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PART 1/2

**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 561/2006 as regards 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

This Impact Assessment accompanies two proposals of the European Commission modifying Regulation (EC) No 561/2006<sup>1</sup>, Directive 2006/22/EC<sup>2</sup>, Directive 2002/15/EC<sup>3</sup> and Regulation (EU) 165/2014<sup>4</sup>. These legal acts form together a legislative framework for the social rules in road transport and for their enforcement. This initiative also concerns the proposal to establish sector-specific rules (*lex specialis*) for posting of workers in road transport sector, which will take precedence over the relevant provisions of the cross-sectorial Directive 96/71/EC on posting of workers and Directive 2014/67/EU on enforcement.

### 1.1 Brief description of the legislative framework of the social rules in road transport

Since 1969<sup>5</sup> the EU has developed an extensive framework of social rules for road haulage operators and road passenger transport operators. These rules aim at: improving working conditions for road transport mobile workers<sup>6</sup>, enhancing road safety for all road users and ensuring fair competition between road transport operators in the single market. They apply to all professional drivers (employed and self-employed) and to all transport undertakings engaged in the carriage of goods by vehicles above 3.5 tons or in the carriage of passengers by vehicles for more than 9 persons.

The existing social rules in road transport are set in two main legislative acts<sup>7</sup>:

1) Regulation (EC) 561/2006 (also known as the **Driving Time Regulation**) establishes the minimum requirements on daily and weekly driving times, breaks and daily and weekly rest periods to be observed by drivers and road transport operators.

2) Directive 2002/15/EC (also known as the **Road Transport Working Time Directive**) lays down rules on the organisation of the working time of drivers. It establishes the requirements on maximum weekly working times, minimum breaks in work and on night-time working. It applies to drivers falling in scope of the Driving Time Regulation, including self-employed drivers.

The minimum requirements for enforcement of the provisions of the Driving Time Regulation are in:

1) Directive 2006/22/EC (also known as the **Enforcement Directive**), which establishes minimum levels of roadside checks and controls at the premises of transport undertakings to be carried out every year by Member States.

2) Regulation (EU) No 165/2014 (also known as the **Tachograph Regulation**), which sets the requirements on the installation and the use of tachographs in the vehicles in scope of the Driving Time Regulation. The tachograph serves as the main tool for monitoring and controlling compliance with the provisions of that Regulation, in line with control requirements in the Enforcement Directive.

The Road Transport Working Time Directive is not accompanied by any EU uniform requirements for monitoring and controls.

The global cross-cutting objective of the existing road transport social legislation is to support the completion of a fair, socially responsible and efficient single market for road transport. Thus, they are closely interlinked with the internal market rules on access to the occupation of road transport

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<sup>1</sup> OJ L 102, 11.4.2006, p. 1

<sup>2</sup> OJ L 102, 11.4.2006, p. 35

<sup>3</sup> OJ L 80, 23.3.2002, p. 35

<sup>4</sup> OJ L 60, 28.2.2014, p.1

<sup>5</sup> OJ L 77, 29/03/1969, p.49-60

<sup>6</sup> Article 3(2)(d) of the Directive 2002/15/EC defines 'mobile worker' 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".

<sup>7</sup> The overview of main provisions of the relevant legal acts is in Annex 10

operator, on access to the international road haulage market and on access to the international passenger road transport market<sup>8</sup>.

Existing road transport social legislation only covers the social aspects that relate to the organisation of drivers' work and rest periods. There are other rules relating to working and social protection conditions that apply when transport operators based in one Member State, in the framework of transnational provision of services, carry out transport operations on the territory of another Member State. These rules are laid down in Directive 96/71/EC<sup>9</sup> on posting of workers (also known as the **Posted Workers Directive** or **PWD**), which applies to all sectors<sup>10</sup>, including to road transport whenever the conditions for a posting situation are fulfilled. It lays down a nucleus of mandatory terms and conditions of employment that ensure undertakings established in a Member State guarantee workers posted to the territory of another Member State the conditions of employment of the Member State where the work is carried out. The nucleus of mandatory rules include the following: minimum rates of pay, minimum paid annual holidays, health, safety and hygiene at work and other provisions of non-discrimination. This Directive is accompanied by the common enforcement rules set in Directive 2014/67/EU<sup>11</sup> (called the **PWD Enforcement Directive**).

## 1.2 Evaluation of the existing road transport social legislation

The ex-post evaluation of the existing social legislation in road transport was carried out in 2015-2017<sup>12</sup> covering the Driving Time Regulation, the Road Transport Working Time Directive and the Enforcement Directive. The Tachograph Regulation was not part of this evaluation as it was adopted only in 2014, repealing its predecessor - the Council Regulation (EEC) No 3821/85.

The ex-post evaluation assessed 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. The evaluation was supported by the external study<sup>13</sup> and based on a thorough review and analyses of available data and – like the impact assessment itself – on a variety of consultation activities of stakeholders, including Open Public Consultation<sup>14</sup> and SME Panel Survey<sup>15</sup>.

The evaluation concluded that the legislation remains a relevant tool, but it is only partially effective in improving working conditions of drivers and ensuring fair competition between operators. The effects in terms of enhancing road safety were positive. However, although road safety levels have improved in the period covered by the evaluation, the impact of the social legislation could not be discerned from the impacts of other road safety measures implemented across Member States.

The insufficient effectiveness and efficiency of the social legislation is mainly due to unclear and unsuitable rules, diverging national interpretations and application of the rules, inconsistent and ineffective enforcement practices and a lack of administrative cooperation.

