from the EU-15 and seven from the EU-13.

Table 1: Summary of stakeholder engagement

Type of stakeholder	Approached	Responded	% response rate
Targeted Surveys			
National ministries	119	15	13%
Enforcement authorities	142	52	37%
Undertakings survey	(a)	1269	n/a
Trade union survey	102	14 (b)	14%
High level (general) survey (c)	198	64	32%
TOTAL (surveys)		1441	
Interviews			
National ministries	9	7	78%
Enforcement authorities	25	8	32%
Industry associations	16	12	75%
Undertakings	41	14	34%
Trade union	10	5	50%
Specific sectors	11	5	45%
Other	2	1	50%
TOTAL (interviews)	114	53	46%
Drivers (d)	n/a	37	n/a

Notes: Stakeholder consultation took place from June 2015 until November 2015. Response rates are approximate, as some organisations forwarded the request to participate to other organisations on the study team's behalf – consequently it is not known how many organisations were contacted in total.

(a) Undertakings surveys were distributed via national associations; hence it is not known how many organisations were contacted in total;

(b) A number of coordinated responses were received from trade unions;

(c) It was dedicated to identification of high level, cross-cutting views on the relevance, effectiveness, efficiency and added value of the legislation it was answered by associations of transport operators (50), NGOs (4), individual experts (3) and other types of association(7);

(d) Driver interviews were carried out during study visits

Overall, the stakeholder response rate was good taking into account the length and complexity of the questionnaires, and also considering the highly technical and specific nature of the road social legislation. The response rate for the questionnaire parts on Directive 2002/15/EC was slightly lower than for Regulation (EC) No 561/2006. The quality of the responses was overall good. Questions on quantitative elements remained frequently unanswered reflecting a lack of data availability.

In parallel to those consultation activities carried out by the consultant the Commission undertook the actions aimed at initiating a high level structured discussion on the shortcomings of the current road transport social legislation and of its enforcement and encouraging the active participation of the EU and national stakeholders in this process. The following consultation events have been organized and attended by the Commission services throughout the year 2015 and 2016:

- The High Level Conference 4 June 2015 titled 'Social Agenda for Transport', which launched the wide debate on social aspects in transport sector;

- A series of dedicated seminars targeted at EU level stakeholders and concerning the road transport issues, including the one on social rules and enforcement of 23 October 2015,
- the orientation debate on the social aspects in road transport organized by the Transport Council on 10 December 2015,
- the Road Transport Conference on 19 April 2016 with dedicated workshops, including the one on internal market and social aspects of road transport,

As the aftermath of those meetings the Commission has received several position papers on the issues raised, from the EU and national stakeholders, including national authorities as well as the business and workers organisations.

In September 2016 the Commission launched an open public consultation, which aimed, among others, at validating the problems identified in the earlier consultation activities and identifying other problematic issues that had not been revealed before. The consultation was composed of two types of questionnaires: (a) non-specialised one addressed to individual respondents: drivers, transport operators, shippers, freight forwarders, other actors in the transport operation chain and citizens, and (b) specialised one addressed to institutional respondents: national authorities, enforcement bodies, workers' organisation and industry associations. The consultation ended on 11 December 2016 yielding 1411 responses in total, including 1209 replies to non-specialised questionnaire and 169 replies to specialised questionnaire. The 1209 responses from individual respondents provide a good representation of key stakeholders: drivers/other road transport workers (31%), road hauliers (22%), passenger transport companies (17%). A total of 23 Member States were represented by the respondents. Among 169 responses received from institutional respondents, the majority of them were from industry associations (54%) and workers' organisations (13%). The remaining stakeholders represented national authorities (national enforcement authorities, regulatory authorities, enforcement authority organisations) and others (academic bodies, EU governmental authorities, intergovernmental organisations). A total of 24 countries were represented by the respondents. The detailed overview of stakeholder groups participating in the open public consultation is presented in annex III together with the results of all consultation activities are discussed further in the report.

4.2 Data analysis

Based on data collected from various sources through desk and field research the consultant carried out thorough analyses focusing on two key issues: (1) developments and trends as regards compliance levels over the period of 2007-2014 and (2) developments in cost-effectiveness of enforcement. These analyses were carried out taking account of economic and social changes in the road transport market that occurred in this period. In addition, the responses and position papers submitted directly to the Commission in the framework of the described above additional consultation activities carried out by the Commission, have also been taken considered in the process of the data analysis.

In particular, the analyses included identification and assessment of main factors (internal and external) affecting positively and/or negatively compliance level. These included: changes in functioning of the transport market, quality (relevance, clarity, consistency) of legal provisions, quality and accessibility of infrastructure, compliance discipline, enforcement regime, dissuasiveness and effectiveness of penalty systems, awareness of transport actors of the correct application of the rules.

The analysis of developments and trends in enforcement involved the assessment of the effectiveness and efficiency levels as well as harmonisation of enforcement practices across

the EU. The main factors contributing to these developments included a clarity and enforceability of provisions, enforcement capacities of Member States, cooperation and coordination of control activities between Member States.

An analysis on cost-benefit and cost-effectiveness (see below section 4.3 on limitations) was also carried out in the course of the ex-post evaluation study. This includes the assessment of regulatory costs and benefits for drivers, transport undertakings and national authorities under the legislation and potential costs and savings from modernisation of the current framework.

The results of these analyses fed into a comprehensive assessment of changes in road safety levels, quality of working conditions and distortions of competition being a consequence of the combination of the implementation of the social legislation as well as the internal factors (e.g.: quality and clarity of the legal provisions, number and type of checks, penalty systems) and external factors considered (e.g.: drivers' wages, quality and accessibility of infrastructure, presence of international operators). These analyses assisted in providing full-fledged responses to the evaluation questions. Their results are presented in sections 5 and 6.

4.3 Limitations

The main limitation in gathering a neutral quantified data was linked to the fact that many types of impacts of the social legislation are of a subjective nature and do not offer unbiased quantifiable baseline indicators (e.g. some aspects of working conditions, fatigue and well-being of drivers). Therefore, based on the information gathered from the literature review, surveys and interviews, quality indexes have been established to better understand the functioning of the social legislation. However, the results need to be interpreted with caution as regards the impacts on achievement of policy objectives.

With regard to other indicators that could be measured quantitatively (e.g.: number of controls, infringement rates, number of vehicles fitted with digital tachographs, enforcement capacities etc.), the main limitations were gaps and insufficient detail in the national statistics. Therefore the complete picture could not be established in particular when trying to evaluate a progress over time. In addition information on quantitative indicators not included in the EU and national datasets (e.g.: costs of controlling and reporting, number of prosecutions of co-liable parties, etc.) were extremely sparse in the literature or not known to the stakeholders. In particular, for the Working Time Directive the data was more qualitative and sparser. This is mainly because Member States are not obliged to collect and report quantified data resulting from controlling compliance with the working time provisions.

For passenger transport the availability of quantified information and evidence occurred to be poor due to the highly fragmented nature of the industry in terms of authorities involved, types of market operators. Therefore, it was difficult to find alternative sources of information in addition to interviews with passenger transport sector, to carry out triangulation of data.

These data availability limitations had to be mitigated by using additional data sources although of more general nature (e.g.: European Working Conditions Survey, CARE database on fatalities) and by making qualitative analyses, including assessment by stakeholders. Moreover, in some instances the absence of data and insufficient quantifiable information resulted in the choice of the cost-effectiveness analysis over the cost-benefit analysis.

5 IMPLEMENTATION STATE OF PLAY

5.1 Implementation of the road transport social legislation

The driving and resting time Regulation (EC) No 561/2006 and both directives - enforcement Directive 2006/22/EC and road transport working time Directive 2002/15/EC - were designed to provide for the legal framework of comprehensive, clear and enforceable rules to drivers, operators and national authorities. Most parts of the Regulation came into force on 11th April 2007. However, certain elements relating to tachographs were applicable as of 1st May 2006.

The Road Transport Working Time Directive¹⁷ complements the Regulation (and its predecessor Regulation (EEC) No 3820/85), which does not stipulate maximum hours for activities other than driving, such as loading and unloading and other work in or outside the transport sector, which may have bearing on driver's fatigue. The Directive only applies to activities and drivers falling in the scope of Regulation or the AETR Agreement. Since March 2009, also self-employed drivers are subject to the Directive's provisions. The employed drivers who are excluded from the scope of this specific Road Transport Working Time Directive fall, in principle, under the scope of the horizontal working time Directive 2003/88/EC applicable to all sectors of the economy.

The enforcement Directive 2006/22/EC entered into force on 4 April 2006 and was supposed to be transposed by Member States into their national legal system by 1 April 2007. However, by that deadline only 9 Member States notified their correct transposing measures¹⁸. The timely and correct transposition was of paramount importance for achieving the policy objectives, as the Directive required setting up a system of appropriate and regular checks, both at roadside and on the premises of transport undertakings to control compliance of drivers and of operators with the provisions of the driving time regulation as well as with the provisions on the installation and the use of tachograph, as set out in then applicable Regulation (EEC) 3821/85. Therefore, the Commission launched infringement procedures for non-communication or non-compliance against 18 Member States¹⁹ who failed to fulfil their obligation of transposing and implementing the Directive's provisions.

According to the assessment of the implementation by the Member States of the legislation in the period 2007-2014 the social provisions and the enforcement regime harmonised several aspects of the operation of road transport undertakings with regard to work organisation of drivers, uniform rest and working hours of drivers, clarified to certain extent responsibilities of drivers, transport operators and of relevant authorities of Member States.

In particular, Directive 2006/22/EC by putting in place harmonised requirements for carrying out controls rendered enforcement activities more effective and uniform, which can be concluded from the findings in the subsequent Commission implementation reports. The regular monitoring of the developments in the implementation by the Member States of the Regulation was made possible thanks to Article 17 of Regulation (EC) No 561/2006 which requires Member States to report every two years to the Commission on the application of the legislation. Also Article 13 of Directive 2002/15/EC provides that Member States should report to the Commission on the implementation of the Directive, indicating the views of the social partners. Based on the analysis of these national submissions the Commission draws up

¹⁷ Working Time Directive was transposed by all Member States by the time the Regulation (EC) No 561/2006 started applying in April 2007.

¹⁸ The Directive was fully transposed by all Member States into national law only in 2009

¹⁹ Bulgaria, Denmark, Estonia, Ireland, Greece, Italy, Cyprus, Lithuania, Luxemburg, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia and United Kingdom

a regular biennial report for the European Parliament and for the Council. Since the entry into force of the legislation in 2007 until the latest available data from controls from 2014 the Commission adopted 4 biennial reports based on national submissions by Member States. They contain both quantitative and qualitative data on checks carried out at roadside and premises, including concerted checks, offences detected and other relevant national initiatives undertaken.

The legislation also established the basis for cooperation among Member States and between Member States and the Commission. This includes the network of national bodies for intracommunity liaison to ensure coordination in carrying out concerted checks and establishing joint training programmes on enforcement, to facilitate exchange of data, experience and intelligence on application of the provisions. The Committee on Road Transport²⁰ was established in line with the Regulation's provisions to serve as a forum for Member States, the Commission and the EU stakeholders to examine the cases of diverging understanding, application and enforcement of the provisions. The main tangible outputs of this cooperation between Member States and facilitated by the Commission were commonly established clarification notes, guidance notes, decisions on recommended approaches and good practices on enforcement, which aimed to provide common understanding of the rules in force.

The monitoring of the implementation of the legislation over years 2007-2014 revealed that national authorities and the industry faced significant difficulties with interpreting uniformly, enforcing consistently and complying effectively with the rules in force. Therefore, in order to ensure correct, harmonised application and enforcement of the common EU rules, the Commission, in cooperation with Member States and the EU stakeholders, has undertaken a number of non-legislative initiatives and legislative measures. They include, in particular: seven guidance notes²¹ on implementation and enforcement, seven clarification notes²², Commission Directive on categorisation of infringements (Directive 2009/5/EC), Commission Recommendation on guidelines for best enforcement practice concerning checks at roadside (2009/60/EC). The Commission has also co-financed the project called TRACE (*Transport Regulators Align Control Enforcement*), which developed a European harmonized training format for enforcers controlling the respect of the above mentioned rules. It also co-financed a complementary project called CLOSER (*Combined Learning Objectives for Safer European Roads*) of which the main final output delivered in the beginning of 2016 was a training guide for trainers in the field of road transport legislation and for enforcement bodies.

However, despite these efforts and achievements, numerous difficulties and differences in application and enforcement of the provisions in force exist, as well as certain ambiguities or inconsistencies in the current provisions.

For instance, the scope of the Regulation is differently understood, as some Member States consider that the Regulation applies only to professional drivers²³ whilst other Member States²⁴ apply the rules to the vehicle in scope, hence also to persons who drive them only occasionally. The ECJ ruling of Case C-317/12 of October 2013 gives guidance on this issue

²⁰ Registered as C09500

²¹ guidance notes are available in all the EU languages on the Commission website:
http://ec.europa.eu/transport/modes/road/social_provisions/driving_time/guidance_notes_en

²² clarification notes are available in English at the mentioned above Commission website

²³ Hungary, Austria,

²⁴ UK, Sweden, the Netherlands,

although it does not entirely solve the uncertainty revolving around the definition of the driver. The ECJ ruled that "*the provisions of Regulation (EC) No 561/2006 apply essentially to professional drivers and not to individuals driving for private purposes*". However, the interpretation of the ECJ ruling is not supported by all stakeholders. The UK for example, takes the interpretation that the wording of the Regulation is aimed at the type of vehicle being driven, and the type of journey being undertaken, rather than at the status ('professional' or 'non-professional') of the driver. As such, the scope of the Regulation still differs across Member States depending on their national interpretation – i.e. according to the relevant national authorities consulted for this study, the Regulation applies only to "professional drivers" in Austria and Hungary.

Also the provision on the regular weekly rest is applied differently: 8 Member States²⁵ consider that drivers may choose to spend their regular weekly rest in the vehicle, whereas 16 Member States²⁶ regard the prohibition of taking the regular weekly rest in the vehicle difficult or impossible to enforce, and 2 Member States²⁷ apply national measures imposing severe sanctions for spending the regular weekly rest in the vehicle.

The remuneration based on performance is allowed by the legislation provided that it does not create incentives to breach the provisions of the Regulation and does not put at risk road safety or health and safety of drivers. This type of pay exists particularly among drivers from the EU-13 Member States (e.g. Lithuania, Poland, Slovakia or Slovenia) where the variable proportion of the driver amounts to 57% on average compared to 21% in EU-15. According to 36% of drivers (13 drivers out of 36) interviewed in the framework of this evaluation, such payment scheme contributes to stress and sometimes also to non-compliance with the social rules. The assessment of whether or not such performance-based remuneration can be regarded as endangering road safety or encouraging infringements is based on national criteria. Nevertheless, 65% of enforcers (34 out of 52) who replied to the surveys during this evaluation, reported difficulties with enforcement of these payment provisions.

The national risk rating systems were established in Member States in order to enhance effectiveness of their enforcement activities by targeting controls at the companies at a high risk level (non-compliant companies). However, this tool has not been used effectively and uniformly. 17²⁸ out of the 25 Member States (including Norway and Switzerland) which responded to the consultation, use a risk rating system, while 3²⁹ of the remaining 8 Member States³⁰ admitted that they do not have an operational risk rating system. In addition, the exchange of information between Member States about the risk level of non-compliant operators was difficult, since different formulas were used by Member States to calculate the risk rating. The support study confirms a lack of harmonisation in terms of the implementation of the risk rating system and its penetration across all relevant enforcement authorities and the calculation methods used in the system itself.

The mentioned guidance notes drafted by the Committee on Road Transport have not achieved to provide for full clarity and harmonisation of enforcement across the EU. Since they are not legally binding, their application in daily enforcement is not assured. The same

²⁵ Bulgaria, Germany, Croatia, Lithuania, Latvia, Luxembourg, Poland, Slovakia,

²⁶ Austria, Netherlands, Spain, Denmark, UK, Hungary, Cyprus, Czech Republic, Slovenia, Sweden, Portugal, Denmark, Estonia, Finland, Greece, Norway

²⁷ France, Belgium

²⁸ Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Spain, Finland, Croatia, Latvia, Lithuania, Netherlands, Poland, Romania, Slovenia, Sweden, UK

²⁹ France, Hungary, Norway

³⁰ Bulgaria, France, Hungary, Luxembourg, Portugal, Slovakia, Norway, Switzerland

applies to the common training curriculum for enforcers, developed under the mentioned TRACE project, which has been taken up and/or followed entirely or partially by 16 Member States³¹, including Norway out of 25 countries (including Switzerland and Norway) who responded whilst others³² either did not follow it or were not aware of it.

The social legislation has also been subject to some ruling of the Court of Justice, which had an important impact on the implementation of the relevant social provisions. The Court ruled on the following provisions: daily rest periods, temporary drivers, transport of animal carcasses or waste, specialised vehicles and door-to-door selling, special breakdown vehicles, penalties for infringements, obligations of employers, driving periods and breaks, period of work and end of working day, period of 24 hours and day, weekly rest, exception for carrying materials and equipment, definition of operating centre³³.

Regardless of the efforts made to enhance consistency and effectiveness of enforcement of the common EU provisions and a slight improvement in compliance level observed, the number of infringements by drivers and road transport operators against the social provisions remain high: 3.3 million offences were detected in the reporting period 2013-2014. Almost half of them concerned breaches of the rules on breaks (23%) and rest periods (25%). These were followed by infringements against the driving time requirements (16%), incorrect driving time records (17%), the misuse of recording equipment (10%) and the lack of records for other work (8%).

Whereas 3.3 million detected infringements were reported by Member States³⁴ in the first two years of the implementation of the Regulation in 2007-2008 and enforcement Directive, 4.5 million infringements were reported to the Commission in 2009-2010³⁵. This rise can be explained in the increase of checks required by the Directive as well as the introduction of the digital tachograph, which allowed for faster and more accurate and reliable data. The downwards trend in detected infringements levels can indeed be noticed since 2009, from 4.5 million in 2009-2010, 3.8 million in 2011-2012, to 3.3 million infringements detected in 2013-2014.

However, no straightforward and definite conclusions can be drawn from these developments. On the one hand, the diminishing levels of detected infringements can indicate a better compliance with the rules in force thanks to well-established enforcement practices and greater awareness of social rules among drivers. On the other hand, these lower levels of infringements can also be the result of diminished infringement detection rates, superior manipulation techniques and decreasing enforcement capacities in Member States in terms of human and financial resources.

This can be seen in the total average number of controls carried out in 2013-2014 in the EU, which decreased by 4.8% compared to 2011-2012 (drop from 158.6 to 151 million working days checked). Also the average rate of offences detected³⁶ has declined throughout

³¹ Czech Republic, Lithuania, Luxembourg, Latvia, Netherlands, Romania, Slovenia, Belgium, Cyprus, Germany, Greece, Hungary, Poland, Sweden, Slovakia and Norway

³² Belgium, Hungary, Croatia, Estonia, Finland, Luxembourg, Slovenia, Slovakia, Switzerland

³³ The overview of relevant ECJ rulings is available here:

https://ec.europa.eu/transport/sites/transport/files/modes/road/social_provisions/driving_time/doc/european-court-judgements.pdf

³⁴ To note that three Member States (The Czech Republic, Slovakia and Sweden did not report data on offences for this report)

³⁵ Finland did not provide data on offences in this reporting period.

³⁶ The most relevant indicator to analyse the trend of offences detected is the infringement detection rate, defined as the number of offences detected every 100 working days checked.

subsequent reporting periods: from 3.9 detected offences per working days checked in 2007-2008, 3.1 in 2009-2010, then 2.4 in 2011-2012 and 2.17 offences detected per 100 working days checked in the last reporting period of 2013-2014. There are vast disparities in offence detection rates at premises between Member States ranging from 0.02 to 14 offences detected per 100 working days checked. These discrepancies in detection rates confirm that the European Union is far from establishing a harmonised enforcement area because of diverging enforcement practices and resources for controlling compliance with road transport legislation.

More details and statistics regarding the implementation of the social legislation in the years 2007-2014 can be found in the subsequent biennial implementation reports as well as the final report for the study on ex-post evaluation of social legislation in road transport, in particular in Annex C on "Analysis of trends in compliance" and Annex D on "Cost-effectiveness of social rules enforcement".

5.2 Market context and developments

The implementation of the social legislation and its effects cannot be assessed without taking into account the developments that occurred in the road transport sector and on the market in general over the years 2007-2014. The overarching economic and political trends brought about new challenges that this time- and price sensitive sector had to face. In particular cost pressures in the transport sector have led to an increased use of complex employment arrangements, including multiplication of operational basis, long sub-contracting chains extending across the borders or temporary contracts. These pressures also incite (false) self-employment in order to cut labour costs and non-complaint behaviour in the Member States with lower effectivity and severity of national enforcement and penalty systems. While in such new complex contractual settings the argument concerning the positive impact of the rules on health, safety and working conditions of drivers remains relevant, the enforcement of the rules becomes increasingly challenging. In addition, the study on ex-post evaluation of the road haulage legislation³⁷ revealed that emerging illicit or dubious business practices that allow operators to gain unfairly competitive advantage often deprive drivers from their fundamental rights of social protection and adequate working conditions, including minimum rates of pay. These unfair business practices³⁸, which take the form of 'letterbox' companies and/or illicit cabotage operations, are based on circumventing the law and/or profiting from the deficiencies and ambiguities in the legal framework as well as an ineffectiveness of enforcement. In response to these developments some Member States (Germany, France, Austria, Italy) introduced in 2015, 2016 and 2017, in the context of implementation of the Posted Workers Directive³⁹(PWD), the national measures on the application of the national minimum wages to all foreign operators and drivers carrying out transport activities on their territories. The numerous and severe national administrative and control requirements imposed on foreign operators with relation to the application of their national minimum pay rates leading to great regulatory burdens for industry created heated discussions within industry and between Member States as regards the applicability and enforceability of PWD to international road transport. This led to infringement procedures launched by the Commission against France and Germany for alleged disproportionate restriction of the

³⁷ <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-eval-road-transport-social-legislation-final-report.pdf>

³⁸ These are addressed directly by the parallel revision of the Regulations on access to profession and access to international haulage market

³⁹ Directive 96/71/EC on posting of workers and Directive 2014/67/EU on enforcement

freedom of providing cross-border road transport services and incited deeper reflections on the sector-specific criteria for application PWD to road transport sector. In the recognition of the legal uncertainties and practical difficulties of applying the current horizontal provisions on posting to road transport the Commission stipulated in its proposal of 8 March 2016 for targeted revision of PWD that: "*Because of the highly mobile nature of work in international road transport, the implementation of the posting of workers directive raises particular legal questions and difficulties (especially where the link with the concerned Member State is insufficient). It would be most suited for these challenges to be addressed through sector-specific legislation together with other EU initiatives aimed at improving the functioning of the internal road transport market.*"

Market size

Freight transport sector

The total volume of road freight transport in the EU-28 was around 1,725 billion t-km in 2014, some 10% less than during its peak in 2007, but showing a small increase compared to 2009 (1,700 billion t-km) (Eurostat, 2016b). This development has been shaped by the global financial and economic crisis, which has had severe impacts on the EU.

In 2014, total road freight transport accounted for around 49% of freight moved in the EU-28 (Eurostat, 2016b) (77% excluding intra-EU sea and air transportation), a share which has remained largely unchanged over the past decade (Eurostat, 2016b). Around two thirds (64%) of road freight movements are within Member States and one third (36%) is between Member States (Eurostat, 2016b).

Passenger transport

There are considerable difficulties in obtaining statistics for the passenger transport sector because data are not harmonised across Member States and are therefore not comparable. Eurostat reports that bus and coach travel combined accounted for 549 billion passenger kilometres in 2007, falling to 526 billion in 2014. In 2014 it accounted for around 8.0 % of all passenger transport (and 9% of all land passenger transport), down from 8.5% in 2007 (Eurostat, 2016). The international market for coach and bus services is small compared to national markets. The data available does not allow an accurate estimate of the overall market size, the 2016 fact-finding study⁴⁰ estimated that international coach passenger numbers grew by 40-60% and international coach passenger-kilometres grew by 0-40% between 2009 and 2014, which can be seen as the response of operators to opportunities provided by international liberalisation. At the end of 2014 there were a total of 35,659⁴¹ carriers in the EU-28 possessing Community license, which allows an access for international market for coach and busses in the EU. This shows the increase by 3% compared with 34,582 licences in 2010 (data for EU-27).⁴²

Market structure

Freight transport sector

The road freight market is broadly divided into two main segments. The first are small firms that account for the vast majority of the total number of hauliers - 90% of enterprises in the

⁴⁰ <http://ec.europa.eu/transport/sites/transport/files/modes/road/studies/doc/2016-04-passenger-transport-by-coach-in-europe.pdf>

⁴¹ <https://ec.europa.eu/transport/sites/transport/files/modes/road/haulage/doc/2015-08-06-community-license-road-passenger-transport-2010-2014.pdf>

⁴² Idem

sector have fewer than 10 employees and account for close to 30% of turnover (including self-employed) (Eurostat, 2016b). These firms tend to compete mainly on price, with labour costs being a key determinant of competitiveness. At the time the legislation was adopted, 95% of road transport firms had fewer than 10 employees, reflecting a slight trend toward consolidation in recent years⁴³.

The second segment is made up of a limited number of large firms that provide complex logistics services. Firms in this segment compete on price, range and quality of the services offered (WTO, 2010). Since economies of scale are more important, there is also a higher degree of market concentration; around 1% of enterprises are enterprises with over 50 persons employed, these account for around 40% of sector turnover⁴⁴.

Subcontracting plays a major role in road haulage. Even in 2007, it was recognised that a proportion of small companies tend to be economically dependent on larger operators who prefer to subcontract through exclusive or preferential contracts rather than to invest in additional vehicles⁴⁵. There has been a strong increase in subcontracting within the EU road haulage market compared to a decade ago. Overall, the European road haulage market can be characterised by a chain of hire and reward companies with large pan-European logistics companies at the top controlling the largest contracts but subcontracting much of that down the chain. Small enterprises and owner drivers either form small consortiums to obtain work, rely on subcontracting from larger firms or move loads identified through freight exchanges.

Rapid expansion of larger operators offering integrated logistics services was identified at the period 2007-2014, along with intense corporate restructuring. Large multimodal third party logistics providers help to meet the demand for high quality, reliable and predictable door-to-door truck services. Cost pressures for logistics providers mean that many heavily rely on subcontracting less profitable operations to smaller enterprises and owner-operators, driving the number of links in the logistics chain upward⁴⁶.

Passenger transport

The enlargement of the EU increased the importance of scheduled coach travel, due to its advantages in terms of safety, flexibility and ability to respond to changing demand. Although there are a number of very large coach operators in the EU, the average size of companies are small, with an estimated average of 16 vehicles per company. The sector is highly fragmented in terms of the size and type of market operators and the range of transport operations.⁴⁷ Services include scheduled long distance services, to school transport services, and shuttle services operated for tourists between airports and hotels. The importance of these different types of services also varies significantly between Member States.

Many coach brands are a marketing alliance or partnership, managed by one operator and operated by several companies or by subcontractors. Many coach companies are domestic subsidiaries of foreign owning groups, and the ultimate ownership of individual coach

⁴³ The final report of the support study "Ex-post evaluation of social legislation in road transport and its enforcement", p. 23

⁴⁴ Idem, p. 23

⁴⁵ European Commission, 2007a. *Impact Assessment accompanying the proposal for a Regulation of the European Parliament and of the Council on common rules concerning the conditions to be complied with to pursue the occupation of road transport operator SEC(2007) 635/3*, s.l.: s.n.

⁴⁶ AECOM, 2014b. *Report on the State of the EU Road Haulage Market, Task B: Analyse the State of the European Road Haulage Market, Including an Evaluation of the Effectiveness of Controls and the Degree of Harmonisation*. s.l.:s.n.

⁴⁷ SDG, 2009. *Study of passenger transport by coach*, s.l.: s.n.

operators may depend on mergers and acquisitions activity among a more limited number of parent companies⁴⁸.

Cost structure

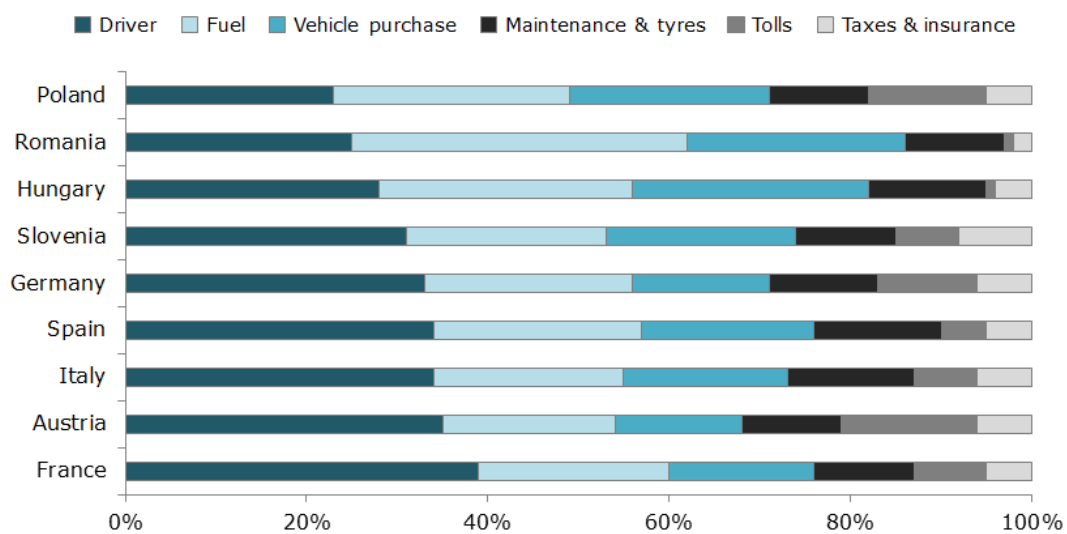
Freight and passenger road transport sector

Cost differentials between Member States are significant; in road haulage these costs can be almost double from one Member State to another.

During the economic downturn, profit margins have contracted within the logistics sector as well as in the road haulage sector. As a result a price competition within road transport increased substantially. On the trunk lines of European corridors, reported freight rates have fallen even below pre-boom prices in the years up to 2006 to as low as €0.7 per vehicle-km or less. This corresponds to a reduction of some 30% compared to previous market prices of about €0.9 to €1.0 per vehicle-km, which barely covers the variable costs of haulage, let alone the full cost of vehicle utilisation⁴⁹.

Cost levels are one of the key factors determining competitiveness in the road haulage sector. As shown in Figure 1, the most important cost components are the driver's wages and fuel, followed by vehicle purchase costs. While in absolute terms, labour costs in the Member States that joined in 2004 and 2007 remain lower than in the EU-15, the gap is steadily narrowing.

Figure 1: Percentage of operating costs per hour in selected Member States



Notes: Driver costs indicate wages; maintenance includes general vehicle maintenance and tyre replacement

Source: (Bayliss, 2012)

Although there are some signs of labour cost convergence across Europe, there are still considerable differences between Member States. For example, the cost of a French driver is 2.4 times higher than a Polish driver spending two to three weeks per month outside their respective domestic markets. Even taking into account possible differences in terms of skills and productivity, the pay gaps are sufficiently high to conclude that there are still substantial differences in the labour costs. Also differences in social insurance contributions can be quite

⁴⁸ Comprehensive study on passenger transport by coach in Europe, April 2016; <http://ec.europa.eu/transport/sites/transport/files/modes/road/studies/doc/2016-04-passenger-transport-by-coach-in-europe.pdf>

⁴⁹ KombiConsult, 2015. *Analysis of the EU Combined Transport*, s.l.: s.n.

substantial. As an example, the estimated amount of the employers' mandatory (net) social security contributions for a driver operating is €736 per month in France; €446-630 in Germany, €481-584 in Spain, as compared to €316 in Slovakia and €111 in Poland⁵⁰.

The high competition in the industry means that transport undertakings are often price takers rather than price makers, which yields low profit margins. For this reason, hauliers are always looking at ways to improve margins by reducing operational cost. Efforts to improve productivity and competitiveness have been made in areas such as reducing empty running, outsourcing unprofitable work and sourcing cheaper fuel.

Employment

Freight transport sector

In total, in 2013 there were 563,598⁵¹ registered road freight transport enterprises in Europe, employing around 2.9 million people (Eurostat, 2016b).

For a number of years, the industry has been concerned about skill shortages and tight labour supply. A shortage of 74,500 professional drivers in Europe was estimated in 2008, which at the time was mitigated by the economic downturn. In 2013-2014, around 30% transport operators in Germany and the UK and 36% of transport operators in Belgium have difficulty in hiring drivers⁵². The support study on the ex-post evaluation reveals that countries are still experiencing problems with driver shortages – including eastern European Member States - although precise quantification was rare.

In 2015, the vast majority of heavy truck drivers are still employees (on average, 92%), with the remainder being self-employed (Broughton et al, 2015). While it is difficult to determine the current true extent of bogus self-employment, evidence from the literature indicates that it is particularly common in countries with strong neoliberal trends and weak trade unions, as well as becoming increasingly common in Eastern European countries (REMESO, 2013). Conversely, in France there is little self-employment. The strong domestic orientation and culture of working with employees rather than self-employed workers is thought to protect the sector from a strong growth of false self-employment⁵³. Nevertheless, incentives to use self-employment to cut labour costs have increased following the financial crisis, particularly due to the relatively higher wages of French drivers – leading to subcontracting of foreign firms with third country drivers or self-employed drivers. According to one French study “subcontracting to dependent [false] self-employed implies a level of compensation that cannot cover costs if the worker follows all road and labour regulations, thereby implicitly forcing the subcontractor to break the law“.

Passenger transport

Figures from Eurostat describing employment in road passenger transport also include all urban and suburban land transport modes (motor bus, tramway, streetcar, trolley bus, underground and elevated railways). The level of employment was almost 2.0 million⁵⁴ in 2013 – a reduction from 2.1 million in 2007 (Eurostat, 2016b). According to the fact-finding

⁵⁰ The final report of the support study "Ex-post evaluation of social legislation in road transport and its enforcement", p.25

⁵¹ Economic activity according to NACE Rev. 2 classification

⁵² The final report of the support study "Ex-post evaluation of social legislation in road transport and its enforcement", p. 26

⁵³ idem

⁵⁴ including all urban and suburban land transport modes

study⁵⁵ it has been estimated that employment in the domestic and international coach industry is slowly declining and by 2014 was around 0.55 million, with a margin of error of $\pm 10\%$. This decline may conceal a mixture of growing volumes and increasing productivity. It suggests that the sector remained relatively stable in the face of recession.

In a number of Member States, local bus/coach operators have taken advantage of the free movement of workers to employ drivers from other Member States. For example, it has been reported that UK bus operators have recruited drivers in Poland. This has led to a shortage of drivers in Poland, which has in turn prompted Polish operators to recruit drivers from Ukraine⁵⁶. The extent of such recruitment policies could not be identified. The same report⁵⁷ informs that between 2004 and 2009, 7,010 heavy goods vehicle drivers from the 8 Member States⁵⁸ registered in the UK, hereby exacerbating problems of driver shortages in their own countries.

Outlook

As in the EU economy as a whole, employment in the transport sector is facing challenges arising from demographic changes – in particular, the challenge of a growing shortage of skilled workers in an increasingly competitive global environment. Labour shortages are expected to become an increasing problem in the next 10 to 15 years as the economy and the transport sector return to growth and the number of people retiring from the sector increases. Projections of the demand for labour in the land transport sector also predict that the shortage will worsen in 2020 (due to a predicted additional demand of 200,000 to 500,000 jobs) compared to an approximate equilibrium in 2015⁵⁹.

5.3 Social and market challenges in the sector

A direct correlation between the market changes described above and the level of compliance with the social legislation as well as the cost-effectiveness of enforcement is difficult to establish. However, it was generally recognized during the open public consultation (details in Annex III) that the increasing fierce cost-based competition incited the emergence of business practices and sometimes very complex working arrangements that affected the proper application of the EU social legislation and rendered the cross-border enforcement more challenging. Fierce competition and cost pressures on operators had knock-on effects on the working conditions of drivers. New risk factors have emerged, such as: irregular work patterns including long periods away from home/base, time pressure, stress linked to the performance-based payment, inadequate resting facilities, persisting differentials in labour costs and social protection standards between the Member States inciting illicit business models and dubious employment schemes. Dubious employment practices concern mainly applying the terms and conditions of employment of the Member States with lower labour and social protection standards to drivers working habitually in/from the higher cost countries. The ex-post evaluation support study⁶⁰ found that letterbox companies and illicit

⁵⁵ <http://ec.europa.eu/transport/sites/transport/files/modes/road/studies/doc/2016-04-passenger-transport-by-coach-in-europe.pdf>

⁵⁶ The final report of the support study "Ex-post evaluation of social legislation in road transport and its enforcement", p. 27

⁵⁷ idem

⁵⁸ Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia

⁵⁹ The final report of the support study "Ex-post evaluation of social legislation in road transport and its enforcement" available at: http://ec.europa.eu/transport/modes/road/road-initiatives/fair-competition-workers-rights_en

⁶⁰ Ricardo et al, 2015 – Support study for an evaluation of Regulations (EC) No 1071/2009 and No 1072/2009.

cabotage operations are the emerging business practices that are directly linked with illicit employment schemes used to reduce and avoid certain costs, such as labour costs, social contributions and taxes.

Illicit employment practices in the sector pose a serious market challenge as confirmed in the open public consultation (details in Annex III). They are resulting not only from the shortcomings of the internal market rules as regards the access to the market and occupation but from difficulties of application of the horizontal Posting of Workers Directive 96/71/EC (PWD) to the road transport sector. Persisting uncertainties regarding applicable terms and conditions of employment to international road transport contracts, difficulties with establishing habitual place of work of international driver to determine genuine posting situation and inherent difficulties with controlling complex employment arrangements are the challenges faced by the industry and by Member States' enforcement authorities.

Whilst the first group of shortcomings will be considered in the framework of the planned targeted revision of the relevant internal market road transport regulations, the issue of applicability of posting provisions entails the revision of the conditions under which the Posting of Workers Directive applies in the road transport sector and the efficacy of the related enforcement mechanisms. The unilateral national measures undertaken by some Member States⁶¹ (as mentioned in the previous section on market context and developments) on the application of their minimum wage laws to road transport do not ensure a balance between the freedom to provide cross border services and the social protection rights of workers and create a global risk of fragmentation of the EU internal road transport market.

The issue of working patterns, including duration of periods away from the home-base or from the operational centre, is not regulated by the current legislation. However, it is linked with the provisions on the organisation of driving and working times. The study⁶² shows that long periods away from home have increased over the last decade due to the liberalisation and internationalisation of the transport market and contribute to driver's stress and fatigue. For instance, the Lithuanian trade union estimated that these periods have increased from around 5-10 days to 5-60 days in freight transport and to 5-90 days in passenger transport over the past ten years. This development combined with insufficient and/or inadequate rest and sanitary facilities contributes to the deterioration of working conditions of drivers and decreases the attractiveness of the profession.