The results of the ex-post evaluation are to a large extent reflected in this impact assessment as shown in Table 1

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<sup>8</sup> Regulations (EC) No 1071/2009, No 1072/2009 and No 1073/2009

<sup>9</sup> OJ L 18, 21.1.1997, p. 1–6)

<sup>10</sup> with exclusion of merchant navy

<sup>11</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. The deadline for transposing the posting enforcement Directive into the national legislation was 16 June 2016.

<sup>12</sup> Draft SWD on ex-post evaluation of the social legislation in road transport and its enforcement

<sup>13</sup> The final report is available at: <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-eval-road-transport-social-legislation-final-report.pdf>

<sup>14</sup> Results of the Open Public Consultation: [http://ec.europa.eu/transport/modes/road/consultations/2016-social-legislation-road\\_en](http://ec.europa.eu/transport/modes/road/consultations/2016-social-legislation-road_en)

<sup>15</sup> Results of the SME Panel Survey <https://ec.europa.eu/transport/sites/transport/files/2016-social-legislation-road-specialised-summary-sme-panel.pdf>

**Table 1: Links between the conclusions of the ex-post evaluation and the Impact Assessment.**

Main ex post evaluation conclusions	Impact Assessment
<b>Conclusions on relevance</b>	
Some of the uniform rules do not fit the specificities of particular transport services (e.g. passenger transport, multi-stop transport operations, construction site deliveries, etc.)	This issue is developed in the problem definition in section 0 as one of the main factors contributing to stress and fatigue of drivers and in section 2.4.1 on unsuitable and unclear rules. Furthermore they are addressed by policy measures in section 5.2.
<b>Conclusions on effectiveness</b>	
Undistorted competition between operators has not been fully achieved due to diverging national interpretations and implementation of the rules and inconsistent enforcement practices, including diverging national penalty <b>systems</b> .	The Impact Assessment recognises that the problems on the ground with the distortions of competition are linked with the deficiencies of the legislative framework as well as with the market pressures. These are mentioned in section 2.2 on market context and discussed in detail in section 2.3.1 of the problem definition.
The risk of non-compliance remains due to ineffectiveness and inconsistency of enforcement, in particular as regards working time rules	This problem is specifically discussed in section 2.4.2 which is dedicated to ineffective and inconsistent enforcement and poor administrative cooperation. It is further addressed by enforcement measures under Policy Package 2 (section 5.2)
Unintentional non-compliance persists due to unclear or inflexible rules and discrepancies in their implementation and enforcement.	This problem is analysed in problem definition in sections 2.3.1.1, 2.4.1 and 2.4.2. Several policy measures address these issues (section 5.2)
The risk of deterioration in working conditions (e.g. long periods away from home, inadequate rest conditions, time pressure and stress, inadequate pay) has not been effectively addressed due to abuses or deficiencies in the current rules and the lack of flexibility in applying the rules, and market pressures.	This problem is the topic of section 2.3.2 and substantiated by the underlying causes described in section 2.3.1.1 and 2.4.1. Several policy measures address these issues (section 5.2)
<b>Conclusions on efficiency</b>	
Enforcement costs increased slightly and this increase has not been sufficiently compensated by the increase in cost-effectiveness of enforcement due to insufficient use of available tools for targeting controls and systems for exchange of data and information and due to poor administrative cooperation between Member States.	These issues are dealt with mainly in section 2.4.2 and Policy Package 2
Compliance costs for operators have increased by 1-3% of the annual transport-related turnover although these have been somewhat offset by benefits related to more harmonised legal framework for carrying out business.	Sections 2.3.1.2 and 2.4.3 of the problem definition describe these issues.
<b>Coherence and coordination</b>	
Lack of coherence and coordination with the rules on posting of workers	This finding of the ex-post evaluation is the reason for enlarging the initial scope of the initiative from existing social legislation to social rules applicable to road transport. This is explained in the policy context (section 2.1.2). Furthermore the measures on posting in road transport have been assessed in section 6

The full text of the ex-post evaluation report is annexed to this Impact Assessment.

Certain issues identified within the ex-post evaluation are not addressed in this Impact Assessment. This is mainly due to lack of evidence that they constitute significant social or economic problems at the EU-level or because EU intervention would create excessive regulatory burden or because other

EU instruments are intended to address some of these issues. The unaddressed issues include: (a) whether drivers of Light Goods Vehicles (vehicles below 3,5 t) should be subject to the same requirements regarding driving, working and resting times; (b) whether self-employed drivers should be excluded from the Road Transport Working Time Directive; (c) diverging levels and types of penalties; (d) unequal implementation of the principle of co-liability for infringements; and (e) inconsistent training for enforcers. The detailed description of unaddressed issues and the reasons why they have not been taken up in this Impact Assessment are provided in Annex 5.

### **1.3 Contribution to the reduction of the regulatory burdens**

The initiative is mentioned as a REFIT initiative in point 11 of Annex 2 to the Commission Work Programme 2017.<sup>16</sup> It is thus part of the Commission's Regulatory Fitness and Performance programme that aims at making EU laws simpler and less costly. The REFIT objectives are reflected in the specific objectives of this Impact Assessment, and special attention is given to the simplification of the rules, their enforceability and to the analysis of the impacts on regulatory burdens on companies and on authorities.

## **2 WHAT IS THE PROBLEM AND WHY IS IT A PROBLEM?**

### **2.1 Policy context**

The social aspects in the road transport sector have gained considerably in importance over the last decade. The White Paper on Transport (COM(2011)144) made clear that the creation of a Single European Transport Area should go together with a higher degree of convergence and enforcement of social rules. It adds that market opening needs to go hand in hand with quality jobs and working conditions. The Juncker Commission has established as one of its priorities the goal of creating a deeper and fairer internal market for road transport<sup>17</sup>. This includes actions aimed at combatting social unfairness and unfair competition and to create a social framework for new employment opportunities and fair business conditions.