In addition, increased market competition in the road transport sector has led to downward pressure on profits and wages and aggravated the risk of non-compliance of the social rules by undertakings and drivers who are under higher pressure to remain competitive and to deliver goods on time. This further exacerbates the risks of an unlevelled playing field as well as the risks to road safety. For drivers of vehicles, delivering goods, there is pressure as they may have to compensate the client for possible delays incurred. This encourages drivers to flout the rules in relation to rest times so that they can deliver on time and remain competitive. In the passenger transport sector, fatigue is considered a problem both for coach drivers (due to long driving distances on motorways) and bus drivers (given the amount of distractions and high level of concentration needed). Pressure often comes from the passengers who may not understand why their driver needs to take scheduled breaks and may require compensation.

⁶¹ Germany, France

⁶² EU-OSHA, 2010. A review of accidents and injuries to road transport drivers, s.l.: European Agency for Safety and Health at Work, available at https://osha.europa.eu/en/tools-and-publications/publications/literature_reviews/Road-transport-accidents.pdf/view

6 ANSWERS TO THE EVALUATION QUESTIONS

6.1 Relevance

Question 1: To what extent the main risks of the sector (freight and passenger) identified at the time of the adoption (i.e. a) unlevelled playing field for drivers and transport operators; b) deterioration in the driver's working conditions; c) deterioration in road safety) are still persisting? Do the key objectives of the legal framework adequately target them?

The three main risks identified at the time of adoption of the legislation arise primarily from uneven precarious behaviours of operators and drivers and from ineffective enforcement, and hence they can only be addressed by uniform rules transcending national boundaries.

Drivers have been increasingly subject to greater work demands, along with a loss of autonomy, which poses the risk of unhealthy stress levels and potentially a range of stress-related illnesses. The risk of deteriorating working conditions also negatively affects the image and attractiveness of the driving profession, leading to driver shortages and a risk of higher pressure on the drivers that remain. The results of the European Working Conditions survey (EWCS) (Eurofound, 2015) show that in 2010 37% of the professional road transport drivers consulted, stated that they typically work more than 48 hours per week. These findings are supported by the outcome of the national study for Germany (HS Furtwangen, 2012), which found that 56% (out of 1000 drivers) of the consulted drivers in 2011 reported weekly working times of more than 59 hours. These findings were validated by another German study (ZF Friedrichshafen, 2014) for which 2,196 professional German drivers were consulted in 2014. The results show that only drivers operating in the local transport segment (<50km) report weekly work hours below 48h. Drivers engaged in all other transport segments report average working times above 48h (90% of drivers consulted) ranging from 49 hours to 59 hours per week.

The continued trends of above-average levels of long period away from home/base, atypical and irregular working hours, time pressure, stress related to performance-based pay reported by professional drivers in the course of the evaluation demonstrate that high levels of protection are needed to prevent further deterioration of their working conditions.

All of this has clear implications for road safety – both of the drivers themselves and other road users (due to the higher mass of HGVs and buses/coaches, accidents tend to be more serious and most of those killed are other road users).

These developments demonstrate the persistence and developments of the risks identified at the adoption time. Hence, the main objectives of the legal framework are still fully relevant to directly addressing risk factors of unlevelled playing field, inadequate working conditions of drivers and suboptimal road safety for all road users. However, as working conditions are influenced also by other factors (mentioned above) going beyond the current EU rules in force, the legislation, though relevant, is not sufficient in addressing all relevant risk factors.

Question 2: Is the current scope of application of the legislative framework still relevant in the context of the recent road transport market developments, including modern complex employment arrangements? If not, why?

It is concluded that the scope of the legislation is still relevant today. This applies to the scope in terms of the type of vehicles covered, the types of drivers covered, and considering the system of derogations and exemptions.

Including self-employed drivers into the scope of the social legislation appears to be still relevant today as the needs of such drivers, in terms of health, safety and working conditions

are the same as for employed drivers. However, cost pressures combined with the low probability of detecting non-compliance puts them at a higher risk of infringing the rules. The fact that self-employed drivers are covered by the driving, working time and resting time rules reduces the risk of false self-employment practices which aim to gain unfair competitive advantage over compliant undertakings.

The same argument applies to drivers subject to complex employment arrangements (such as temporary contracts and/or (cross-border) subcontracting chains), whose activities however are difficult to retrace for enforcement authorities. Also here, the risk of infringing the rules is comparatively higher with adverse effects on their health, safety and working conditions. As this type of employment arrangements has intensified compared to when the rules were adopted, there is even a greater need today to cover the concerned drivers by the social legislation.

Concerning the needs of the sector, the analysis shows that these have not substantially changed; however the underlying issues that make compliance with prescriptive driving and working time rules more difficult have become more pervasive. This particularly concerns the external factors going beyond the current rules such as congestion and accessibility to resting facilities, as well as growing pressure from clients. The mechanisms built into the rules that aimed to alleviate these issues (respectively flexibilities and co-liability) are not sufficient to address all the circumstances and in addition they are not uniformly enforced.

Therefore, the industry representatives have argued that, whilst the rules are still relevant, certain flexibility in their application should be provided in order to address the specific needs or circumstances of individual transport operations. Around 70% of the freight transport operators⁶³ considered that a lack of flexibility in the rules is a major cause of difficulties in compliance with Regulation (EC) No 561/2006, and 55%⁶⁴ regard the lack of flexibility as main cause for non-compliance with Directive 2002/15. This view seems to be supported by the drivers interviewed: out of the 22 responding drivers engaged in the freight transport sector, 15 (or almost 70%) stated that inflexibility in the rules (e.g. to account for specific traffic conditions) was a cause of non-compliance⁶⁵. For instance, international drivers engaged in long international transport journeys, due to unforeseen waiting time or traffic obstacles, cannot reach their destination or home/base for the weekly rest. Even if they do not reach their daily driving time limit they must stop in order to start the weekly rest period and spend it sometimes not far away from their final destination or home. The flexibility in deciding when to start the weekly rest while preserving the daily driving time limits would help to address this obstacle which incites the non-compliant behaviour.

For drivers engaged in short-distance local deliveries where driving periods are frequently interrupted by short breaks it is difficult to comply with 45 minute break and in the same time fulfil the daily delivery multi-stop schedule.

For the passenger transport sector specifically, there are distinct service needs related to the demands of passengers, their personal needs during the journey, their visit plan, that are not seen in freight transport. For drivers engaged in the international carriage of passengers the lacking flexibility brings about additional stress related to discontent of passengers when they

⁶³ (out of 784 who responded)

⁶⁴ (out of 498 who responded)

⁶⁵ The final report of the support study "Ex-post evaluation of social legislation in road transport and its enforcement" available at: http://ec.europa.eu/transport/modes/road/road-initiatives/fair-competition-workers-rights_en

cannot reach their destination and have to stay at the roadside to let a driver comply with the driving and resting rules. Industry representatives consulted during the ex-post evaluation study argue that the lack of flexibility in the current road social legislation makes it more difficult to comply and have advocated for a more specific consideration of the passenger transport sector. The majority of respondents to the stakeholders' consultation carried out within the study regard that rules do not fit the specificities of passenger transport services, which contributes to non-compliance. Namely: 75% (out of 294 respondents) for Regulation (EC) No 561/2006 and 65% (out of 199) for Directive 2002/15/EC). This issue is therefore ranked at a similar level of importance to the lack of flexibility, and again the issues are again ranked more severely for the Regulation as compared to the Directive.

With regards to freight transport vehicles, extending the social legislation to cover vans (below 3,5 tons) would not address the most important safety risks pertinent to these vehicle types. Considering that Member States have implemented their own national drivers' hours restrictions for LGVs⁶⁶ (Light Goods Vehicles), which are typically based on the limits established in the road social legislation, the relevance of explicitly extending the rules to vans as a means to reduce fatigue seems limited. The anecdotal evidence shows that the main root cause of the fatigue of van drivers seems more clearly linked with the demands of the job such as the pressures of keeping to schedules, increasing traffic, and a higher proportion of drivers' working time taken up by non-driving activities.

6.2 Effectiveness

Question 3: To what extent has the clarification of the provisions on driving times, rest periods and organisation of working time of drivers helped to improve the legal certainty of the rules and their uniform application? Has the compliance increased as a result of these clarifications?

The clarity of provisions, being a subjective concept, is assessed based on the following indirect indicators that, if they exist for a certain provision, suggest a lack of certainty:

- a) efforts to clarify the same or newly introduced provisions;
- b) number and content of petitions, court cases or complaints due to unclear provisions;
- c) remaining uncertainties indicated by stakeholders during consultation activities.

Regulation (EC) No 561/2006 introduced a total of 23 amendments or additions to the legal definitions compared to Regulation (EEC) No 3820/85. These changes aimed to clarify the scope of the legislation regarding the types of vehicles and operations covered, and to more precisely define the terms used in relation to rest periods, breaks and driving times.

The 17 of the total 23 (74%) amendments/additions to the legal definitions are regarded successful in bringing more clarity to the rules, as no relevant uncertainties were identified according to the indicators described above. The 6 remaining definitions that turned out to be unclear and resulted in non-uniform application concern: 'carriage by road', 'break', 'driver', 'daily driving time' and the interaction between the definition of 'other work' provided in Regulation (EC) No 561/2006 and the definition of 'periods of availability' provided in Directive 2002/15/EC.

⁶⁶ For example, Austria applies more stringent requirements (max. 8 hours per day instead of 9). In Germany the requirements for LGVs between 2.8 tonnes and 3.5 tonnes maximum authorised weight are the same as for heavy goods vehicles but the requirements for lighter LCVs of up to 2.8 tonnes are more stringent than for HGVs (similar to Austrian LCV requirements) (Danklefsen, 2009)

Table 3 – Summary of legal definitions and other provisions that caused uncertainties and lead to non-uniform application

Legal definition	Identified uncertainties following adoption of Reg (EC) No 561/2006	Further clarification efforts undertaken	Outcomes of further efforts / current status regarding uncertainties
‘Break’ in the context of ‘Multi-manning’	Uncertainty whether the second driver may take a ‘break’ in the moving vehicle	Guidance Note 2	Lack of uniform application remains
‘Driver’	Uncertainty as to whether only professional drivers are within the scope of the Regulation	ECJ ruling (Case C-317/12); Clarification Note 2	Lack of uniform application remains
‘Daily driving time’	Uncertainty regarding when a new daily driving period commences after a non-compliant rest	Commission Decision C(2011) 3759; Guidance Note 7 (of 6/2015)	No success - Decision did not resolve issue; Impact of Guidance Note 7 on clarifying the issue has not yet been assessed
‘Carriage by road’	Uncertainty whether definition should be linked to ‘vehicles’ or ‘drivers’ in case of mixed activities	No specific clarification efforts undertaken	Uncertainty remains
Place of regular weekly rest	Uncertainty as to whether regular weekly rest is permitted in the vehicle	Response to parliamentary questions; EU-Pilots (3 pre-infringement cases) in response to complaints	Pertaining differing interpretations, lack of uniform application
Suitable stopping place	Unclear conditions under which deviation to the rules is acceptable and what constitutes a suitable stopping place	Guidance Note 1	Uncertainty remains, lack of uniform application
Records for other work and availability	Further uncertainty on the means and the time period for which the records on other work, availability and rest times must be made when a driver was away from the vehicle or was engaged in mixed: in-scope and out-of-scope activities	Clarification notes: 5 and 7	Lack of uniform application
Payment regimes	Uncertainty as to what is, and how to prove, an unacceptable payment based on performance	No specific clarification efforts undertaken	Non-uniform application

Among all the above described legal uncertainties resulting from the lacking clarity of the provisions and their diverging interpretations and enforcement, the provision on the place of taking regular weekly rest merits in-depth explanations, because the lacking clarity has led to adopting national specific measures in France and in Belgium. These measures, based on national interpretations of the current EU (unclear) provision, envisage imposing severe sanctions for taking regular weekly rest in the vehicle, which cannot be entirely warranted by the current EU provision in force.

Article 8 provides the provisions on rest periods. A recurring point of contention regards Article 8 (8) which states that daily rest and reduced weekly rest may be taken in a vehicle “as long as it has suitable sleeping facilities for each driver and the vehicle is stationary”. While the revised provision makes clear that daily and reduced weekly rest periods can be taken in the vehicle under specific circumstances, the location of where regular weekly rest can be taken is not further defined. The national authorities thoroughly discussed this issue at

the meetings of the Committee on Road Transport and the CORTE⁶⁷ enforcement meeting held in March 2015 revealing two main positions:

- 1) Regular weekly rests should not be allowed in the vehicles, considering that “rest” is defined as a period during which the driver may “freely dispose of his time”. Given that many drivers are frequently asked to secure their vehicles and cargo during the rest periods that they spend in their vehicles, drivers hence cannot freely dispose of their time and such periods should not count as rest.
- 2) Regular weekly rests may be allowed in the vehicle (should the driver choose so), considering that prohibiting this on the grounds that the driver cannot freely dispose of his time would also imply that he could not spend daily and reduced weekly rests in the vehicle either (which would contravene the requirements of the Regulation).

Some Member States (Belgium, France and Netherlands) more specifically interpret the relevant provision as having the aim to improve the working conditions of drivers by suggesting that regular weekly rest should be taken at home, although this is not explicitly stated in the Regulation. Other Member States⁶⁸ and enforcement organisations emphasised that there are uncertain consequences of not permitting the driver to stay in the vehicle, given that alternative accommodation is either not available or of insufficient quality. This is indeed a concern, although the availability of parking and service areas that enables drivers to comply with their obligations under the EU legislation is the responsibility of the competent authorities in each Member State.

In the course of the consultation activities, trade unions supported fully the first position described above.

The lack of uniform application persists, with France and Belgium prohibiting drivers from spending regular weekly rest in vehicles and sanctioning severely for doing so, and with other Member States, such as Bulgaria, Lithuania and Luxembourg, who do not regard spending a regular weekly rest in the vehicle as prohibited.

As regards the working time provisions set out in Directive 2002/15/EC, for 8 of the total 9 legal definitions, no relevant uncertainties were raised. Therefore it can be concluded that these definitions achieved their aim of providing clear rules specifically for the transport sector. For example, the definitions of ‘other work’ and ‘periods of availability’ are considered clear by, respectively, 9⁶⁹ and 10 respondents⁷⁰ out of 13 ministries⁷¹. The only uncovered uncertainty concerns the ‘periods of availability’. Enforcers from the Netherlands and Ireland, however, highlighted the difficulty of proving and verifying whether ‘period of availability’ have been known in advance. As a result, these representatives claimed that the provision is unenforceable, which is a different issue.

In case of the provisions of enforcement Directive 2006/22/EC only the issue of using an attestation form to certify for driver's activity and inactivity periods when away from the vehicle was a subject to diverging implementation practices. Despite the Guidance Note 5 clarifying the use of the attestation form the differences in enforcement across the Member States persisted. The lack of uniform application stems from the fact that the use of the

⁶⁷ CORTE – Confederation of Organisations in Road Transport Enforcement

⁶⁸ Czech Republic, Bulgaria, Denmark, Estonia, Lithuania Latvia, Spain, UK

⁶⁹ Austria, Belgium, Bulgaria, Finland, France, Latvia, Poland, Portugal, Slovakia, Slovenia and United Kingdom.

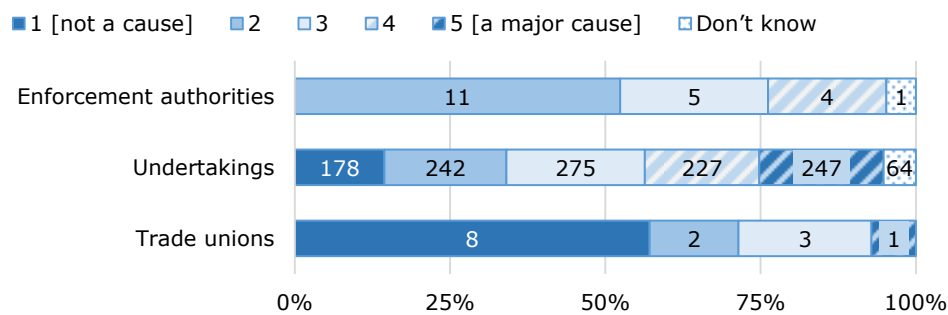
⁷⁰ Austria, Belgium, Bulgaria, Finland, France, Latvia, Poland, Portugal, Slovakia and Slovenia.

⁷¹ Austria, Belgium, Bulgaria, Estonia, Finland, France, Latvia, Poland, Portugal, Slovakia, Slovenia, Sweden and United Kingdom.

attestation form is not mandatory. This lack of harmonisation has been further compounded by Article 34 of Regulation (EC) No 165/2014, which states that “*Member States shall not impose on drivers a requirement to present forms attesting to their activities while away from the vehicle.*” This caused further uncertainties on how to record and control activities of a driver when a driver was away from a vehicle. In Austria the form was still required if retrospective entries for such activities on the tachograph were not possible. In other Member States, such as Finland and Latvia, the use of the form is allowed (but also other proof can be provided), while still other Member States, such as France and Greece disregard such forms (and other proof for such activities is required). Hence, the attempts made to harmonise the use of the attestation forms across the Union have been unsuccessful. Prevailing different approaches to the use of these forms cause uncertainties among drivers and undertakings, especially when engaged in international transport operations.

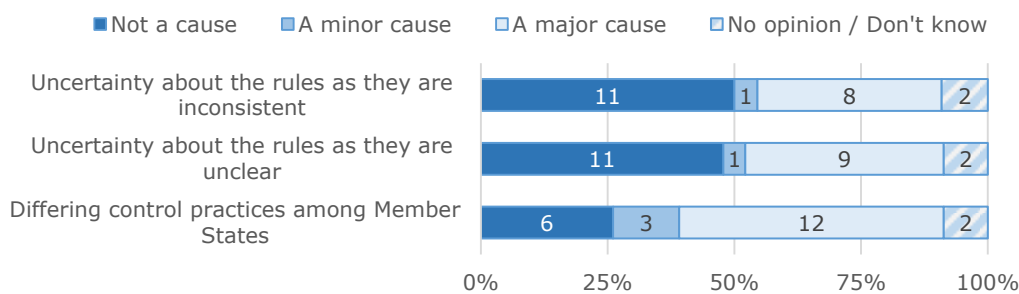
Given the lack of disaggregate data on the detected infringements (i.e. there is no information on whether specific infringements were due to uncertainty or a lack of harmonisation) it is difficult to assess the impact of clarification on compliance levels. Qualitatively, answers from the stakeholder questionnaires show different views: while enforcers and trade unions do not consider a lack of clarity to be a big factor contributing to non-compliance, drivers and undertakings regard it more relevant for a capability to comply.

Figure 2: Response from different stakeholder groups linking a lack of clarity/coherence in existing rules with difficulties in compliance with Regulation (EC) No 561/2006.



The Figure 2 shows that enforcers and trade unions do not regard the clarity of the rules as a potential cause of non-compliance. The responses from undertakings were more mixed, with slightly more rating a lack of clarity as a (major or minor) cause of non-compliance versus those who rated it as not a cause.

Figure 3: Response from drivers to the question whether any of the three listed items contribute to difficulties in complying with the EU provisions.



Source: Interviews with drivers conducted in course of the evaluation support study

The above Figure 3 shows that drivers and undertakings, consider a lack of clarity in the rules as a more important contributing factor to non-compliance than other stakeholders. This

might reflect that they are more aware of (and affected by) the practical difficulties of correctly interpreting and applying the rules.

Question 4: To what extent has the package of enforcement measures (including provisions on cooperation) contributed to improving the application of the social rules in road transport in a uniform manner throughout the EU and to increasing compliance with these rules? How do results compare for provisions under Driving Time Regulation and Road Transport Working Time Directive?

A range of enforcement measures were introduced to ensure harmonised application, more effective enforcement and subsequently better compliance with the driving time rules across Member States. These included: minimum thresholds for the number and distribution of checks; common classification of the infringements; risk rating systems; co-liability for infringements; body for intercommunity liaison, obligation to exchange data and experience between Member States, requirement to carry out concerted checks and joint training programmes for enforcers.

The enforcement Directive 2006/22/EC has had positive impacts in terms of reaching thresholds for number of controls and moving toward more checks at the premises, which contributes to a more uniform application of the rules across the EU. In 17 Member States⁷² the percentage of working days checked showed an increase between 2005-2006 (before the Directive was adopted) and 2007-2008⁷³. By 2011-2012, the percentage of working days checked had increased in all but one Member State (Poland). The actual number of checks still varies substantially (with some Member States⁷⁴ reporting shares that are 3 to 5 times higher than the minimum requirements); however, the purpose of the Directive is to harmonise the minimum standards rather than prescribing a precise number. In this sense, the Directive can be considered to have been largely successful in ensuring common minimum standards: in 2011-2012, all Member States except Denmark, Greece, Italy, Latvia and the Netherlands reached the minimum target of 3% and in 2013-2014 the list of countries that have not reached the 3% threshold diminished to four Member States, namely: Greece, Netherlands, Croatia and Lithuania.

Concerning the risk rating systems and penalty systems, there is considerable divergence in the application of the rules (due to the flexibility allowed to Member States in defining national provisions). Only 8 Member States⁷⁵ use the formula for calculation of risk rating of the transport undertaking based on or similar to the Commission recommended formula established in 2007. All others established own methods to calculate risk rating. As a result the same type and number of infringements may lead an undertaking to be classified in one Member States as a high risk company which leads to more frequent checks, while the undertaking can be regarded as low risk in another Member State. Hence, undertakings established in a Member States with more stringent rules are disadvantaged to those who are established in a Member States with a more relaxed calculation method.

The same applies for the definition of the level of fines and the type of sanctions, which vary significantly across Europe. As a result the same infringement is fined differently in different

⁷² Austria, Cyprus, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Romania, Slovakia, Sweden - around 80% of the 21 Member States for which data are available

⁷³ Directive 2006/22/EC increased the minimum requirement for working days checked, from 1% before the introduction of the Directive to at least 2% of all working days from 1 January 2008

⁷⁴ Austria, Bulgaria, Germany, France, Romania

⁷⁵ Luxembourg, Poland, France, Netherlands, Latvia, Cyprus, Greece, Bulgaria

Member States, with variations from 60 Euro fine to 5000 Euro or even immobilisation of the vehicle⁷⁶. One of the steps taken to (indirectly) improve the harmonisation of sanctions was the adoption of the Commission Directive 2009/5/EC⁷⁷ on the common classification of the level of seriousness of infringements. The Directive classifies infringements against the provisions of the Driving Time Regulation into three categories according to their degree of seriousness and specifies reference thresholds for infringements relating to quantitative variables. However, since the level of sanctions is a competence of Member States, no indicative value in terms of sanctions to be imposed has been assigned to each of these categories. Furthermore, out of the 21 Member States⁷⁸ that reported on their penalties systems, only the Netherlands and Romania notified that they aligned their categories of penalties with the above-mentioned categorisation of infringements.

These examples show that developments in infringement rates can be influenced by a variety of factors, and it is not possible to develop general conclusions for the EU. Overall, the developments toward a best practice in enforcement can result in either improvement in compliance and/or higher detection rates. Examples of what “best practice” specifically means include: higher quality training of enforcers and better risk-targeting.

The principle of co-liability has not contributed to the specific objective of uniform enforcement due to the variation in implementation by Member States (allowed by the legislation) leads to situations where the same facts could make different parties being held liable depending on the Member State. Difficulties in enforcement are typically due to the challenges of identifying who is really responsible for any infringements detected, especially in cases of extensive subcontracting chains. In effect, it is typically a driver who is penalised. Therefore, the direct impact of the principle of co-liability on improving compliance is minimal as there is not a real risk to the third parties of actually being held liable in practice. Hence the situation in this regard has not improved compared to the time before the application of the rule.

The Enforcement Directive increased the requirements for concerted checks as from 2007 to six per year, compared to two checks per year under the previous rule. Comments received via the survey and interviews indicated that concerted checks contribute to improving enforcement capacity (in terms of knowledge and best practices) and consistency of enforcement practices over a longer period of time through the exchange of experience between enforcement officers and establishing common approach to enforcement.

The administrative cooperative measures have not, however, been sufficient to overcome the diversity of national applications. This is largely due to the non-binding nature of the instruments, where alignment, through information and best practice exchange and/or common training⁷⁹ is encouraged but not required

⁷⁶ Commission report on penalties, COM(2009) 225; Study on the harmonisation of sanctions in the field of commercial road transport (2012 - 2013) available at http://ec.europa.eu/transport/modes/road/studies/road_en
⁷⁷ [Commission Directive 2009/5/EC of 30 January 2009 amending Annex III to Directive 2006/22/EC of the European Parliament and of the Council on minimum conditions for the implementation of Council Regulations \(EEC\) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities](#) (OJ L 29, 31.1.2009, p. 45–50)

⁷⁸ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Luxembourg, Latvia, Netherlands, Portugal, Romania, Sweden, Slovenia, Slovakia, UK.

⁷⁹ The final report of the support study "Ex-post evaluation of social legislation in road transport and its enforcement" available at: http://ec.europa.eu/transport/modes/road/road-initiatives/fair-competition-workers-rights_en and a draft Commission Staff Working Document accompanying Report from the Commission on the

The analysis shows that enforcement measures are only partially effective in addressing the risk of non-compliance. While the enforcement measures mitigate the risk of non-compliance, the risks of being detected and its consequences do not outweigh the potential advantages (in terms of carrying out more transport services due to longer driving and working hours, shorter rest periods) of infringing the rules for all undertakings and/or drivers. The extent to which this applies varies across Member States and depends on their specific enforcement systems in place, as well as the type of transport operation being carried out and therefore cannot be realistically quantified.

In contrast to the Driving Time Regulation, there is no explicit legal requirement for Member States to carry out regular controls on compliance with the working time provisions and subsequently to collect and submit quantitative information on the enforcement. Therefore, no quantitative data is available to assess the harmonisation of its application across the EU or the effects on compliance/ levels. A qualitative assessment suggests that the enforcement practices for the Working Time Directive vary significantly across Member States and that the level of compliance is rather low. This further implies that enforcement in general is not effective, which in turn is due to the low priority given to enforcement of the Directive.

Question 5: Do the monitoring and reporting arrangements in place allow for adequate checking and follow-up of the legislation?

The legislation requires Member States to submit biennial reports on the driving time rules according to a standard template. The set of indicators available in the Member States' reports allows for adequate monitoring and follow-up of the legislation in terms of the implementation of its core requirements, such as the number of checks. It also allows for a basic assessment of national enforcement capacity and the reported detected infringement rates. The timeliness, completeness and consistency of the monitoring data submitted has increased over time. In part, the introduction of the electronic reporting tool seems to have been successful in encouraging a higher response rate. Nevertheless, continuing difficulties concern the provision of data around certain indicators where Member States are not able to collect the data at the level of detail that is requested by the Commission, such as the number of vehicles fitted with a digital tachograph or the number and type of offences detected at premises and roadside⁸⁰.

In contrast with the Driving Time Regulation, there is no explicit legal obligation for Member States to include quantitative information in their reports with regard to checking compliance with the Working Time Directive. As a result, there is insufficient quantitative data to evaluate the implementation and effectiveness of the Directive. The current biennial reporting is still fragmentary and in its current state not adequate for a comprehensive checking and follow up of the legislation.

implementation in 2013-2014 of Regulation (EC) No 561/2006 and of Directive 2002/15/EC – to be adopted and published in the first trimester of 2017

⁸⁰ The final report of the support study "Ex-post evaluation of social legislation in road transport and its enforcement" available at: http://ec.europa.eu/transport/modes/road/road-initiatives/fair-competition-workers-rights_en and a draft Commission Staff Working Document accompanying Report from the Commission on the implementation in 2013-2014 of Regulation (EC) No 561/2006 and of Directive 2002/15/EC – to be adopted and published in the first trimester of 2017

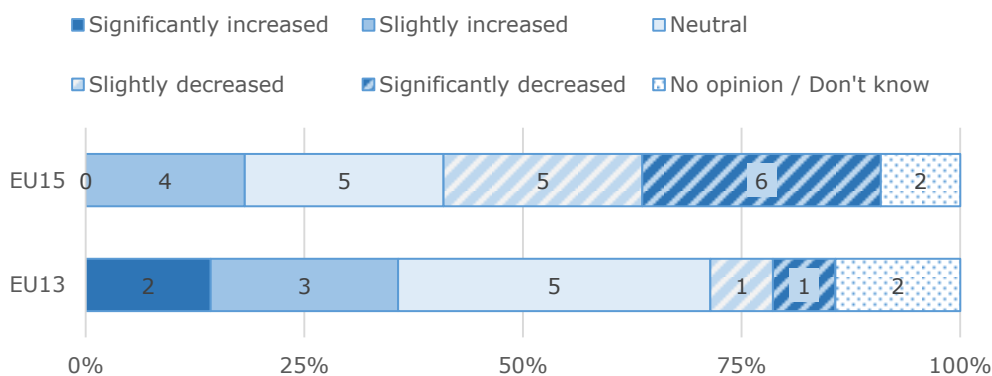
Question 6: Has the EU legislative framework on social rules in road transport resulted in improved working conditions of drivers (in particular in relation to their health and safety), increased road safety level and contributed to a level playing field? What are the main drivers and hindrances to its effectiveness?

This evaluation question assesses the effectiveness of the social legislation in terms of contributing to the policy objectives to improve working conditions, increase road safety and avert the distortions of competition.

The working conditions in general cover several aspects, such as hours of work, rest periods, work schedules, remuneration, the physical conditions and mental demands that exist in the workplace, including degree of safety, fatigue and stress as well as work-life balance. The assessment of the effectiveness of the social legislation in improving working conditions of road transport mobile workers is based on those aspects which can be directly or indirectly linked with the existing road transport social rules. The first group of linked factors are those which have a direct impact on the fatigue of drivers, namely: working hours, driving hours and resting periods. The second group of linked factors are indirectly linked to the rules in force and could cause stress, namely: performance-based payments, legal requirements and roadside checks, long periods away from home/base, work-related sleeping disorders, time pressure and unforeseen circumstances.

According to the drivers' survey the average working times have improved for EU-15 drivers but remained stable or deteriorated for EU-13 drivers over past 10 years.

Figure 4: Response of drivers to the question: Have your overall average working hours (driving and other work) increased or decreased over the last 10 years?



Source: Survey of drivers conducted for this study

Notes: n=36; of which 22 from EU-15 and 14 from EU-13; of which 27 engage in international transport operations, i.e. outside the MS where they are based

The availability of data with respect to enforcement of, and compliance with, the Working Time Directive is very limited, mainly due to the fact that Member States are only required to provide qualitative data (quantitative data is only provided on a voluntary basis). As a result, there is insufficient quantitative data to evaluate the effectiveness of the Directive. However the consultation activities carried out within the study shows that there is an overall stakeholders agreement about low compliance with working time provisions across the EU, with less than a half out of 36 drivers who responded to the survey reporting that they work more than 48 hours on average per week. This shows that the objective of the Working Time Directive to limit average weekly working time to 48 hours and hence reduce fatigue and improve working conditions has been achieved only to a limited extent compared to the

expected results behind this legislation. This is mainly due to weak enforcement of the Directive's provisions, as was already discussed in previous question 4.

Concerning the general impact of Regulation (EC) No 561/2006 on drivers' fatigue and health, around 45% (out of 1269) of respondents to the survey of undertakings regarded the impacts to be neutral and equal numbers of respondents rated it positively and negatively. A higher share of respondents to the same survey from EU-13 countries responded positively compared to those from the EU-15. Very similar responses were received via the interviews with drivers: almost half of 37 of respondents considered there was no change in their fatigue over the past 10 years, whereas more than a quarter of them said it had increased and less than a quarter felt it had reduced.

Several studies provide various figures on fatigue-related accidents. The IRU in its ETAC study (IRU, 2007) cites a proportion of fatigue-related accidents of 6%. In a study conducted in 2011, the Dutch road safety institute found that fatigue was responsible in approximately 23% of accidents where international truck drivers were involved (SWOV, 2011), while (Connor et al., 2001) report that fatigue is a contributory factor in a range of 10%-20% of road crashes where professional drivers are involved. Finally, a research conducted by the Swedish Transport Institute VTI found that 19% of bus drivers had over the past decade been involved in an incident due to fatigue and 7% of them had been involved in an accident caused by their own fatigue (Anund et al., 2014). None of these sources provide whether the fatigue was due to the working, driving and resting times that are regulated by the EU legislation or they are more linked to other factors such as: health problems, drugs, alcohol, unhealthy life-style, sleeping disorders, etc. Therefore, it is not possible to draw reliable conclusions. However, in the light of the development of increased competition and other pressures in the sector, the situation can still be considered an achievement compared to the situation of the absence of EU rules on driving and resting times which should have led to excessive driving and working times affecting directly the fatigue as well as health and safety of drivers.

The performance-based payment is lawful under the provision of the legislation provided that it does not create risks to road safety or encourage infringing the legislation (e.g.: speeding or extending driving times and shortening resting periods to carry out more operations in order to get more money for better performance in terms of distances travelled or volume of goods carried within a month). The analysis revealed that on average EU-13 drivers are paid less than EU-15 drivers, yet have a higher proportion of their salary that is variable (57% on average compared to 21%). Moreover, the variable part of the salary is typically displayed on payslips as "travel expenses" (although it is often linked to the travelled distances) and not subject to charges including taxes and social contributions. According to trade unions consulted, distance- or load-based payments account for a relatively low estimated share of drivers in the UK (5%) and Italy (10%), whereas the estimates for other countries were higher, including Spain (50%), Poland (50%) and Lithuania (77%). Overall the share of affected drivers in EU-13 countries range from 50-77%, with the variable portion of salary being on average 57%. According to 36% (out of 36) of drivers interviewed for this study, such payment schemes are a cause contributing to non-compliance with the rules. Based on this data it is, however, difficult to conclude whether the performance-based remuneration contributed or hindered the effectiveness of the legislation.

The legal requirements that drivers have to be aware of are numerous and extend far beyond the social legislation. Road social legislation specifically is comprehensive and demands a lot from drivers in terms of understanding and properly recording their activities. According to EU-OSHA (2010) stress related to these requirements is therefore likely to be higher among

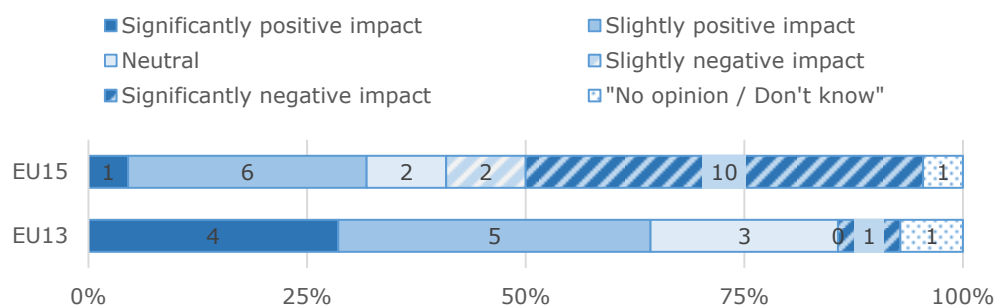
drivers that participate in international operations, since these drivers have to be aware of potentially varying applications or interpretations of the legislation across the Member States. The stress due to roadside checks is likely to be intensified by the risk that drivers will be held responsible for the actual payment of on-the-spot fines when an infringement is detected at roadside. The activities involved in time recording to demonstrate compliance have also been suggested as a stress factor, since accidental incorrect recording can lead to fines.

The road social legislation does not limit the time of drivers that they can spend away from their home base. According to the replies of 25 drivers participating in the drivers' survey EU-13 drivers in particular stayed away for two to four consecutive weeks before returning to their homes, while EU-15 drivers generally do not stay away from home for more than a week. In addition, it was found that out of the 25 responding drivers engaged in international transport operations, 7 typically spend their regular weekly rest on-board the vehicle (all engaged in freight transport), 3 spend it in an accommodation provided by an employer (all engaged in passenger transport). While these insights from the interviews do not provide information on the actual lengths that these drivers spend away from home, this small sample does suggest that regular weekly rests on board the vehicle are a common practice. At these occasions, the periods away from home are likely to surpass one week or two weeks in case the regular weekly rest periods is followed by or follows reduced weekly rest periods.

Time pressure is reported to be an increasing cause of stress for drivers, as well as imposing an increased risk of non-compliance with the road social legislation. The Regulation (EC) No 561/2006 introduced the obligation of employers to organise the work of drivers in such a way that they can comply with the Regulation's provisions. It also introduced the principle of co-liability among relevant actors in transport operation chain. However the potential of these provisions to mitigate the associated stress caused by market conditions and unforeseen circumstances appears to be limited, even if the provisions are respected, since other factors outside of the scope of the social legislation (market developments, unforeseen circumstances) contribute to increased stress.

As shown in Figure 5 below, the overall impact of the social legislation on working conditions is perceived as positive by EU-13 drivers, while the view of EU-15 drivers is more diversified: 10 out of the 22 interviewed drivers expressed the opinion that the legislation's impact on working conditions was (slightly or significantly) negative.

Figure 5: Response of drivers to the question: What has been the impact of EU social rules (provisions on driving and rest times as well as working time) on your working conditions in general?

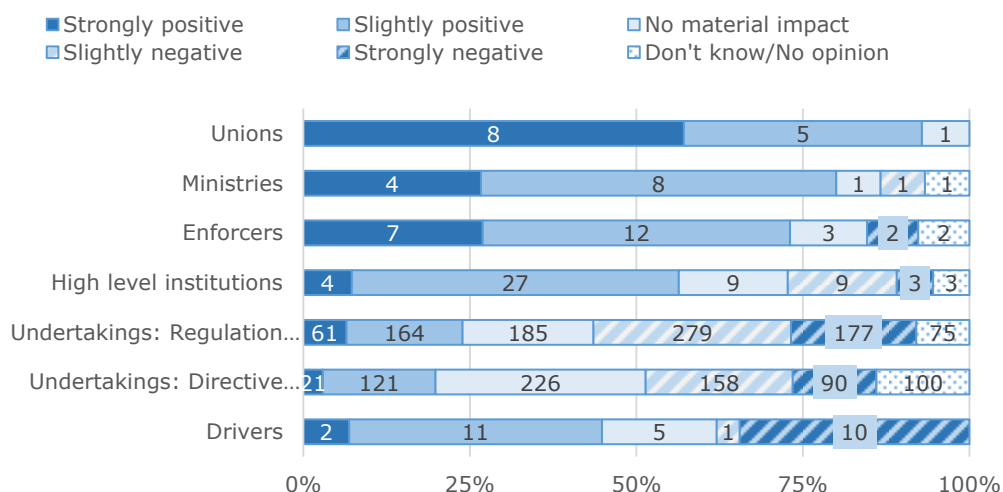


Notes: n=36; of which 22 from EU15 and 14 from EU-13; of which 27 engage in international transport operations

Source: Survey among drivers conducted for the support study for ex-post evaluation

Figure 6 shows that the view of other stakeholder groups was generally more positive compared to the views of drivers. Only undertakings had a more reserved view on the impact of road social legislation on working conditions. All other stakeholders expressed a majority view that road social rules have had a strong or slight positive impact on drivers' working conditions. The trade unions held by far the most positive overall views.