#### ***2.1.1 Complementarity with parallel initiatives on the review of road transport legislation***

The ex-post evaluation of the existing social legislation and the separate ex-post evaluation of the rules on access to occupation and to haulage market, which was carried out in 2014-2015<sup>18</sup>, established that social and market challenges in the sector are interdependent. Illegal business practices, such as 'letterbox' companies<sup>19</sup> or illegal cabotage<sup>20</sup> (i.e. abuses of the rules on access to occupation and access to haulage market which are described in a separate impact assessment<sup>21</sup>) are usually linked with illicit employment practices and circumvention of the working time rules. These deprive drivers of their rights, such as to adequate working and resting conditions and to adequate remuneration reflecting living costs and conditions. These social and market challenges are largely caused by ambiguities in the current social and market rules in road transport, the deficiencies in their enforcement and inadequate implementation of the PWD in the road transport sector (the market forces behind these challenges are described in section 2.2).

Addressing these challenges requires a holistic approach whereby the social, internal market and posting of workers' rules work better together to ensure both fair working conditions for drivers and fair competition between operators. Therefore, this initiative on social aspects in road transport

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<sup>16</sup>[https://ec.europa.eu/info/publications/work-programme-commission-key-documents-2017\\_en](https://ec.europa.eu/info/publications/work-programme-commission-key-documents-2017_en)

<sup>17</sup>[https://ec.europa.eu/commission/priorities\\_en](https://ec.europa.eu/commission/priorities_en)

<sup>18</sup> Commission published a Staff Working Document (SWD(2016) 350 final) with the results of the evaluation: <https://ec.europa.eu/transport/sites/transport/files/swd20160350.pdf>

<sup>19</sup> The term 'letterbox' refers to companies "established" in a Member State where they do not carry out their administrative functions or commercial activities, in violation of Article 5 of Regulation (EC) No 1071/2009.

<sup>20</sup> Cabotage –national carriage for hire or reward carried out on a temporary basis in a host Member State

<sup>21</sup> SWD(2016) 350 final

should be seen as part of a coordinated all-embracing response to the current social, market and technological challenges faced by the sector (further described in Annex 7).

### **2.1.2 Complementarity with the revision of the Posting of Workers Directive (PWD)**

This initiative should also be seen as complementary to the on-going revision of the PWD, which aims to clarify and update the provisions adopted more than twenty years ago and to ensure that the Directive still strikes the right balance between the need to promote the freedom to provide services and the need to protect the rights of posted workers. The PWD revision deals with general issues, such as broader set of remuneration rules or maximum periods of posting to be applied to all sectors. In the explanatory memorandum to the proposal of 8 March 2016<sup>22</sup> the Commission emphasized the complementarity of the ongoing revision of PWD with the initiatives for the road transport sector announced by the Commission in its Work Programme 2016. Further, in recital (10) of the proposal, the Commission states 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.* This is a clear mandate to take action at EU level to adjust the application of the posting rules to the specificities of the road transport sector through the road transport legislation.

### **2.1.3 Complementarity with the social dialogue**

In September 2016 the EU Social Partners<sup>23</sup> launched the social dialogue negotiations in accordance with Articles 154 and 155 of the TFEU. The objective is to reach an agreement on working standards, outside the existing EU rules to be observed by all parties in a transport operation chain, the so called Social Code. The overall goal of the initiative is to further enhance the social and working conditions in the sector and reinforce the responsibilities of both sides of industry for meeting these standards. The Social Partners established six topics for negotiations: (1) conditions at loading/unloading points, (2) access to medical assistance for drivers *en route*, (3) conditions during rest, (4) applicable labour law, (5) return home, and (6) language of labour contracts. The Commission actively supports the Social Dialogue negotiations on the Social Code. The potential agreement of Social Partners, in particular on the issue of conditions during rest and at loading/unloading points, would complement and reinforce the social dimension of this initiative.

### **2.1.4 Links with pending infringements cases**

The important component of the policy context for this initiative is on-going infringement cases. The case *Vaditrans BVBA* (C-102/16) concerns the issue of unclear provision in the Driving Time Regulation as to the regular weekly rest. The Advocate General issued an opinion in February 2017 to the effect that a driver may not take regular weekly rest periods inside the vehicle. The Court judgment will interpret the current text of the Regulation on driving and rest time. This does not however prevent the Commission from assessing the relevance of the current rule and, if justified, to propose new provisions on the taking of regular weekly rest which are better suited to business needs while ensuring a high level of protection for drivers.

The Commission also launched infringement procedures against the German, French and Austrian national measures, in 2015, 2016 and 2017 respectively, on the grounds that the application of their minimum wage measures to foreign road transport operators leads to unjustified restrictions to the freedom to provide services. This initiative considers how best to clarify the relevant rules in force on posting of workers to ensure that they are consistently and proportionately implemented throughout the EU. The Commission considers that establishing the EU-wide solution is more

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<sup>22</sup> COM(2016)128

<sup>23</sup> European Transport Workers' Federation (ETF) and International Road Transport Union (IRU)



effective and sustainable than clarifications provided on case-by-case basis through infringement proceedings. As explained in more details in annex to this Impact Assessment, it is considered that judgments of the Court of Justice, even if they confirm the interpretation of the Commission in the infringement procedures against the 3 above Member States, will not be sufficient to ensure a balanced and harmonised application of the PWD in the EU.

All these elements together form a solid policy context for this REFIT initiative, which aims to clarify and improve the legal framework to ensure that the rules are fit for purpose and reflect adequately the social and economic needs of the sector, that they are enforceable and enforced consistently throughout the EU whilst also seeking to ensure that enforcement and compliance with those rules does not impose excessive regulatory burdens.