Figure 6: Response of different stakeholder groups to the question: What was the impact of road social legislation on working conditions of drivers?



Source: Stakeholder surveys conducted for this study

Concerning road safety, although road safety levels have improved over the last decade⁸¹, the impact of road social legislation on this development is impossible to discern given that in the same time period numerous other road safety measures have been implemented across the Member States (such as speed management measures, enforcement of seat belt use, changes in drivers' education etc.), and available data typically does not allow to identify the cause (or the causing party) of an accident.

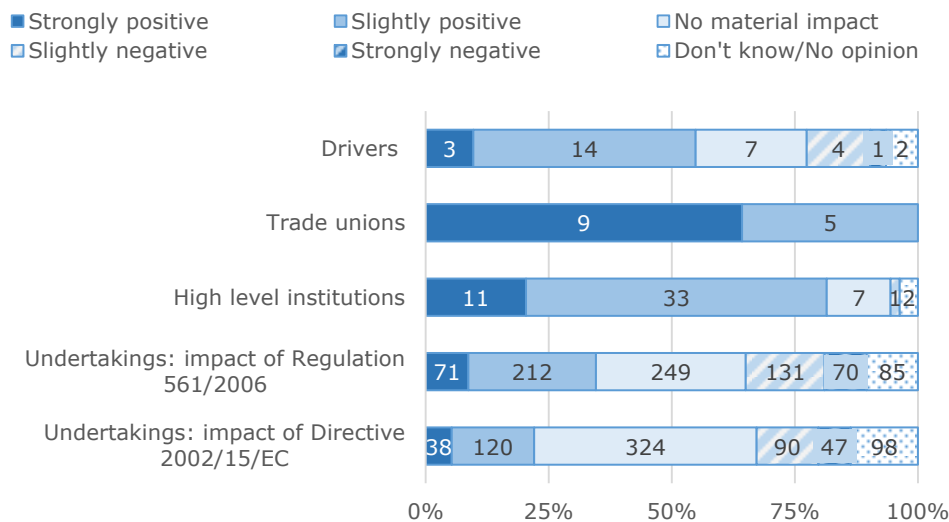
Nevertheless, the stakeholder groups consulted for this ex-post evaluation mostly believe that the analysed legal acts had a positive or at least neutral effect on road safety levels (60% of undertakings, being the most reserved stakeholder group in this respect, take this view). In conclusion, establishing the limits on driving time by requiring drivers to take minimum breaks and rest periods, EU social rules help to secure safe transport operations and to avoid situations where fatigue, stress, sleepiness and mental overload of drivers may be contributory factors to road accidents involving commercial vehicles. However, isolating the impacts of the road social legislation from the impacts of other safety and security measures introduced in the same period is not possible. Nevertheless, stakeholders generally perceive the impact of road social legislation on road safety to have been positive.

Figure 7 shows many of the stakeholders consulted believe that the impact of road social legislation on road safety was positive. However, views diverge across stakeholder groups, with trade unions being significantly more positive than other stakeholder groups. Undertakings were the least positive overall, but still reported a neutral or slightly net positive overall result.

⁸¹Over the period 2005-2013 road fatalities in freight transport decreased by almost 40% (from almost 1600 per year to 900 per year) and in bus and coach remained stable (ca. 250 fatalities per year); source: CARE database, 2015

In conclusion, establishing the limits on driving time by requiring drivers to take minimum breaks and rest periods, EU social rules help to secure safe transport operations and to avoid situations where fatigue, stress, sleepiness and mental overload of drivers may be contributory factors to road accidents involving commercial vehicles. However, isolating the impacts of the road social legislation from the impacts of other safety and security measures introduced in the same period is not possible. Nevertheless, stakeholders generally perceive the impact of road social legislation on road safety to have been positive.

Figure 7 Response of different stakeholder groups to the question: What was the impact of road social legislation on road safety?



Source: Stakeholder surveys conducted for this study

The analysis of a level playing field showed that this has not been achieved. This is partly due to lacking clarity in certain provisions and intended flexibilities provided in the legislative acts, including those on national penalty systems. This results in the situation that the same behaviour of a driver/operator is interpreted in different Member States as compliant or non-compliant with the rules, hence resulting in imposing penalty or not. In addition, the same infringement can be sanctioned differently in different Member States, which incites the non-complaint behaviours, to gain unfair competitive advantage, in the countries where the penalties are at low levels or enforcement is weak. On the other hand, unintended factors that hinder the development of a level playing field include: differences in interpretation of the rules and different implementation of enforcement systems (in line with Directive 2006/22/EC) across the Member States. This again results in different treatment of drivers and operators at the controls depending on the national interpretation of the rules. Around 55% of stakeholders consulted during all consultation activities indicated that diverging national interpretations of the common rules and different enforcement practices are the main legislative challenge for the sector and 69 % regarded that the current legislation does not address adequately the risk of distortions of competition⁸².

Question 7: Does the current system of exemptions and national derogations have impact on the achievement of the objectives of the legislation?

Regulation (EC) No 561/2006 contains nine specific exemptions for certain types of vehicles/ their types of uses for which the Regulation's provisions do not apply. There are no problems

⁸² Results of the consultation activities are presented in more details in Annex III

reported with five exemptions which have been justified on either the basis that the vehicles represent very small market shares (e.g. with a maximum speed of less than 40 km/hr or with a historic status) or are used for specific purposes in the public interest (e.g. vehicles used for emergency or medical purposes). Allowing such exemptions in the Regulation ensures that the costs of enforcement and compliance for drivers are reduced without impacting on the achievement of the objectives of the Regulation in terms of ensuring road safety and adequate working conditions, by nature of the small scale of activities concerned and the coverage of such activities by the general working time rules, as set out in Directive 2003/88/EC. Conversely, specific issues have been uncovered with the remaining four exemptions that were justified on the basis of the short distances travelled. These problems mainly concern whether the definitions are precise and clear enough to avoid possible loopholes that enable the rules to be circumvented (e.g. in the case of breakdown vehicles), as well as an unlevelled playing field in the interpretation and application of such exemptions⁸³.

Regulation (EC) No 561/2006 also offers a list of national derogations that may be granted by Member States, provided the objectives are not prejudiced. Consequently, although the freedom for Member States to freely adopt pre-defined derogations appears to be appropriate, this may cause uncertainties for drivers, undertakings and enforcement authorities about how to handle international operations that are derogated only in some Member States. However, the study confirmed that this does not appear to be a major concern.

For most derogations, no issues were uncovered with regard to possible negative impacts on the objectives of the Regulation, since drivers subject to derogations are still subject to the working time rules for mobile workers (Directive 2002/15/EC) and the derogations apply to areas where driving is mostly an ancillary activity that happens locally. This is ensured either by imposing a restricted radius within which the vehicle is allowed to operate - or, by definition, applying the derogation solely to transport operations that are not subject to competitive pressures.

The temporary exemptions are not found to cause any adverse effects on the objectives of the Regulation. Rather, they appear to be useful tool to deal with exceptional and urgent circumstances (e.g.: extreme weather conditions resulting in high demands for heating oil to the households or de-icing products to the airports and requiring continuous transport operations) when the suspension of relevant transport operations would not be appropriate.

Derogations from Directive 2002/15/EC are, per definition, very restricted in their nature and furthermore only possible in consultation with both sides of the industry. Consequently, adverse effects on the objectives of road social legislation are limited. They are an appropriate tool to deal with specific circumstances within a Member State (or within a certain sector or specific business)⁸⁴.

Question 8: To what extent has the legislative framework created any unintended negative/positive effects? If so, which stakeholders groups are affected the most?

The results of the survey for undertakings⁸⁵ showed that around 30% of respondents had to hire additional drivers in order to maintain their level of turnover before Regulation (EC) No 561/2006 and in particular the enforcement regime established by Directive 2006/22/EC

⁸³ The final report of the support study "Ex-post evaluation of social legislation in road transport and its enforcement" available at: http://ec.europa.eu/transport/modes/road/road-initiatives/fair-competition-workers-rights_en

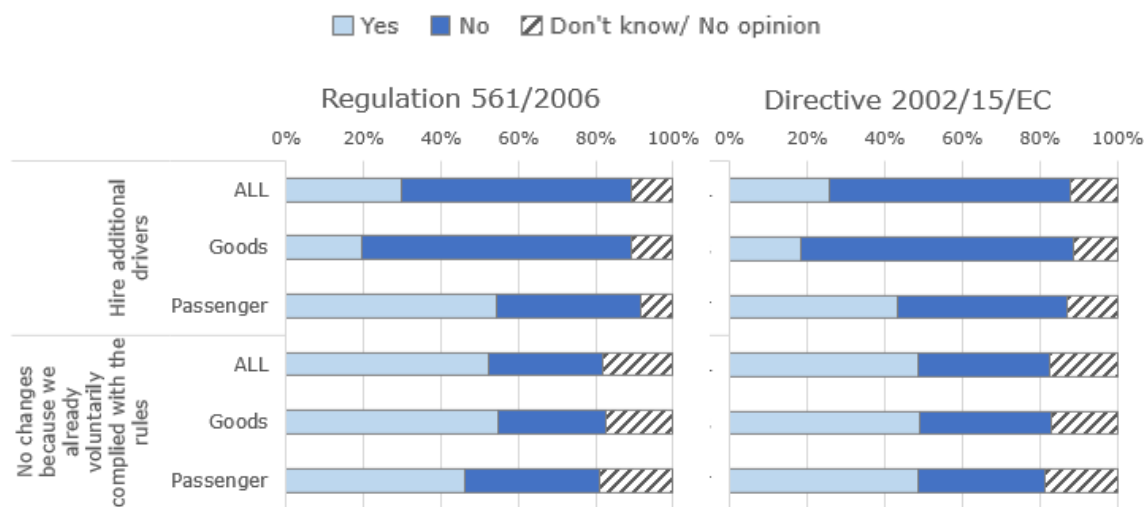
⁸⁴ Idem

⁸⁵ The undertakings survey consisted of 716 respondents involved primarily in goods transport and 299 involved primarily in passenger transport

came into force. Conversely, 60% (609) of undertakings reported that they did not have to hire additional drivers, and over half of them reported that they made no changes at all since they already complied with the rules. This implies that labour demand was not increased for these organisations, as many had complied with the driving time rules prior to the introduction of the strict enforcement regime.

Splitting the results by goods and passenger transport shows that the passenger transport sector was likely more affected, since around 55% (164) reported a need to hire additional drivers as compared to 20% (143) of respondents working primarily in goods transport (Figure 7, left-hand side). The distribution of responses concerning the Working Time Directive was very similar, with around half of all respondents claiming that they already complied and 26% reporting that they had to hire additional drivers (Figure 8, right-hand side).

Figure 8: Responses to the question: In order to maintain your level of turnover when the social legislation came into force, did you need to do any of the following?



Source: Undertakings survey (716 respondents involved primarily in goods transport; 299 involved primarily in passenger transport)

In summary, there are two opposing effects of the social legislation on driver shortages: firstly, the legislation could contribute to worsening shortages due to restricting the driving/working hours of those in the profession and leading to greater labour demand.

The second effect of the social legislation works to mitigate driver shortages by improving the attractiveness of the profession and thus increasing labour supply. Views from industry gathered from literature and the national reports contributing to the Commission's biennial reports indicate a consensus that the legislation has contributed to improving the working conditions of drivers. Conversely, the additional demands of compliance with the rules and the risk of fines may detract from the attractiveness of the sector. The net effect of these opposing forces cannot be determined due to the multitude of other factors influencing labour market dynamics.

The increase in subcontracting seen in the industry over recent years has reportedly been linked to a proliferation of employment practices that undermine the working conditions of drivers, notably bogus self-employment and the employment of non-resident drivers via so-called letterbox companies. The social legislation is not, however, the primary driving factor for any increases in such undesirable employment practices. The most important factor contributing to both of these practices is the need to lower costs in light of increased

competitive pressure in the industry. Nevertheless, according to stakeholders' opinions avoidance of the social legislation is likely to be a secondary contributing factor to the extent that it allows companies to reduce compliance costs although risking high non-compliance costs, which occur when the enforcement is effective.

There is no evidence on negative impacts on bus services regarding installation of tachographs. On the contrary, the example from Sweden shows that some companies have installed tachographs in all buses, even if there is a large proportion exempted, because having the same recording routines across all activities can reduce the scope for manual errors.

There has been a general trend toward a higher number of Light Goods Vehicles below 3.5t on the EU roads. In 2015 LGVs represented around 85% of new commercial vehicle registrations in the EU (ACEA, 2016). up from 75% in 2006 (T&E, 2016). The operations by these vehicles are not covered by the social legislation in road transport. The claimed increasing use of LGVs in commercial carriage of goods is likely to be linked particularly with the rise in home deliveries and developments in urban freight logistic. These types of service are best-suited to vans rather than trucks (due to the fact that smaller vehicles are more efficient when making “last mile” deliveries from centralised distribution hubs, as well as due to access restrictions on heavier vehicles in urban areas). There is no evidence that they are actually taking market share away from HGVs (“switching”) as a means to avoid legislation and reduce compliance costs.

Comparing the cost differentials between different types of vehicles in Europe shows that HGVs have a considerable advantage over LGVs in all regions. As shown in Table 4, the cost of transport per ton by HGV (25t, 80m³) is only around 16% of the cost to transport a ton by LGV (1.65t, 20m³). By volume, the cost of transport by HGV is around 60% of the cost of transport by LGV. An increase of more than 25% in the freight transport cost price for HGVs (against a static LGV rate) would be needed for competition to occur (NEA, 2010).

Table 4: Cost of transport by HGV relative to LGVs

	South West Europe	Southeast Europe	North West Europe	North East Europe
Per ton	16%	16%	16%	16%
Per m ³	60%	62%	60%	62%

Source: (NEA, 2010)

Overall, the social legislation is unlikely to be the main cause of the recent increases in vans seen on the roads. Even with the combined regulatory burden from relevant road legislation (for which the cut-off point is usually 3.5t, e.g. tolls, internal road transport market regulations, driver training etc.) it appears unlikely that there is substantial unfair competition between light goods vehicles and heavier freight vehicles in international commercial road freight transport. The main drivers of increased van usage are thought to be due to shifting demand patterns (increasing home deliveries, for which vans are the most suitable vehicle), rather than explicit efforts to avoid legislation.

6.3 Efficiency

Question 9: To what extent has the legislation been efficient? What are the regulatory costs and savings involved (i.e. substantial compliance costs, enforcement costs or savings and administrative costs of monitoring and reporting arrangements) and are they proportionate to the benefits achieved on working conditions, road safety and competition?

The efficiency of the social legislation is assessed based on comparison of changes in costs and in benefits for: operators, drivers and national authorities and related to: compliance, enforcement, monitoring and reporting.

The table below presents the estimated implementation costs for enforcement authorities due to the requirements laid down in the EU social legislation.

Table 5: Implementation costs for enforcement authorities (total for EU-27)

Cost Item	One-off cost** (€ million)	Annual cost*** (€ million / year)
Staff employed in enforcement	-	400 (mid estimate) 300 - 500
TACHOnet	42-43	1.7
Software and hardware equipment	45-50	*
Training of enforcement staff	30	12

* Software and maintenance costs are not considered as such data was not available at the authorities.

** One –off costs are investment costs involved in the introduction of social legislation.

*** Annual costs estimates are based on the latest figures; they do not reflect the costs borne every year since the introduction of the legislation.

The analysis shows that the largest share of the overall enforcement cost is represented by ongoing staff costs required to maintain the enforcement capacity.

The benefits of the road social legislation in terms of working conditions cannot be quantified by any means for use in a cost-benefit assessment. Benefits in terms of improvements in road safety may be quantified, but are subject to such high uncertainty as regards the contribution of the social rules, hence no robust conclusions on these basis can be drawn.

As an alternative indicator, qualitative assessment on the basis of survey among enforcers⁸⁶ was carried out. The results show that 43% (22) of respondents regarded that the requirements under Directive 2006/22/EC led to higher enforcement costs while at the same time the effectiveness in terms of compliance with the rules also improved. Even more positively, a further 14% (7) of respondents considered that there were no material impacts on costs while at the same time the effectiveness improved, and even 5% (3) estimated a reduction in costs while also seeing improvements. No respondents reported increased costs and lower or unchanged effectiveness. Although only based on qualitative estimates, this seems to suggest that any increased costs have been accompanied by benefits in terms of compliance.

The enforcement measures put in place resulted in additional costs for national authorities⁸⁷ related to setting up and maintaining risk-rating systems. Around 47% (24) of responding authorities felt that the set-up of the risk-rating system had made a contribution (significant or slight) to investment costs, and 30% (15) identified it as making a contribution to ongoing costs. However, no authorities were able to provide more precise information as to the magnitude of these costs.

At the same time, the risk-rating system is generally considered to have led to efficiency and effectiveness improvements in enforcement – almost 75% (39) of responding enforcers

⁸⁶ In total 52 enforcement authorities, across 17 Member States plus Norway and Switzerland, responded to the survey, of which 28 belonged to the national level and 24 to the regional level.

⁸⁷ Responses from 15 Member States were received to the survey: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Latvia, Poland, Portugal, Slovakia, Slovenia, Sweden, UK.

agreed that the system had improved their ability to detect non-compliance. Some enforcers⁸⁸ mentioned that the risk-rating system had improved the cost-efficiency of their activities. This seems to indicate that, despite the additional costs, the benefits of the risk-rating systems are also significant. No other additional costs impacts were identified as being significant.

In terms of benefits, the potential for greater digitalisation of enforcement systems appears to be strong. There are two main advantages of a higher degree of digitalising enforcement systems: (i) easier compilation of reports and (ii) access to real-time information on vehicle's and driver's status concerning transport license documents, tachograph cards, history (type and frequency) of infringements committed, etc. The more digitalised enforcement system is considered to be costly in the short term, but in the longer run it makes the work of control officers more efficient. This can lead to gains in efficiency and cost savings. In this respect, cost savings are assumed to appear not only for the enforcement authorities when conducting checks, but also for the operators since time during which vehicles and drivers are checked is minimised.

For transport operators the main costs of compliance with the legislation are related to:

- Hardware - costs for purchasing tools to download tachograph data, such as company cards, downloading tools etc.
- Administrative effort and monitoring: areas frequently mentioned included the cost of understanding complex rules, inspection of data, scheduling etc.
- Staff costs and training: Transport operators are directly responsible for training their drivers on the functioning and the correct use of the recording equipment as well as on making sure that their drivers have proper knowledge of driving time and rest period requirement so to guarantee full compliance with EU social norms.
- IT/software: Technological and IT developments that have occurred over the past years have made it possible to purchase products that not only enable the basic analysis and reporting of drivers' hours management but are also intended as a full vehicle fleet management tool.

Table 6 shows that, on the whole, cost increases (in % of the firms' transport-related annual turnover) have been estimated by the companies themselves to be around 1-3% for operators. Similar cost increases (1.3%) are reported by the companies engaged in goods and in passenger transport operators in the larger firm size bracket (>€5 m). The figures highlight a possible disproportionate effect on smaller firms, who appear to incur a larger cost relative to their size compared to large companies – as is often the case with legislation involving administrative burdens. However, the sample size of respondents for the smaller companies was rather low (only 29 companies below €500,000), which makes it difficult to draw any concrete conclusions.