## **2.2 Market context**

### **2.2.1 Market changes**

Since the adoption of the social rules, the social and business environment of the road transport sector has changed significantly. The liberalisation<sup>24</sup> of the internal market for road transport facilitated the free movement of goods and of workers and the freedom to provide cross-border road transport services, which are cornerstones of the EU single market. The positive effects in terms of increased efficiency of the transport operations, enhanced competitiveness and gains for the European consumers and economy have been weakened by the economic downturn in 2007-2008 and the Eurozone crisis that started in 2009. This, combined with the EU enlargements of 2004 and 2010 and the low level of compliance with the EU and national rules, led to increasing competition creating downward pressures on profits and wages.

The road transport market has always been highly competitive and price-sensitive because it is dominated by a large number of small companies and owner-operators. 90% of enterprises in the sector have fewer than 10 employees and account for close to 30% of turnover (including self-employed) (Eurostat, 2016b). Since the supply of and demand for road freight transport services is generally rather homogenous, these firms tend to compete mainly on price, with labour costs being a key determinant. A limited number of large firms that provide complex logistics services are able to differentiate their services based on range and quality of the services as well as price.

A number of reports<sup>25</sup> argue that the sector is faced with decreasing profit margins driven by growing competition from EU-13 based operators, which have contributed to strong downward pressure on prices of services and subsequently on drivers' wages and other working conditions. On the trunk lines of European corridors, reported (2015) freight rates have fallen sharply to as low as €0.7 per vehicle-km or less. This corresponds to a reduction of some 30% compared to the previous market prices (2010-2011) of about €0.9 to €1.0 per vehicle-km<sup>26</sup>.

It appears that hauliers, in looking to improve margins, are focusing on reducing operational cost and this can be to the detriment of drivers' working conditions. In absolute terms, labour costs (remunerations and social contributions) in the Member States that joined the EU in 2004 and 2007 remain lower than in the longer-established EU Member States (EU-15). It is true that the gap is steadily narrowing, but the cost differentials (mainly in labour costs and social contribution costs) between Member States remain significant. In this context, driver costs play an important role, since they represent a significant part of the operating costs of hauliers, ranging from around 20% to around 40% of overall operating costs, depending on the Member State of employment. As shown in

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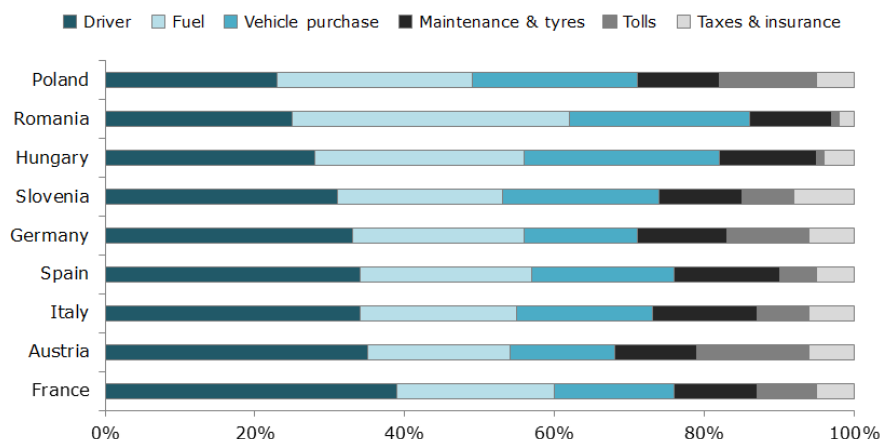
<sup>24</sup> Among others: Regulations (EC) No 1071/2009, 1072/2009, 1073/2009 on, respectively: access to occupation of road transport operator, on access to international haulage market and on access to international passenger market.

<sup>25</sup> TRT, 2013. Social and working conditions of road transport hauliers, s.l.: s.n.; European Parliament, 2013a. Development and implementation of EU road cabotage, s.l.: s.n;

<sup>26</sup> SWD(2016) 350 final, page 12; KombiConsult. (2015), Analysis of the EU Combined Transport.

Figure 1 the most important cost components are the driver's wages and fuel, followed by vehicle purchase costs.

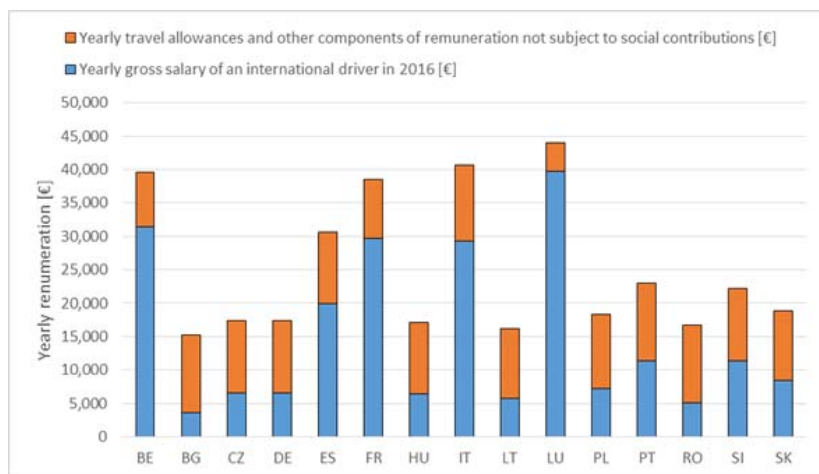
**Figure 1: Percentage of operating costs per hour in selected Member States**



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. Figure 2 presents data on drivers' actual remuneration which are available for 16 EU Member States (BE, BG, CZ, DE (East and West), ES, FR, HU, IT, LT, LU, PL, PT, RO, SI, SK). For example, the remunerations of a French driver is 2.4 times higher than a Polish driver. Also differences in social insurance contributions are quite substantial. As an example, the estimated amount of the employers' mandatory (net) social security contributions for a driver in France is €736 per month; €446-630 in Germany, €481-584 in Spain, as compared to €316 in Slovakia and €111 in Poland<sup>27</sup>.

**Figure 2: Structure of remuneration of an average international truck driver in 2016 (excluding employer's social contribution)**



Source: (CNR, 2016)

### 2.2.2 Market-based challenges

The market-based differentials described above give rise to increasingly fierce cost-based competition. In combination with legislative loopholes and enforcement deficiencies, it creates incentives for unfair business and employment practices (e.g. letterbox companies, illegal cabotage,

<sup>27</sup> The final report of the support study "Ex-post evaluation of social legislation in road transport and its enforcement", p.25

bogus self-employment, downward pressures on rest periods and pay, etc) applied by certain operators and for protectionist national measures (e.g. imposing sanctions for weekly rest in the vehicle, disproportionate application of national measures on minimum wage to foreign operators, national restrictions on cabotage) being adopted by some Member States in response.

Social and competition issues are clearly interdependent, because business practices that allow operators to gain unfairly a competitive advantage often deprive drivers of their fundamental rights of social protection and adequate working conditions, including minimum rates of pay. On the other hand the smooth functioning of the internal road transport market is hampered by illegal practices such as 'letterbox' companies, illegal cabotage, illicit employment arrangements including false self-employment and abuses of the road transport social rules. All these obstruct fair access to market for operators and fair working conditions for drivers, including adequate pay.

This leads to a phenomenon, which is commonly called 'social dumping'. The Employment Committee of the European Parliament issued in 2016 a "Report on social dumping in the European Union"<sup>28</sup>, in which it states that there is no universally shared definition of social dumping, but sets out the view that *"the concept covers a wide range of intentionally abusive practices and the circumvention of existing European and national legislation (including laws and universally applicable collective agreements), which enable the development of unfair competition by unlawfully minimising labour and operation costs and lead to violations of workers' rights and exploitation of workers"*.

The discussion on the issue of 'social dumping' is indeed highly polarized. In general, EU-15 Member States, EU-15 operators and trade unions regard this phenomenon as a race-to-the-bottom in social standards leading to exploitation of drivers (particularly from EU-13), undercutting cost-based competition by the EU-13 operators and posing risks of job losses for EU-15 drivers. On the other hand, EU-13 Member States, operators and industry organisations, consider that benefitting from cost-differentials is legitimate as long as the relevant EU laws are respected, and that problems of 'letterbox' companies and illicit employment practices are mainly caused by non-compliant EU-15 operators. They regard the national measures adopted by some EU-15 countries to combat the 'social dumping' as protectionist and discriminate against EU-13 operators by imposing on them excessive administrative costs and restricting freedom to provide services.

Overall, therefore, the EU road transport market appears to be divided in two opposing camps as regards perception of the social and market challenges.

### **2.3 What is the problem? What is the size of the problem?**

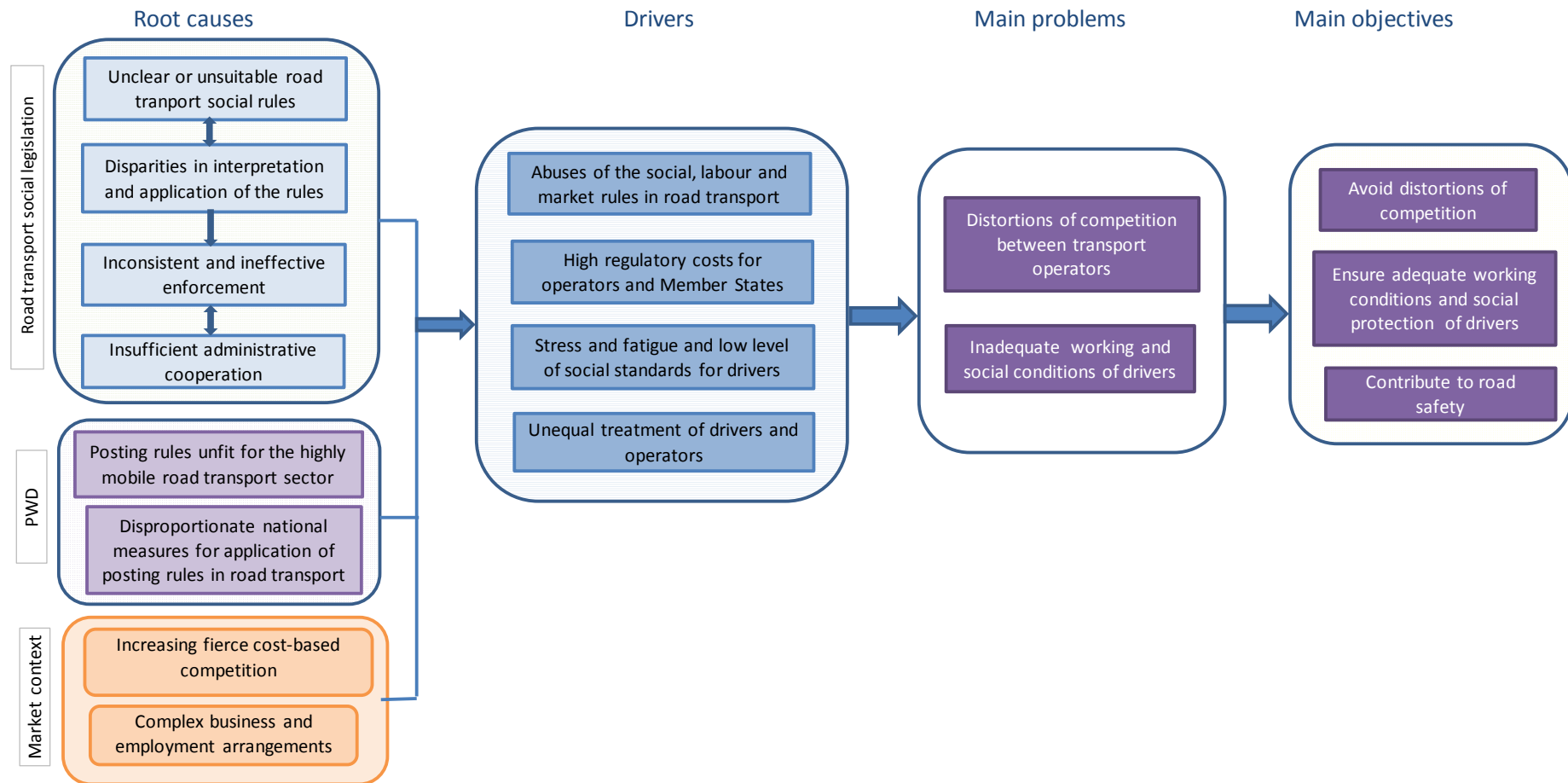
Two main problems on the ground are: (1) distortions of competition between transport operators and (2) inadequate working and social conditions of drivers. They may impact negatively on the integrity of the EU road transport market leading to its fragmentation, deteriorate the social standards in the profession leading to job losses and aggravate road safety affecting all road users.