Table 6: Estimated increase in costs due to road social legislation to undertakings as a % of transport-related revenue since 2007

	Size of firm (annual transport-related revenue)			
	< €100,000	€100,000 - €500,000	€500,000 - €5 million	> €5 million
Goods transport	3.0%	2.9%	1.6%	1.3%
Passenger transport	1.9%	3.4%	2.3%	1.3%

Source: Survey of undertakings

Notes: N=122; 5 companies <100k; 24 companies 100-500k; 65 companies 500k-5m; 28 companies >5m

⁸⁸ DE, CY, NO, LT

The most substantial cost identified (i.e. costs for the equipment of new vehicles) linked to the investments required to comply with the legislation estimates of the investment required were carried out. A summary of the calculations is provided in table 7, which shows that the estimated total cost for industry of equipping vehicles and training drivers to use this recording equipment is €943.5 million. Full details of the calculations are provided in the Final Report of the support study on ex-post evaluation of social legislation in road transport and its enforcement.⁸⁹

Table 7: Estimation of costs associated with equipping vehicles

Item	Average unit cost (€)	Number of units	Total cost (€ millions)
Tachograph company card	79 per company	930,000 (number of freight & passenger undertakings affected)	73.5
Downloading equipment, e.g. a dedicated "memory stick"	200 per company	930,000	186
Dedicated software to read and analyse the downloaded data	600 per company	930,000	558
Training on the use of recording equipment	350 per driver	3.6 million drivers, of which 10% are trained each year	126
Total			943.5

Sources: interview with a tachograph manufacturer; publicly available price releases (ShopFTA⁹⁰, TachoMaster⁹¹, SmartCompliance⁹²); (ACEA, s.d.); (CORTE, 2015); (Panteia et al, 2014).

The majority of undertakings⁹³ (more than 50%, that is 546) reported that no changes were required to their operations in order to maintain the same level of revenue following the introduction of Regulation (EC) No 561/2006. However, there were some additional costs borne by firms, in particular:

- 35% (380) of operators identified a need to make changes to daytime distribution schedules, and 25% (317) said that night-time distribution patterns had to be adapted.
- 29% (368) of operators identified a need to hire more drivers. The estimates ranged from 1 to 120 (although not all of the drivers were full time), with the median being 2 additional drivers.
- 11% (139) of operators identified a need to purchase additional vehicles (also for the purpose of substituting old vehicles with new ones fitted with digital tachograph). The increase ranges between 1 and 30 new vehicles, with the median being 2 additional vehicles

The only direct cost category identified for drivers in relation to compliance with the social regulation is represented by the cost of obtaining the tachograph driver card. On average, the cost (2014 PPP⁹⁴ adjusted) for obtaining a tachograph driver card is €68 (range between €20 reported for Hungary and €192 reported for Luxembourg). On average at the EU level just above than 2.2 million drivers are required to apply for a digital tachograph driver card. This

⁸⁹ Table 6-16 in the final report of the support study "Ex-post evaluation of social legislation in road transport and its enforcement", p.158 and p. 261 (Please note that the number referred to in the text, i.e. € 853.5 million, on p. 158 is incorrect)

⁹⁰ <https://www.shop.fta.co.uk/c-17-solutions.aspx>. Last visit: 31st December 2015.

⁹¹ <http://www.tachomaster.co.uk/supplies/>. Last visit: 31st December 2015.

⁹² <https://smartcompliance.descartes.com/shop/tachograph-hardware/digital-tachograph-download-devices/>. Last visit: 31st December 2015.

⁹³ In the undertaking survey, 1269 responded to the survey

⁹⁴ Purchasing Power Parity

results in a total compliance cost for them to apply and obtain a tachograph driver card of €152 million.

The second-most important costs for operators and for drivers are related to the administrative costs of monitoring and reporting activities. Administrative costs borne by operators and drivers to report on the compliance with the social legislation are associated with the downloading process of the data stored in the tachographs and with the requirement of returning records. The costs for reporting with use of a digital tachograph have been estimated at €61 million on a yearly basis. For analogue tachographs, this cost has been estimated at €51 million on a yearly basis. The higher total annual costs for digital tachographs compared with analogue tachographs result from the higher number of drivers using digital tachographs and vehicles equipped with such. The unitary annual cost of using digital tachograph is five times lower than the cost of using analogue tachograph.

National authorities and ministries typically do not consider that there are significant costs involved to meet reporting requirements. An estimate has been calculated in order to gauge the possible level of costs, starting from the value reported by Slovenia. Overall, the cost for reporting and monitoring has been estimated at €7-8 million/year for the period 2011-2012. The combined reporting of Regulation (EC) No 561/2006 and Directive 2002/15/EC is seen as a positive development that has contributed to reducing costs.

6.4 Coherence and coordination

Question 10: To what extent are the provisions and definitions of the three legal acts composing the legal framework of the social rules in road transport internally consistent and coherent? Are there any differences, overlaps or inconsistencies and what are the consequences, if any? To what extent are the three legal acts working together as a framework for the social rules in road transport?

The comparative analysis of the two legal acts shows that Regulation (EC) No 561/2006 and Directive 2002/15/EC are legally coherent with regards to their objectives, general scope and definitions/provisions. The Directive has been designed to act in concordance with the previous Regulation (EEC) No 3820/85, replaced by Regulation (EC) No 561/2006. The scopes of workers covered by the two acts are rather complementary with some overlaps (for drivers) and some workers out-of-scope (self-employed travelling staff).

Although there are no problems of coherence in a strict legal sense, the analysis did point to practical problems with: (i) combining the two systems of breaks provided by the Directive and the Regulation and with (ii) combining the driving and working time requirements.

In relation to breaks, it appears that the overlap between the break requirements under Directive 2002/15/EC and Regulation (EC) No 561/2006 make it more difficult for undertakings to appropriately plan the work of drivers.

The combined application of the driving and working time thresholds provided under the Regulation and the Directive leads to practical issues, as only little time is left for other work when the maximum weekly driving time is used to its full extent. Some Member States also pointed out in the survey that the current legislation does not leave sufficient time for non-

driving activities.⁹⁵ However, these overlapping requirements on working and driving times do not induce any legal inconsistency.

The coordination of the legal instruments is evaluated based on assessing the extent to which they are organised so as to minimise their inputs (including personnel and equipment), without compromising the effectiveness of the legislation. Coordination between checks of Regulation (EC) No 561/2006 and Directive 2002/15/EC is generally high (i.e. checks of both pieces of legislation are carried out at the same time by enforcement authorities). There appears to be a higher degree of coordination for checks at the premises, since it is not always possible to coordinate checks at the roadside and not all of the required records for working time are held in the vehicle.

At the level of the firms, coordination of the processes for the driving time and working time rules can be achieved through the use of ICT systems. Software packages are available to plan schedules and track driver's activities in real time, which can help to minimise the risk of infringements and associated penalties.

Coordinated efforts of enforcers and firms may also yield positive outcomes by supporting firms in achieving and maintaining high compliance, which means that enforcers can further reduce (on top of using a risk rating system) the need to target them in random checking and achieving good results in terms of compliance levels. An example of such innovative approach to enforcement based on trust exists in the Netherlands.

Question 11: To what extent the provisions and objectives of the social legislation in road transport are coherent with other relevant EU legal acts? Has it contributed (and to what extent) to the policy objectives in the area of transport, social policy, fundamental rights and environment?

In this question the coherence of the social legislation with other relevant legal acts applicable to road transport sector was assessed. The following legislative acts have been taken into account to analyse interactions, synergies and inconsistencies: tachograph regulation (Regulation (EU) No 165/2014), 2009 Road package Regulations (Regulation (EC) No 1071/2009 on access to occupation of transport operator, Regulation (EC) No 1072/2009 on access to the road haulage market and Regulation (EC) No 1073/2009 on access to the passengers transport market, Directive on training of drivers (Directive 2003/59/EC) and roadworthiness package (Directive 2014/45/EU on periodic roadworthiness tests and Directive 2014/47/EU on technical roadside inspections) and the Posted Workers Directive 97/71/EC and its enforcement Directive, Directive 2014/67/EU.

The external coherence of the social legislation with those legal acts is found in general positive. The provisions complement each other as they contribute collectively to the same policy objectives of improving safety of all road users, preventing and combatting distortions of competition between transport operators and enhancing working conditions to improve health and safety of drivers. However, there are several inconsistencies between specific provisions which lead to practical difficulties in application or result in diverging interpretations and enforcement. For instance, the list of most serious infringements provided in Annex IV to Regulation (EC) No 1071/2009 does not correspond well with the provisions in Regulation (EC) No 561/2006, in particular as regards infringements of daily driving time limits. Also the obligation of keeping driving time and working time records differ between

⁹⁵ Survey of national authorities in Annex E to the final report of the support study "Ex-post evaluation of social legislation in road transport and its enforcement" available at: http://ec.europa.eu/transport/modes/road/road-initiatives/fair-competition-workers-rights_en

the Directive on Working Time and the Tachograph Regulation. Also some exemptions established by the Driving Time Regulation and by the Directive 2003/56/EC on the training of drivers are not consistent. These particular discrepancies have a negative impact on the proper application of the road social legislation, however, they do not result in putting at risk the objectives of road safety, working conditions and fair competition.

In the light of the general policy objectives of the European Union, the road social legislation broadly fits in the EU social policy and contributes to some extent to achieving its goals. This is in particular the case for the road safety, working conditions, and health and safety components of the EU policies, which are among the main objectives of the road social legislation. With regards to the objectives of access to market and fair competition, the road transport social legislation contains adequate links with other pieces of EU legislation regulating these aspects.

Certain key objectives of EU policy are however not reflected in the road transport social legislation, namely the efficient use of resources, environmental and sustainability objectives and adequate infrastructure employment (in particular, changing employment structure like increase of short-term/temporary contracts or work organised via agencies). These aspects although crucial for the transport - and more particularly for road transport - policy and legislation, have no clear link with social legislation in itself. One general policy objective with which the link is considered insufficient is the development of infrastructure (e.g. parking and rest areas), in particular in the context of requirements on breaks and rest periods of drivers.

Moreover, as regards the Posting of Workers Directive and its enforcement Directive, there is a certain gap between the application of the two legal frameworks hindering to ensure a balance between the freedom to provide cross border services and the social protection rights of workers. The legislations on the Posting of Workers does not take into account of any sector-specific criteria reflecting the highly mobile nature of the workforce and multi-country operations. As a consequence, Member States (like already Germany, France and Austria) can apply it to each international transport operation carried out by foreign operators on their territory from the first minute of such activity (see above section 5.3 on challenges in the sector).

As regards the broader EU legal framework, the Charter of Fundamental Rights of the European Union provides under its Article 31 the right to fair and just working conditions. This article grants rights to workers to daily and weekly rest periods as well as a limitation to the maximum working hours. It is therefore of particular relevance and concordance with the road transport social legislation. Article 52 of the Charter also foresees the possibility to derogate to its rules, including Article 31, in specific circumstances (limitations necessary and meeting the objectives of general interests or the need to protect the rights and freedoms of others). This means in particular that derogations must be strictly limited to what is necessary to ensure that it fits with the specific requirements of road transport.

The policies and legislations have been analysed (i.e. White Paper, Charter of Fundamental Rights, Europe 2020, Cohesion policy, Health and Safety policy) interact with the road transport social legislation either through direct links or indirect links in different spheres. Links with environment and efficient use of resources are therefore relevant in the context of transport policy rather than in the context of social legislation. Nonetheless, the lack of links between the road transport social legislation and, on the one hand, development of attractive infrastructure and, on the other hand, employment structure may be detrimental to the objectives of road transport social legislation. Adequate infrastructure is needed to support the requirements of the road transport social legislation related to breaks and rest periods.

Ensuring a workforce sufficiently large to cope with the pressure put on the sector could be linked to the road transport social legislation.

Positive interactions between road transport social legislation and all analysed broader EU policies were identified with regards to road safety, working conditions, training and skills. No negative impacts were identified or reported by stakeholders in terms of coherence.

6.5 EU added value

Question 12: What is the added value of setting the social legislation for road transport at the EU level?

The road transport sector has a strong international character, with highly mobile workforce carrying out activities across the borders being an inherent feature of the profession. A third of all freight services in the EU are operated between Member States. In 2014, 286,883 hauliers were in possession of Community licences allowing them to operate on the EU haulage market. This number increased by 3% compared with 279,056 Community licences issued in year 2009⁹⁶. As regards passenger transport, 35.659 Community licenses (allowing to operate on the EU passenger market) were issued in 2014 showing a growth by 3% compared with 34.582 Community licences since 2010⁹⁷. However, the great majority of passenger transport operations concentrate on domestic markets. These figures suggest that a large share of drivers perform their activities (driving and other work) on the national roads of several Member States, having direct impact on road safety and indirect impact on competition between foreign and local operators. Therefore, the common rules provided by the road transport social legislation are intended to ensure for drivers and operators equal working and business conditions under which they may operate on the national and international market. The lack of the EU common minimum requirements on driving, working and resting times would lead to proliferation of variety of national traffic rules that EU non-resident drivers and operators would have to apply. Further it would create a risk of choosing for operations the countries with less stringent rules allowing for longer working hours.

In this context the social legislation provide the EU added value by harmonising the minimum requirements on the organisation of driving, working and resting periods. However, the potential EU added value in achieving a level playing field has not been reached so far, because some problems remain pertaining to the weak and inconsistent enforcement and diverging implementation between and within Member States. None of those problems though call into question the importance of the substantive principles and provisions, which the social legislation establish.

The opinions of the stakeholders with respect to added value generally validate the notion found in the legislation itself and in the literature that the EU level is the most relevant level to provide road social rules. The majority of respondents to the targeted surveys agreed (strongly or slightly) that EU social rules in transport have an added value compared to

⁹⁶ source: Commission; data based on the national implementation reports from Member States, in line with Art 17(1) of Regulation 1072/2009

⁹⁷ Ex-post evaluation of Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services and amending Regulation (EC) No 561/2006, section 4.2

national level rules – i.e. 80% (12 out of 15) of responding ministries 58% (14 of 24) of enforcers and 50% (32 of 64) of respondents to the general survey.

It seems that the legislative intention of ensuring subsidiarity by the creation of EU-wide rules regarding road social legislation with a possibility of applying country-specific rules has been implemented in practice. However, the possibility to apply diverging social rules for drivers is seen by some of those who commented on this issue prevalently in a negative light, i.e. eighteen respondents out of eighty who responded to the stakeholder survey providing usable comments to the added value question pointed out that different rules at national level hinder the level-playing field, while only two respondents indicated a positive dimension of these differences that is due to greater flexibility at national level.

Since the legislative process undertaken at EU level that is aimed at the creation of the European Single Transport Area including road social legislation started a few decades ago and is at quite an advanced stage, choosing an alternative solution now does not seem to be justified both in political and economic terms.

A different level of regulation (e.g. national regulation, soft-law measures) could not have been more relevant and/or effective and/or efficient than the current one to achieve its main objectives. A low number of cases where road social legislation provides a different level of protection and a modest scope of derogations indicate that the EU level is considered appropriate. The European Agreement concerning the work of Crews of Vehicles engaged in International Road Transport (AETR) takes the pattern of EU legislation to harmonise the road social rules with non-EU countries. This evidence leads to a conclusion that EU-level legislation is the most relevant and effective solution for harmonising road social rules.

7 CONCLUSIONS

Relevance

The social legislation remains a relevant and proportionate tool to address the three risks of: 1) unlevelled playing in the transport market, 2) deterioration in social and working conditions of drivers and 3) deterioration in road safety levels. This is due both to the nature of the risks – which arise from uneven and ineffective enforcement, and hence by definition can only be addressed by uniform rules transcending national boundaries – as well as developments in the market that make it more important than ever to control the risks, which have intensified compared to the situation when the legislation was first adopted. In particular, market competition in the road transport sector has become increasingly intense and this exacerbates the risk of non-compliance by undertakings or drivers who are under greater pressure to remain competitive. This means that the external factors that contribute to the risk have intensified compared to the situation when the rules were adopted, which in turn implies that there is a greater need to guard against them. In the absence of the rules and their effective enforcement, there would be greater problems of an unlevelled playing field, as well as deteriorating working conditions and road safety.

The scope of the social legislation is also still relevant today, particularly taking account of modern complex employment arrangements. Concerned drivers are at a higher risk to infringe the rules with adverse effects on road safety and their health and safety. This is because checking and keeping track of activities across multiple employers and/or (cross-border) subcontracting chains over a period of time has become an increasing challenge for enforcement officers and drivers themselves. This type of employment arrangements has intensified compared to when the rules were adopted, which means that there is today even a greater need to cover those drivers by the social legislation.

Concerning the needs of the freight sector, the analysis shows that these have not substantially changed; however the underlying issues that make compliance with prescriptive driving and working time rules more difficult have become more pervasive. This particularly concerns the external factors such as congestion and accessibility to resting facilities, as well as growing client pressure – which has led to concerns voiced by industry. The mechanisms built into the rules that aimed to alleviate these issues (respectively flexibilities and co-liability) are not enforced uniformly. In summary, the main issues appear to be around the manner in which the legislation is applied and enforced across Member States. As such, industry representatives have argued for more flexibility in the rules, supported to a certain extent by drivers. The counterpoints to these views are concerns of enforcers and trade unions over employers potentially abusing additional flexibilities for the purpose of extending driving times.

For the passenger transport sector, there are distinct service needs that are not seen in freight transport, including regular stops for activities that do not require driving and the need to accommodate passenger requests for flexibility (e.g. regarding additional stops, changes of route, changes in departure times etc.). Industry representatives argue that more flexibility in the application of the rules to deal with specificities of certain transport operations and/or specific external circumstances is desired and would help to comply with the rules in force.

Effectiveness

The social legislation had in general a positive impact on providing adequate working conditions. Even though no significant improvements could be observed, the apparent stability of the situation is regarded as a success in light of the development of increased competition and other pressures in the sector. These development combined with the absence of such EU rules could have led to excessive driving and working times and insufficient rest resulting in greater fatigue of drivers and risks to road safety. The exact impact of the social legislation on the changes in the level of fatigue of drivers is difficult to delineate as distinct from other influencing factors. The perceived downsides of the Regulations (e.g. lack of flexibility and high fines) are considered by some drivers and undertakings as refuting the intended benefits on working conditions when confronted with day-to-day demands of driving.

Although road safety levels have improved over the last decade, the impact of road social legislation on this development is impossible to discern given that in the same period numerous other road safety measures have been implemented across the Member States (such as speed management measures, enforcement of seat belt use, changes in drivers' education etc.), and available data typically does not allow to identify the cause (or the causing party) of an accident. Nevertheless, the stakeholder groups consulted for this study mostly believe that the analysed legal acts had a positive or at least neutral effect on road safety levels (60% of undertakings, being the most reserved stakeholder group in this respect, take this view).

The analysis of the market showed that a level playing field has not been achieved. This is partly due to intended flexibilities that are provided for within the legislative acts and the fact that the responsibility for setting up sanction systems remains with national governments. On the other hand, unintended factors that hinder the development of a level playing field include differences in interpretation of the rules and different implementation of enforcement systems (in line with Directive 2006/22/EC) across the Member States.

The enforcement measures are found only partially effective in addressing the risk of non-compliance. While the enforcement measures mitigate the risk of non-compliance, the risks of being detected and its consequences do not outweigh the potential rewards of infringing

the rules for all undertakings and/or drivers. The extent to which this applies varies across Member States and their specific enforcement systems in place, as well as the type of transport operation being carried out and cannot be realistically quantified.

The combination of external pressures, alongside insufficient enforcement, makes intentional non-compliance more likely. There is also the risk of unintentional non-compliance that is not addressed by the enforcement measures. It is due to uncertainty about the rules, lack of awareness of the rules, or unforeseen circumstances – issues that are only insufficiently addressed by the legislative framework.

The set of indicators available in the Member States' reports allows for adequate monitoring and follow-up of the Driving Time Regulation and Enforcement Directive in terms of the implementation of its core requirements, such as driving and resting time thresholds and with the minimum number and scope of controls. It also allows for a basic assessment of national enforcement capacity and the reported detected infringement rates. The timeliness, completeness and consistency of the monitoring data submitted have increased over time.

In contrast with the Driving Time Regulation, there is no explicit legal obligation for Member States to include quantitative information in their reports with regard to checking compliance with the Working Time Directive. As a result, there is insufficient quantitative data to evaluate the implementation and effectiveness of the Directive. The current biennial reporting is still fragmentary and in its current state not adequate for a comprehensive checking and follow up of the whole legislative framework.

Efficiency

The largest share of the overall enforcement cost is represented by ongoing staff costs required to maintain the enforcement capacity. The main additional cost category is related to the risk-rating systems. At the same time, the risk-rating systems are considered in general to have led to efficiency and effectiveness improvements. In terms of benefits, the potential for greater digitalisation of enforcement systems could lead to (i) easier compilations of reports and (ii) access to real-time information on vehicle's and driver's status, leading to cost-savings. The requirements under Directive 2006/22/EC have led to higher costs while at the same time contributing to higher effectiveness in terms of enforcement and compliance.

Overall, ongoing cost increases for transport operators have been estimated to be around 1-3% of the annual transport-related turnover for operators to comply with the social legislation. This covers costs related to the following main items: hardware (e.g. tools to download digital tachograph data), IT/software; administrative effort and monitoring, staff costs and training. Such costs generally have a larger relative impact on SMEs than larger businesses who enjoy economies of scale.

The companies are not equally affected by increases in compliance costs. Some needed to employ more drivers and/or purchase more vehicles to maintain the same level of revenue while complying with the rules, whilst others did not have to introduce any changes to their operations. There is no clear pattern of distribution of the compliance costs between the companies depending on their size, type of operations (freight or transport) or Member States of establishment.

It is not possible to weigh these additional costs against the magnitude of benefits since these relate to subjective or diffuse issues that are impossible to quantify. The assessment of the contribution of the social rules to those benefits is not possible due to very complex interactions with external contributing factors.

Coherence and coordination

The social legislation is generally coherent with other road transport provisions and other EU legislation. Small discrepancies or loopholes identified create indeed practical difficulties with implementation. These are, however, dealt with through the soft-law measures such as guidelines, clarification notes and enforcement good practices. However, there is certain gap with the application of the Posting of Workers Directive and its Enforcement Directive, which hinders a balance between the freedom to provide cross border services and the social protection rights of workers. Therefore sector specific criteria would be needed for mobile workers in road transport in the context of the application of the PWD.

In the light of coherence with the general policy objectives of the European Union, it can be concluded that the road social legislation broadly fits in the EU social and transport policies and contributes to some extent to achieving their goals. Certain key objectives of EU policy are however not reflected in the road transport social legislation, namely the efficient use of resources, environmental and sustainability objectives, adequate infrastructure and employment structures. These aspects although crucial for the transport - and more particularly for road transport - policy and legislation, have no clear link with social legislation in itself. In the absence of evidence on these points, the absence of express links does not imply that the scope of integration is not fully exploited.

Despite certain inconsistencies the three legal acts work together forming a framework for social rules in road transport. This framework provides the possibilities for economies of scale, although not yet fully exploited, in particular as regards integrated controls of compliance with the provisions on driving times, resting periods and working times. At the level of the firms, coordination of the processes for the driving time and working time rules can be achieved through the use of ICT systems. Nevertheless, the design of the legislation seems to indicate that a level of duplication and complexity in terms of record-keeping cannot be completely avoided.

EU added value

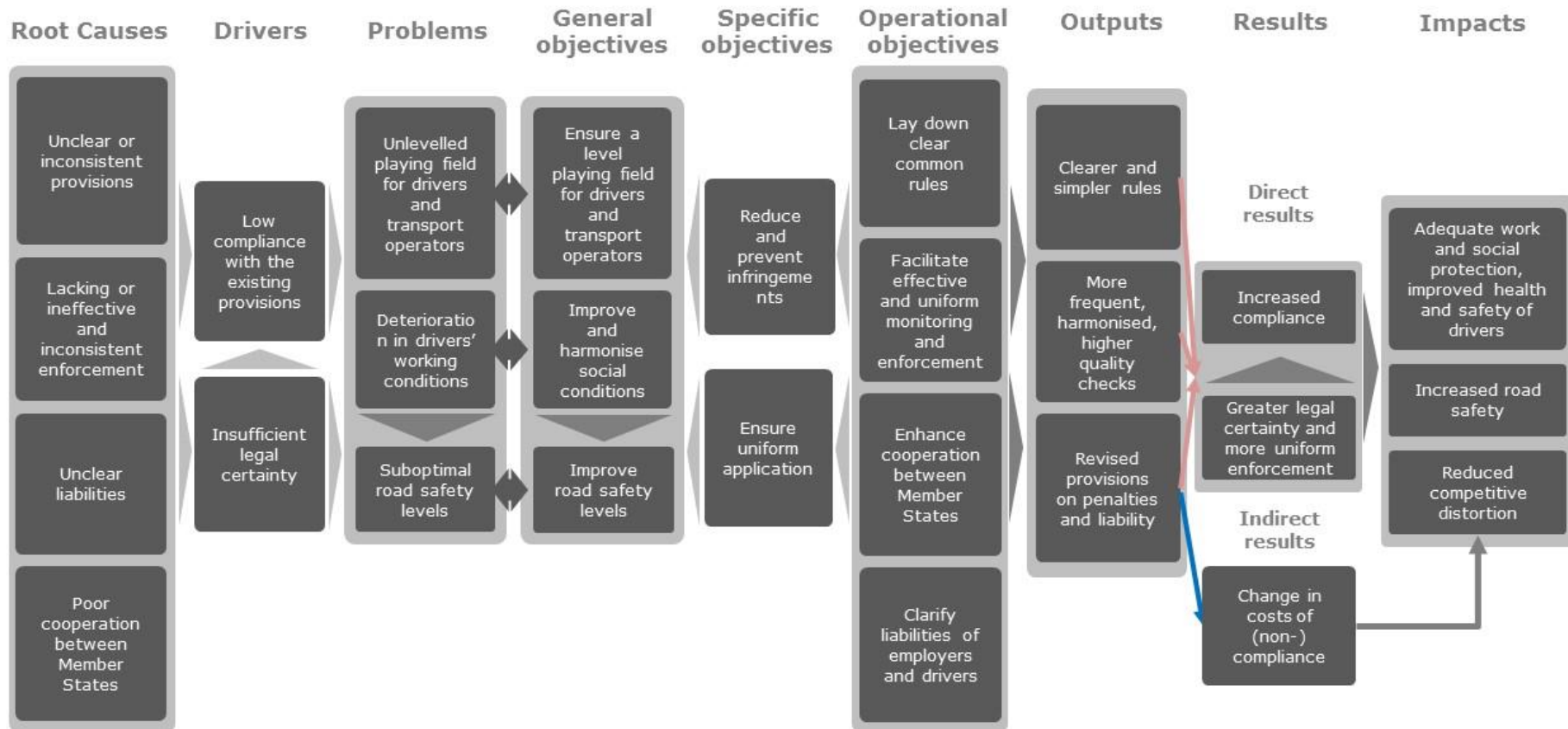
Overall, the social legislation is considered to have led to EU-wide positive results in terms of harmonising the minimum working and business conditions for drivers and operators engaged in domestic and cross-border transport activities in the EU. The EU level is the most relevant to provide such social rules in order to improve road safety, working conditions and prevent distortions of competition on the European market. However, some issues remain in relation to the effectiveness of reaching these objectives in the light of derogations that can be applied by individual Member States and due to diverging interpretations and inconsistent and weak enforcement.

The legislative intention of ensuring subsidiarity by the creation of EU-wide rules regarding road social legislation with a possibility of applying country-specific rules has been implemented in practice. However, the possibility to apply diverging social rules is possibly detrimental to the added value given that national rules hinder the level-playing field.

Since the legislative process undertaken at EU level that is aimed at the creation of the European Single Transport Area including road social legislation started a few decades ago and is at quite an advanced stage, choosing an alternative solution now does not seem to be justified both in political and economic terms.

8 ANNEXES

8.1 Annex I - INTERVENTION LOGIC DIAGRAM



8.2 Annex II - Procedural information concerning the process to prepare the evaluation

1. Identification of the lead DG; Agenda planning/Work Programme references

- DG MOVE is the lead Directorate General.
- The evaluation was validated in the Agenda Planning under references 2016/MOVE/005, 2016/MOVE/018 and 2016/MOVE/019.

2. Organisation and timing

- The evaluation of the legislative acts was launched on 30 September 2014 with the first meeting of the Steering Group, to which were invited representatives from the Secretariat General (SG), Legal Service (LS), Directorate-General for Employment, Social Affairs and Inclusion (EMPL), Directorate-General for Justice and Consumers, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (GROW), Directorate-General for Economic and Financial Affairs (ECFIN) and Directorate-General for Health and Food Safety (SANTE).
- The evaluation mandate (later in the process converted into the evaluation roadmap following the adoption of the Better Regulation Guidelines), including the evaluation questions, as well as the terms of reference for an external study to support ex-post evaluation were discussed already at the first meeting of the Steering Group and agreed on in October 2014.
- On 12 December 2014 the Commission signed a contract with an external consultant to carry out the study to support the ex-post evaluation of the social legislation in road transport and its enforcement covering the following legislative acts: Regulation (EC) No 561/2006, Directive 2002/15/EC and Directive 2006/22/EC.
- The roadmap on ex-post evaluation of the social legislation in road transport and its enforcement was published on 9 October 2015.
- On 16 January 2015 DG MOVE with a representative of DG EMPL held the kick-off meeting with consultant commissioned to carry out the study on ex-post evaluation.
- The inception report was submitted together with draft consultation documents on 8 March 2015. These were discussed with Steering Group members at the meeting of 16 March 2015. All comments and revisions concerning intervention logic, evaluations questions, assessment metrics and consultation activities have been reflected in the 1st intermediate report, which was discussed with the Steering Group on 25 June 2015.
- The 2nd interim report was submitted in 3 September 2015, sent for comments to Steering Group members and discussed with the consultant at the meeting of 24 September 2015.
- The draft final report (submitted on 18 November 2015) and its subsequent revisions were discussed with Steering Group members between November 2015 and February 2016. At the meeting of 15 April 2016 the Steering Group members made a quality assessment of the final report and agreed on it. The members agreed also that for the

purpose of drafting Staff Working Document the evaluation questions, which were overlapping, should be merged and simplified. The list of merged questions (from 22 to 12) was agreed on by the end of May 2016.

- The consultation of the Regulatory Scrutiny Board did not take place as the evaluation was not preselected by the interim Regulatory Scrutiny Board for the scrutiny.
- The evaluation was subject to back-to-back open public consultation (OPC) covering the issues of problem definition and of potential policy measures. The OPC was run between 5 September and 11 December 2016 and the findings have been reflected in the Staff Working Document on ex-post evaluation.

3. Evidence used

- The evaluation relies mostly on the support study on the ex post evaluation of the social legislation in road transport and its enforcement conducted by the external consultant. The final report on the study was published on 14 June 2016⁹⁸.
- Evidence was also gathered from the reporting requirements of Member States under Article 17 of Regulation (EC) No 561/2006 and Article 13 of Directive 2002/15/EC as well as from the monitoring of the implementation gathered through: petitions, complaints, pre-infringement and infringements procedures and also from direct consultations of Member States and stakeholders.

8.3 Annex III –: Stakeholder consultation – synopsis report

Consultation activities

The variety of consultation activities have been carried out in the period between June 2015 and December 2016. This synopsis report provides a summary of the outcomes of the stakeholder consultation activities concerning social aspects in road transport. It provides a basic analysis of the range of stakeholder groups that have engaged in those activities and a summary of the main issues raised by stakeholders.

The two-fold objective of all those consultation activities was to:

- provide to the wide public and stakeholders an opportunity to express their views on all elements relevant for the assessment of the functioning of the social rules in road transport'.
- gather specialised input (data and factual information, expert views) on specific aspects of the legislation (e.g. working and business conditions, enforcement methods and tools, etc.) from the enforcement community and from the industry.

The consultation was conducted in three steps, through:

(1) Ad hoc targeted consultation activities organised by the Commission services (Directorate General for Mobility and Transport in cooperation with Directorate-General for Directorate-General for Employment, Social Affairs and Inclusion) carried out between June 2015 and April 2016;

⁹⁸ <http://ec.europa.eu/smart-regulation/evaluation/search/download.do?documentId=15850394>

(2) Targeted consultation activities carried out by the external consultant within the support study for ex-post evaluation of social legislation carried out between June 2015 and November 2015;

(3) Open public consultation - was carried out by the Commission services between 5 September and 11 December 2016.

The ad hoc consultation activities by the Commission included:

- High Level Conference of 4 June 2015 '*Social Agenda for Transport*', which launched the broad debate on social aspects in road transport and where participants discussed key challenges in participatory workshops. It gathered around 369 participants: decision makers, experts in all transport modes and social partners;
- Targeted seminars of 28 September, 23 October and 29 October 2015 – which aimed at discussing the functioning of the social and internal market legislation in road transport and in particular the main problems with the application and enforcement of the rules in force. Based on the structured list of questions and the participants debated on main market and social issues in road transport and the correlations between them and proposed preliminary solutions to address identified problems. The first two seminars were targeted at the industry stakeholders and social partners at the EU level representing 14 organisations. The last seminar was addressed to representatives of Member States.
- Road Transport Conference of 19 April 2016 with one of the workshops dedicated to internal market and social aspects of road transport. It gathered around 400 participants, mainly representatives from Member States, Members of the European Parliament and key stakeholders who discussed the objective and scope of planned Road Initiatives.
- In those targeted consultations all the relevant stakeholder groups, have been actively engaged: national transport ministries, national enforcement authorities, the main associations representing road transport operators, freight and passenger transport operators, freight forwarders, shippers, SMEs, trade unions, drivers and other road transport workers.

The targeted consultation activities carried out by the external consultant within the ex-post evaluation study consisted of:

- Exploratory interviews with 6 organisations (three EU-level organisations, two national enforcement authorities and one national ministry). The aim was to get information necessary to prepare the effective consultation activities that followed;
- 5 tailored surveys targeted at the following stakeholder groups: national transport ministries (focus on national implementation and interpretation of the rules), enforcement authorities (focus on enforcement practices and challenges, enforcement costs and benefits), undertakings (focus on impacts of legislation at the level of individual undertaking), trade unions (focus on impacts on drivers) and general stakeholders (such as industry associations, focus on cross-cutting views on effects of the legislation). In total 1441 responses were received (of which 1269 from transport undertakings).
- targeted interviews with 90 stakeholders (of which 37 with drivers). The aim was to gather the further insight on the stakeholders' experiences with regard to functioning and effectiveness of national enforcement, challenges if compliance.

Results of the targeted consultation activities also contributed to:

a) study visits to 8 different sites (2 freight transport undertakings, 3 parking areas to interview drivers, 1 enforcement authority, 1 EU-level meeting of trade unions, 1 EU-level meeting of enforcement authorities);

b) case studies covering 9 countries: Belgium, France, Germany, Italy, Sweden, Spain, Poland, Romania and the UK. The aim was to analyse the national interpretations and enforcement practices, national market conditions and country-specific challenges.

The stakeholder engagement activities are summarised in Table .

Table 1: Summary of stakeholder engagement

Type of stakeholder	Approached	Responded	% response rate
Surveys			
National ministries	119	15 ⁹⁹	13%
Enforcement authorities	142	52 ¹⁰⁰ (28 (a))	37%
Undertakings survey	(b)	1269 ¹⁰¹	n/a
Trade union survey	102	14 (c)	14%
High level (general) survey	198	64	32%
TOTAL (surveys)		1441	
Interviews¹⁰²			
National ministries	9	7	78%
Enforcement authorities	25	8	32%
Industry associations	16	12	75%
Undertakings	41	14	34%
Trade union	10	5	50%
Specific sectors	11	5 (2 (d))	45%
Other (TISPOL, CLECAT)	2	1	50%
TOTAL (interviews)	114	53	46%
Drivers (e)	n/a	37	n/a

Notes: Stakeholder consultation took place from June 2015 until November 2015. Response rates are approximate, as some organisations forwarded the request to participate to other organisations on the study team's behalf – consequently it is not known how many organisations were contacted in total.

(a) 28 national-level authorities and 24 regional-level authorities, totalling to 52 authorities that responded; (b) Undertakings surveys were distributed via national associations; hence it is not known how many organisations were contacted in total. (c) A number of coordinated responses were received from trade unions. (d) Out of the 5 interviews 3 respondents said that they had not identified any issues with road social legislation and could therefore not provide any further comments; (e) Driver interviews were carried out during study visits

Due to the breadth and depth of issues that needed to be covered in the evaluation, the questionnaires were necessarily rather long and complex. This may have made it more difficult for some stakeholders to find the time to answer, and it is likely that this impacted on the response rate. Overall, the stakeholder response rate can be considered to be very good in light of this, and also considering the highly technical and specific nature of the legislation.

⁹⁹ Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Latvia, Poland, Portugal, Slovakia, Slovenia, Sweden and the United Kingdom.

¹⁰⁰ The enforcement authorities from eight EU-15 countries and from twelve EU-13 countries responded

¹⁰¹ The response for EU-15 States was much higher than for EU- 13 (99% or 1252 responses against 1% or 13 responses and 3 responses from other than EU Member States (1 each from Switzerland and Norway and one response from 'other' (the country was specified))

Particularly high number of responses received from Sweden, Austria, Germany and France, respectively: 577 (45%), 200 (16%), 166 (13) and 160 (13%). Among other EU-15 based undertakings were responses from: Belgium – 5, Italy – 7, Spain – 7, UK – 7 Cyprus – 1, Denmark – 4, Finland – 8, Ireland – 6, Netherlands -1) Poland – 2 replies, Croatia – 1, Romania – 2, Bulgaria – 3, Czech Republic – 1, Estonia – 1, Lithuania – 3)

¹⁰² The provided numbers do not include the six exploratory and eight pilot testing interviews that were carried out before launching the stakeholder questionnaires.

The open public consultation aimed to support the back-to-back ex-post evaluation and impact assessment processes; hence it addressed the issues relevant for both processes: the verification of the problems faced by the sector as well as the identification of potential solutions to address those problems. The anonymised replies and a summary of OPC findings are available online http://ec.europa.eu/transport/modes/road/consultations/2016-social-legislation-road_en

The main objectives of the OPC were: 1) to confirm the preliminary results identified during the ex-post evaluation support study, 2) to seek the opinion of stakeholders on possible policy measures; and 3) to assess the expected impacts of the possible policy measures.

Questionnaires were drafted by the Commission services based on the findings of the study on ex-post evaluation. To better tailor the questions to the stakeholder groups the consultation was composed of two questionnaires: 1) non-specialised questionnaire addressed to drivers, operators, shippers, forwarders, citizens who submitted in total **1209** responses and 2) specialised questionnaire addressed to national authorities, enforcement bodies, workers' organisations and industry associations from whom **169** responses were received. In total **1378 responses** have been received. The further analysis is made separately for two questionnaires (two groups of addressees).