As indicated in sections 2.1 and 2.2 these competition and social problems are closely interlinked. Their root causes relate to two different sets of rules: a) 'existing' social road transport legislation on driving, working and resting times and b) application of the PWD and its enforcement Directive. In addition, they are exacerbated by market pressures and abuses of the rules on access to the profession and access to market. **Figure 3** illustrates the structure of the problem definition.

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<sup>28</sup>2015/2255(INI), Rapporteur: Guillaume Balas, S&D, FR

**Figure 3: Problem tree diagram**



### **2.3.1 Problem of distortions of competition between operators**

The distortions of competition occur when road transport operators are put in disadvantaged position in relation to competitors in terms of conditions of carrying out the road transport services. It is particularly true for the cross-border provision of transport services, but it also concerns domestic operations (cabotage), in particular when it comes to circumventing the law by non-compliant operators to gain the competitive advantage.

The existing social legislation in road transport provides for certain harmonisation across Member States with regard to the organisation of the working, driving and resting times of drivers and other minimum requirements that transport operators must respect. Nevertheless, as identified in the ex-post evaluation, it has not managed to ensure a sufficient level of fairness in terms of competition. The persisting cases of non-compliance with the rules in force give undue advantage to those breaking the law.

For instance, increasing the working and/or driving times of their drivers, reducing rest times, avoiding or reducing breaks, etc., can contribute to the increased productivity of drivers and an enhanced utilisation rate of their vehicles, ultimately bringing down operation costs (Broughton et al, 2015). The increasing likelihood of being detected and high penalties do not discourage effectively all operators from seeking benefits of circumventing the rules and putting in a disadvantaged position those who comply with them.

Another source of distortions of competition is that the legislation leaves certain aspects open for interpretation. National differences in implementation, monitoring and enforcement put local and foreign operators in the situation that they are treated differently depending on the national practices of the Member States where they operate.

Box 1. For instance, some Member States (BE, FR) impose sanctions for taking a regular weekly rest in the vehicle. Other Member States (e.g.: DK, FI, HU, IE, NL, PT, SE) consider that this is not explicitly spelled out in the Driving Time Regulation, and they do not therefore enforce this. Others (e.g. CZ, RO, BG, LT, LV, LU, SK) regard prohibition of spending regular weekly rest in the vehicle cannot be complied with by hauliers due to lacking resting facilities and safe parking areas.

However, the main source of distortions of competition lies in various developments that are unrelated to the social rules. In particular, market competition in the road transport sector (see section 2.2) has become increasingly intense and this exacerbates the risk of non-compliance by undertakings or drivers who are under greater pressure to remain competitive. The economic crisis also amplified these issues due to the contraction of profit margins within the sector (KombiConsult, 2015).

The Open Public Consultation shows that fierce competition is regarded by the majority of respondents as the main market challenge in road transport (on average 70 % out of 1154 respondents).

Other aspects contributing to distortions of competition concern the problems of letterbox companies and illegal cabotage. These issues have been examined extensively in the parallel ex-post evaluation study on Regulations (EC) No 1071/2009 and (EC) No 1072/2009<sup>29</sup> (rules on access to the profession and access to haulage market) and are addressed in a parallel Impact Assessment. The main incentive for setting up letterbox companies and carrying out illegal cabotage is to reduce costs, which is primarily achieved due to lower wages of drivers (the major factor), followed by taxes and social contributions.

<sup>29</sup> Final report of the ex-post evaluation support study and Staff Working Document on ex-post evaluation is here: [http://ec.europa.eu/transport/modes/road/road-initiatives/well-functioning-internal-market-for-road-transport\\_en](http://ec.europa.eu/transport/modes/road/road-initiatives/well-functioning-internal-market-for-road-transport_en)

These problems, although going beyond the existing social legislation, are relevant for this initiative as they are linked to illicit employment practices and inefficient or inadequate application of the Posting of Workers Directive in road transport, which is one of the issues discussed in this Impact Assessment.

For instance, some road transport operators from Member States with high labour costs and social standards establish 'letterbox' companies in low-cost Member States employing drivers therein under the local terms and conditions of employment, whilst these drivers work regularly or constantly in the Member States with higher labour costs.