Non-specialised questionnaire

The 1209 responses provide a good representation of key stakeholders, the profiles of which are summarised Table 2.

Table 2: Analysis of responses by type of operation and geography

Stakeholder category	Region of operation (as indicated by respondent)	No. of responses	% of responses	% of total
Driver or other road transport worker (employee)	EU-wide	173	47%	
	National	170	46%	
	Non-EU/Other	26	7%	
	None/No response	3	1%	
	Total	372	100%	31%
Road haulier	EU-wide	143	53%	
	National	83	31%	
	Non-EU/Other	38	14%	
	None/No response	5	2%	
	Total	269	100%	22%
Passenger transport company	EU-wide	117	55%	
	National	73	35%	
	Non-EU/Other	20	9%	
	None/No response	1	0%	
	Total	211	100%	17%
Self-employed driver	National	136	66%	
	EU-wide	64	31%	
	Non-EU/Other	4	2%	
	None/No response	2	1%	
	Total	206	100%	17%
Other company in the transport chain (shipper, forwarder)	EU-wide	25	56%	
	National	13	29%	
	Non-EU/Other	5	11%	
	None/No response	2	4%	
	Total	45	100%	4%

Stakeholder category	Region of operation (as indicated by respondent)	No. of responses	% of responses	% of total
Private individual	National	16	42%	
	Non-EU/Other	12	32%	
	EU-wide	7	18%	
	None/No response	3	8%	
	Total	38	100%	3%
Other	National	30	44%	
	EU-wide	18	26%	
	Non-EU/Other	7	10%	
	Non-EU/Other	13	19%	
	Total	68	100%	6%
Grand Total		1209	100%	100%

A total of 126 coordinated responses (e.g. standard replies circulated by associations to their members and submitted separately) were identified and dealt accordingly in the analysis of the consultation results.

A total of 23 countries were represented by the respondents, and a further 8 respondents listed 'other' as their country of residence/establishment. It has to be noted that 42% (512) of the respondents were from Sweden, which was by far the most represented country. The analysis of the consultation results considered this particularity to avoid a potential bias in the results.

Specialised questionnaire

The stakeholder engagement activities of 169 responses received for a specialized questionnaire are summarized in Table-3:

Table-3: Analysis of responses by type of operation and geography

Stakeholder category	Region of operation (as indicated by respondent)	No. of responses	% of responses within group	% of total
Industry association	National	34	37%	
	EU-wide	55	60%	
	Non-EU/Other	3	3%	
	None/No response	0	0%	
	Total	92	100%	54%
Workers' organisation (e.g. trade union)	National	11	50%	
	Non-EU/Other	0	0%	
	EU-wide	11	50%	
	None/No response	0	0%	
	Total	22	100%	13%
National enforcement authority	EU-wide	1	14%	
	National	6	86%	
	Non-EU/Other	0	0%	
	None/No response	0	0%	
	Total	7	100%	4%
Regulatory authority (e.g.	EU-wide	2	33%	

Stakeholder category	Region of operation (as indicated by respondent)	No. of responses	% of responses within group	% of total
national transport regulator, national competition authority)	National	1	17%	
	Non-EU/Other	0	0%	
	None/No response	3	50%	
	Total	6	100%	4%
EU governmental authority	National	1	25%	
	EU-wide	2	50%	
	Non-EU/Other	0	0%	
	None/No response	1	25%	
	Total	4	100%	2%
Academic body (e.g. research institute, training organisation)	EU-wide	1	33%	
	National	2	67%	
	Non-EU/Other	0	0%	
	None/No response	0	0%	
	Total	3	100%	2%
Enforcement authorities' organisation	EU-wide	1	100%	
	National	0	0%	
	Non-EU/Other	0	0%	
	None/No response	0	0%	
	Total	1	100%	1%
Intergovernmental organisation	EU-wide	0	0%	
	National	1	100%	
	Non-EU/Other	0	0%	
	None/No response	0	0%	
	Total	1	100%	1%
Other	National	11	34%	
	EU-wide	17	53%	
	Non-EU/Other	2	6%	
	None/No response	2	0%	
	Total	32	100%	19%
Grand total		168		100%

Moreover, through-out these consultation activities around 40 position papers have been received from variety of stakeholders: industry associations, workers organisations, national authorities, enforcement organisations and other entities, such as vocational training institution.

Conclusions:

The two-fold objective of the consultation activities has been largely achieved, as all relevant stakeholders groups¹⁰³ representing all EU Member States have been extensively consulted providing their views, quantitative information, where available, and suggesting the solutions to improve the legislative framework. The information collected corresponded in general to the objectives and expectations of the consultation activities defined for each stakeholder group. However, due to limited availability of quantifiable hard data certain information gaps remained, this includes in particular the scarce data on the length and frequency of drivers' periods away from home-base, the extent to which transport operators are hiring drivers from countries with less demanding national rules in terms of social and working conditions, number of drivers and operators affected by the application of diverging national measures linked to the EU social legislation. To fill-in these data gaps the Commission analysed several external studies and reports and launched in 2016 two studies dedicated to collection and analysis of the specific data. The findings of these studies will feed into impact assessment analysis.

Regardless these remaining specific information gaps, the consultation activities can be regarded successful in terms of high response rate and a number of concrete proposals received from variety of stakeholders.

Results of consultation activities

General overview of findings

All the subsequently organised consultation activities confirmed and further developed the preliminary identified, during the seminars and conferences mentioned above, main challenges faced by the road transport sector, namely: 1) distortions of competition between transport operators; 2) inadequate working conditions for drivers and 3) high regulatory burdens for Member States and stakeholders.

The stakeholders' consultations also helped to determine the main issues behind those challenges, some of which are of regulatory nature (unclear or unfit legal provisions, divergent interpretations of the rules in force, inconsistent and ineffective enforcement) and others are market-based (illicit employment practices, transport operations carried out regularly in/from the country other than the country of establishment/employment and linked to it long periods away from homebase by drivers).

The consultation activities also revealed that some issues, such as illicit employment and business practices, go beyond the 'traditional' road transport social legislation and are linked with the rules on cross-border provision of services (mainly the posting of workers) and on access to occupation (stable establishment and cabotage).

All stakeholders in general agreed that, whilst the current legislation remains a relevant tool, it is not sufficient or sufficiently effective in addressing all the risks of the sector and therefore the intervention at the EU level is necessary to improve the situation. They were

¹⁰³ Drivers (employed and self-employed), other road transport workers, transport operators (in freight and passenger transport), shippers, freight forwarders, industry associations, workers' organisations, national authorities, enforcement bodies

also on the same line that the EU action should focus on: 1) clarifying, simplifying and adapting certain rules in force, mainly provisions on weekly rest, breaks and rest periods, co-liability for infringements, performance-based remuneration, long periods away from homebase and the scope of legislation in terms of drivers and vehicles covered by the driving and working time rules and also by the rules on the posting of workers; 2) enhancing consistency and cost-effectiveness of enforcement through stronger and regular administrative cooperation between Member States, better exploitation of existing tools and systems for control (such as risk rating systems and European Register of Road Transport Undertakings - ERRU) and promoting the quick deployment of smart tachograph.

The stakeholders' views on the key issues raised during the described above consultation activities are presented below.

Clarity of the rules on driving and working times, breaks and rest periods

The stakeholders' views on the clarity of existing provisions on driving and working times, daily rest periods, breaks and availability periods differed somewhat between stakeholder groups. 11 out of the 15 ministries responding to the general survey carried out within the support study on ex-post evaluation strongly¹⁰⁴ or slightly¹⁰⁵ agreed that provisions on driving times are sufficiently clear to avoid difficulties in interpretation. However, the provisions on weekly rest periods appear to be clear for only six¹⁰⁶ respondents out of 15. In the same time drivers interviewed for the study were divided on the question of clarity and consistency of the rules. 9 out of 31 drivers considered that the lack of clarity and consistency of the rules are major causes for difficulties in compliance. 13 out of 31 assessed that these are not a cause at all. 52 out of 1287 undertakings who responded to the survey indicated that rules are unclear and that in many cases the inconsistencies are due to particular implementation by Member States (e.g. 12-day rule in Germany, Working Hours National Act in the United Kingdom, French Labour Code, Labour Code in Romania). 11¹⁰⁷ out of 21 enforcement authorities considered that the lack of clarity or coherence in existing rules was not a cause for poor compliance, 6¹⁰⁸ authorities designated it as a moderate to major cause.¹⁰⁹ Majority of trade unions shared this view, as 8 out of 14 trade unions considered that a lack of clarity/coherence in existing rules is not a cause for poor compliance.

The open public consultation further develops on this issue by showing the views of stakeholder groups on level of easiness or difficulties with compliance with those rules. Majority of drivers and transport undertakings reported no major difficulties in compliance with daily driving times (917 out of 1183 (78%)), weekly driving times (806 of 1179 (68%)), daily rest periods (862 of 1177 (73%)). Breaks in driving (776 of 1179 (66%)), weekly rest periods (733 of 1171 (60%)) and weekly working time (668 of 1174 (57%)) also had more than half of respondents indicate that the rules were rather not difficult or not at all difficult to understand and comply with. For authorities, enforcers and industry associations the rules on daily rest periods (48 out of 151 (32%)), daily driving times (53 of 151 (35%)) and weekly driving times (46 of 151 (30%)) were not difficult to comply with.

¹⁰⁴ Belgium, Bulgaria, Denmark, Estonia, France, Poland, Portugal, Slovenia and United-Kingdom.

¹⁰⁵ Finland and Latvia.

¹⁰⁶ Belgium, Bulgaria, Poland, Portugal, Slovenia and United Kingdom.

¹⁰⁷ Austria, Cyprus, Germany, Finland, Czech Republic, Hungary, Latvia, Lithuania, Slovakia, Slovenia and Romania.

¹⁰⁸ Authorities from Belgium, Estonia, Luxembourg, Poland, Netherlands and Sweden.

¹⁰⁹ The reasons for the negative assessment were not further described by the authorities.

The most problematic rule to comply with according to all stakeholder groups are those on recording driver's periods away from the vehicle (708 out of 1173 of responding drivers and undertakings (60%) and 52 of 152 of national authorities and industry associations (34%). On the other hand most trade unions who responded to the survey (12 of 13) consider the retrospective recording of activities when the driver was away from the vehicle necessary.

In the same time, the vagueness of the rules in general are regarded to be a major obstacle to the effectiveness of the legislation by 58 % of the individual respondents (drivers, companies) from EU-13 participating to the open public consultation and by 24 % of EU-15 based respondents.

Appropriateness of the rules on driving and working times, breaks and rest periods

According to the survey of undertakings the lack of flexibility in existing rules set out in Regulation (EC) No 561/2006 and the fact that they do not fit to the specificities of certain transport operations were rated by 59% and 53% of respondents (1234 respondents) as being major cause of non-compliance. Among those 80% of the passenger transport undertakings rate these factors as major cause. The 'inflexible' rules which mostly lead to non-compliance are regarded to be those on breaks (671 of 1258 (53%) and daily driving times (654 of 1248 (52%) and daily rest periods (628 of 1246 (50%)).

80% of respondents (914 of 1143 respondents) stated that some flexibility in arranging the daily working period, including driving times, breaks and rest periods, should be introduced to better adapt to the specificities of transport operations and traffic circumstances. This percentage increases to 85% if looking solely at undertakings that are (also) engaged in passenger transport operations, and to 84% if looking solely at undertakings that are (also) engaged in international transport operations.

The working time rules under Directive 2002/15/EC were similarly considered by undertakings participating in the survey inflexible or unfit with respectively 59 % (332 of 564) and 58% (327 of 564) respondents stating that these are the major causes contributing to non-compliance.

The majority of trade unions responding to the survey expressed the opposing view stating that lacking flexibility or unfitness of the rules is not a cause at all of non-compliance. 10 out of 14 trade unions stated so in reference to the driving and resting times rules and 9 out of 14 in case of working time rules.

The responses by drivers and undertakings to open public consultation confirmed that lacking flexibility in application of the rules and not fitting the specific needs of the sector are two major or moderate obstacles of the effectiveness of the rules, with respectively 80 % (921 of 1153) and 74 % (853 of 1152) of respondents regarding so.

Also national authorities, enforces and industry associations regarded these two factors as an important obstacle to the effectiveness of the rules, with 70 % (105 of 152) as regards lacking flexibility and 72% (109 of 151) for the rules unfit to the needs of the sector.

The 22 trade unions participating in open public consultation have not indicated those two factors as a major obstacle to the effectiveness of the legislation.

As regards the possible solutions 53% (606 of 1146) respondents (drivers and companies) to open public consultation considered that flexible distribution of minimum breaks and resting

times to adapt to specific transport services would have a major contribution to improving the functioning of the social rules.

Provisions on regular weekly rest

The issue concerns whether or not drivers are/should be allowed to spend their regular weekly rest in the vehicle. Within the high level survey with ministries five¹¹⁰ out of the 15 Member States allow drivers to spend their regular weekly rest in the vehicle. All other Member States take the official stance that this is not allowed, however express differences in how or whether this is enforced. The Czech Republic mentions specifically that EU clarification is required on this issue.

The individual respondents were equally split in their opinions on whether to explicitly forbid taking regular weekly rest in the vehicle (54%, 623 of 1140) or to allow it (54%, 617 of 1137). The opinions of institutional respondents were slightly mixed with 45% (68 of 140) supporting the first solution and 58% (86 of 148).

Scope of the driving and working times rules

Regarding the scope of Directive 2002/15/EC two Member States¹¹¹, out of 15 who responded to the survey, proposed to exclude self-employed drivers from the working time provisions. The exclusion of self-employed drivers from the working time provisions was proposed as positive contribution to better functioning of the social rules by 41 % of individual (467 of 1139) respondents to open public consultation and by 45% (67 of 148) of institutional stakeholders.

The idea of inclusion of drivers of Light Goods Vehicles (below 3,5 t) was regarded as positive contribution by 44 % (73 of 166) of institutional stakeholders and by 53% (614 of 1146) by individual respondents.

Remuneration-based performance

The majority (13 out of 20) enforcement bodies who responded to the survey indicated that establishing the link between the driver's pay and the distance travelled or load carried and the impacts on road safety is the most difficult element to control. This result was supported to a larger extent by authorities in EU-13 Member States than in EU-15. The difficulties with enforcement of this requirement was also highlighted by trade unions (6 of 14) responding to the survey, who also stated that current formulation also leads to abuses, especially by undertakings working with non-resident drivers. Trade unions proposed to forbid the performance-based payment and to ensure that 'other work' than driving is also remunerated.

Co-liability for infringements

The principle of co-liability of other actors in transport chain (shippers, freight forwarders, etc.) is not sufficiently enforced or difficult to apply according to the survey of enforcers (9 of 22) and trade unions (11 of 14) and in line with the opinion of 36 % (49 out of 138) of institutional respondent to open public consultation (national authorities, enforcement bodies, industry associations and trade unions). Transport undertakings survey reveals that the implementation of this principle differs among Member States. About 50% of responding undertakings (599 of 1198) stated that they have never been held liable for an infringement

¹¹⁰ Bulgaria, Czech Republic Latvia, Poland, and Sweden.

¹¹¹ Bulgaria and Finland

that was detected during a roadside check; 35% (419 of 1198) that they have been sometimes held responsible for such infringements. In Sweden, 70% (403 of 577) state they have never been held responsible; in Italy this percentage drops to 35% (3 of 7). Looking at transport undertakings that solely engage in international transport (104 respondents), approximately an equal amount responded that they have either never been held responsible or sometimes. Less than 5% (5 out of 104) state they have always been held responsible for such infringements.

Application of the provisions on the posting of workers to road transport sector

The lack of awareness or legal certainty regarding applicability of the provisions on the posting of workers in road transport prevails in the responses to the open public consultation as shown by 54 % (600 out of 1106) of individual respondents (drivers and companies) who regard it major problem and 22% (239 out of 1107) respondents replying 'don't know'.

For 50% of operators and 50 % of workers who responded equally important obstacles were other problems such as: provisions not adapted to the specificities of highly mobile road transport sector, administrative requirements related to application of posting provisions, burdensome controls, increase in operational costs.

The share of institutional stakeholders who indicated that the lack of clarity is a major problem was even higher reaching 61% (84 out of 137). Equally important obstacle for them was the problem that the provisions on posting are not adapted to the specificities of highly mobile workforce in road transport. It is to be noted that a significant share 45 % (10 out of 22) of respondents from the workers' organisations indicated that issues such as lacking clarity of applicability of posting provisions, not adapted rules to road transport, administrative requirements, costly and burdensome checks, etc., are not actual problems.

Establishing sector-specific criteria for posting in road transport and adapting administrative formalities was regarded an important solution by 57 % of individual respondents (638 out of 1117). In case of institutional stakeholders the support for such measure was even larger with 62 % respondents (89 of 144).

Long periods away from homebase

4 out of 7 trade unions who responded to the survey said that it is difficult for drivers in international transport to reconcile work and family life (the other 3 respondents, labour unions from Italy and Lithuania, said that this was not difficult). 6 out of 8 respondents stated that lengths of periods away from home for international drivers have either increased or significantly increased in the last ten years. Reasons for this increase listed were: low salaries led by high unemployment and lack of clear regulation.

Enforcement measures

The enforcers taking part in the survey indicated diverse set of problems affecting cross-border enforcement, among which the most significant contribution have: (i) sophisticated means of circumventing rules (19 of 25 responses), lack of enforcement capacity to carry out controls (16 of 25), differences in national interpretations (13 of 25), drivers not being allowed to spend their weekly rest in the vehicle (16 of 25).

All stakeholder groups were almost unanimous that the main factor contributing the most to non-compliance with the rules in force and to difficulties with enforcement is fierce

competition based on costs and pressure on companies / drivers to breach the rules. 11 out of 14 trade unions who responded to the survey and 14 out of 25 enforcers were of this opinion. The public consultation again confirmed that this is the major factor contributing to difficulties with compliance, with 67% (673 out of 1007) of drivers and operators who responded and 70% (104 of 147) of institutional respondents that is: authorities, controllers, industry associations.

On the other hand the majority of enforcers (15 of 25) participating in the survey indicated that enforcement measures such as requirements for equipment of enforcement units and requirement on exchange of information on controls between national authorities have increased the ability to detect non-compliance. The concerted checks were regarded by 88 % (23 out of 26) of enforcers as the factor enhancing harmonised understanding and enforcement of the rules across the EU.

Regarding enforcement of the working time provisions majority of enforcers stated that the main obstacles were the excessive time needed for detecting infringements (14 of 21 participating in the survey), lack of manpower (10 of 19) and language barriers (10 of 19). In addition more enforcers from EU-15 (5 of 7) than from EU-13 (3 of 11) regarded that checks are not frequent enough.

Consistency of enforcement is negatively affected by diverging national interpretations of the rules in force and different enforcement practices, as it was indicated by 55 % (487 of 879) of individual respondents (drivers, operators, shippers, forwarders) to the open public consultation and 70 % (104 of 150) of institutional respondents (authorities, industry associations and workers' organisations).

The majority 54% (619 of 1137) of individual respondents (drivers and companies) and 51 % (76 of 148) institutional respondents to open public consultation regarded that clarification of liabilities of all actors in transport chain would considerably improve enforcement. Other important contributors according to these stakeholder groups were: promoting the use of GNSS digital tachograph systems and harmonizing the control tools used by enforcers (46 % of individual respondents (523 of 1140) and 65% (98 of 149) of institutional respondents).