Illegal cabotage also exploits the economic differences between the Member States and profits from ineffective enforcement of the EU road transport market rules and of PWD. In such cases, again, drivers employed in a low-cost home country under the terms and conditions of that country carry out regularly cabotage operations in a high-cost host country.

Through such practices, as described above, operators save on labour costs and offer cheaper transport services, gaining competitive advantage over the operators employing their drivers in high-cost Member States. This leads to distortions of competition, in particular with micro enterprises who cannot cope with the race-to-the-bottom in terms of labour costs. On the other hand, such practices also deprive drivers from the low-cost Member States of the higher remuneration and social protection of the host Member States where they carry out significant amounts of work and where their daily living costs are higher.

Overall, as the road transport sector is highly price-sensitive the distortions of competition are mainly based on differences in costs faced by companies. The continuing cost differentials (particularly labour costs) between Member States add to the pressure to cut costs, which is an incentive for illegal activities (such as abuse of the EU social, labour and market rules). Also different national rules and administrative barriers to providing road transport services contribute to the distortions of competition by putting foreign competitors in a disadvantaged position. Another source of distortions is discrepancies in implementation, application and enforcement of the current EU legislative framework. All these problem drivers and root causes are described in the following sections.

### **2.3.1.1 Problem driver: Abuses of social, labour and market rules in road transport**

Non-compliance with the EU social, labour and market rules is a main source of distortions of competition between operators.

The results of the controls of compliance with the provisions of the Driving Time Regulation from 2009 to 2014 indicate a diminishing trend in the number of infringements reported. For the period 2013-2014, nearly 3.3 million offences were detected in the EU, reduced from the 3.9 million offences reported in 2011-2012 and the 4.5 million in 2009-2010. Nevertheless, level of compliance of the social rules remains suboptimal. The decreasing level of infringements reported cannot be interpreted simply as an improvement in compliance, for several reasons.

Firstly, the overall enforcement capacity of national authorities in terms of the number of trained enforcement officers decreased by around 35% (from 38.595<sup>30</sup> to 25.148) between the reporting periods 2009-2010 and the latest one of 2013-2014<sup>31</sup>. Consequently, the total average number of controls carried out in EU in 2013-2014 decreased by 4.8% compared to 2011-2012<sup>32</sup>.

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<sup>30</sup> Excluding EL, PT and ES who have not submitted the relevant data on number of trained controllers involved in checks in the reporting period for 2009-2010

<sup>31</sup> Biennial Commission reports on the implementation of the social legislation, SEC(2011) 52 final, SWD(2012) 2070 final, COM(2014) 709 final and COM (2017) 117

<sup>32</sup>(drop from 158.6 million to 151 million of working days checked)

Secondly, as reported by enforcement authorities in the course of the ex-post evaluation and during frequent meetings with enforcement network organisations<sup>33</sup>, the techniques of manipulation and circumventing the rules have developed, making it more challenging to detect infringement. These factors appear to have negatively affected infringement detection rates, which diminished from 3.1 offences detected per 100 working days checked in 2009-2010, then 2.4 offences detected in 2011-2012 to 2.17 offences detected in the latest reporting period of 2013-2014.

Overall, the enforcers consulted within the ex-post evaluation study estimate that the actual compliance is much lower than the infringement data would suggest, as a number of intended or unintended infringements may remain undetected due to random, insufficient and ineffective checks as well as sophisticated manipulation techniques.

There has been a continuous pattern of types of infringements since 2007-2008, with the provisions on breaks and rest periods being breached most frequently, followed by the infringements concerning driving times and driving time records. The manipulation of recording equipment or lacking records has a smaller share of infringements detected at the roadside and at the premises of the company<sup>34</sup>.

The data on infringements against the working time provisions are not available, since there is no legal requirement for Member States to carry out regular controls on compliance with those rules. Compliance levels, however, are regarded as low by all stakeholder groups. Almost half out of 36 drivers participating in the survey in the course of evaluation reported that they worked more than maximum allowed 48 hours on average per week.

Non-compliance with the rules reduces the protection of workers and gives a competitive advantage to those breaking the law by allowing for cost reductions and productivity gains. However, the precise advantages of non-compliance with existing social rules for undertakings are difficult to quantify, as they depend on the type of transport operation that is carried out, the underlying contract and terms agreed with the contractor, and the type of infringement that is committed as well as its extent. In practice, the benefit will vary with each transport operation and the severity of the violation.

Non-compliance with the market rules on access to the profession and to the haulage market is addressed in more details in a parallel Impact Assessment. The fraudulent practices of letterbox companies and illegal cabotage hinder the effective controls of compliance with the social rules, including those on posting of workers. Therefore, they are also considered in this problem definition as one of the contributing factors to distorted competition.

The ex-post evaluation support study<sup>35</sup> estimated that there were at least 430 letterbox companies in 2012 in the EU and that the cost advantage of setting up a letterbox company for hauliers reaches 31% compared to a properly-established company. The level of illegal cabotage is reported to be relatively low (below 1% of all cabotage activity). However, these practices have a significant economic and social impact on the sector. These elements give an idea of the magnitude of illicit employment schemes applied which renders the implementation of social rules ineffective.

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<sup>33</sup> DG MOVE meets and participates frequently in the experts group meetings organised by CORTE, ECR, for instance master classes for enforcers organised twice a year by ECR.

<sup>34</sup> COM(2014) 709 final, p.7

<sup>35</sup> Ricardo et al (2015), Support study for an evaluation of Regulations (EC) No 1071/2009 and No 1072/2009 (see, in particular, pages 42-44 thereof).

Box 2. In March 2017, there was an investigation by the Belgian authorities into Belgian hauliers having established letterbox companies in Portugal and Slovakia. The Belgian authorities found 25 letterbox companies registered in the same address in Slovakia. The estimated unpaid social contributions in Belgium amounted to €6-€7 million<sup>36</sup>.

Other business practices constitute abuses of the provisions of PWD. This is the case of operators legally established in low-cost Member States and providing transport services regularly or for long periods on the territories of other Member States without applying the core terms and conditions of employment, including pay, of those host States.

Box 3. For instance, a big company established in Hungary, disposing of around 3500 vehicles, employing around 3500 drivers from EU-13 Member States mainly under Hungarian labour contracts. Only 950 of those drivers operate in/from/to Hungary. Majority of them carry out habitually international transport operations from/to/within other Member States, mainly from EU-15. Around 1200 vehicles are constantly in Germany, 750 in France, 700 in Italy, etc.

The Open Public Consultation shows that among legislative challenges affecting negatively compliance the most important was different application of the rules (including those on posting of workers) by Member States and diverging enforcement practices, with 55% of individual respondents (drivers, operators, etc.) and 70% of institutional respondents (authorities, controllers, industry associations reporting such problems).

### **2.3.1.2 Problem driver: High regulatory costs for operators and Member States' authorities**

#### ***Regulatory burden linked to the existing road transport social rules***

The regulatory costs related to compliance and enforcement of the existing road transport social legislation<sup>37</sup> do not appear to constitute a significant common problem, as these are generally outweighed by the benefits in terms of more effective enforcement and more harmonised working and business conditions. However, the analysis performed shows a room for improvement in the reduction of the regulatory burdens for transport operators (to comply with the EU social rules) and for national authorities (to enforce the EU social rules).

Box 4. In some Member States, controllers require from the driver a full record for all periods when the driver is not working or working outside the scope of the Driving Time Regulation, whilst in other States only those daily activities when driving in-scope need to be recorded. Some national authorities do not accept manual records or the 'EU form for attestation of activities' as a proof of driver's activities when he was away from the vehicle and could not make records in tachograph. In Austria the EU 'form' is still required if retrospective entries for such activities on the tachograph were not possible. In Finland and Latvia, the use of the EU form is allowed, but also other types of proof can be provided, while other Member States, such as France and Greece, disregard the EU form and require other types of proof for such activities.

Different interpretations of EU law and enforcement practices lead to a regulatory burden involved in determining and applying national administrative and control requirements, and in particular where information is not easily accessible or there is a language barrier. This increases compliance costs and leads to higher risks of unintentional non-compliance and subsequent fines.

For the national authorities, diverging interpretations of EU law and diverging national measures, as well as inconsistent enforcement systems, appear to be major factors in rendering the cooperation between the Member States difficult. Inefficient and uneven use of control tools and systems such as

<sup>36</sup><http://www.dhnet.be/actu/belgique/perquisitions-transport-des-dizaines-d-entreprises-belges-a-la-meme-adresse-en-slovaquie-58c98319cd705cd98df5f04c>.

<sup>37</sup>Ricardo et al, op cit



the risk rating system, and insufficient data exchange between Member States, lead to higher than necessary enforcement costs resulting in regulatory burdens that could be avoided by better exploitation of the existing possibilities.

### ***Regulatory burden linked to the disproportionate application of posting rules to road transport***

A significant burden for the industry has arisen with regard to the national measures on the application of the PWD by a number of Member States (notably Germany, France and Austria) to the transport sector. This has resulted in different administrative and control requirements to be complied with by foreign operators providing services on the territory of these Member States. The identified difficulties (based on a number of complaints<sup>38</sup>, petitions, etc.)<sup>39</sup> with the application of these national measures suggest that operational and administrative costs borne by affected operators are excessively high compared to the benefits for drivers. In particular, where transport operations are not frequent and/or the amount of work performed is insignificant, these regulatory costs appear unjustified and disproportionate compared to the benefits in terms of fair competition and working conditions. A better balance between administrative costs for operators and benefits for drivers in terms of higher remuneration and better social protection would, however, be reached in cases where a driver works for long periods in a host Member State (see Box 3 ) with higher labour and social standards.

According to the operators<sup>40</sup> engaged in international road transport operations carried out in/from/to the territories of countries applying a national minimum wage, it is not the payment of minimum wage that constitutes the main concern, but the extensive (and divergent) administrative requirements and control measures imposed on them to demonstrate compliance with the minimum wage law which creates disproportionate administrative costs. The estimated costs related to the national measures on minimum wage are described in detail in section 2.4.3.

#### **2.3.1.3 Problem driver: Unequal treatment of drivers and operators**

Unequal treatment of drivers and operators is based on different levels of control of compliance of the rules in force, stemming from different national interpretations of those rules and different control measures that may have discriminatory effects. Diverging interpretations of the EU rules lead to situations where a behaviour considered compliant in one Member State constitutes an infringement in another one and leads to unexpected sanctions on operators. The evidence (see Box 5) shows that such diverging interpretations may result in losses of thousands of Euros for an operator resulting from immobilisation of vehicles, financial fines, prosecuting fees, costs of appeal, and losses resulting from non-executed service contracts with client.

Box 5. For example, the Belgian authorities regard that transporting (driving) a new vehicle intended for the final customer should be subject to the driving time rules and tachograph requirements (i.e. tachograph must be installed and the driver's card used) and that such operations benefit from an exemption provided for in the EU legislation for new vehicles not yet put into service. As a result, the vehicles were immobilised and a manufacturer, drivers and their employers have been unexpectedly penalised with fines of 25,000 € per vehicle and 50,000 € and 75,000 € per transport company.

<sup>38</sup> On 6.03.2015 transport companies from several EU states filed with the Federal Constitutional Tribunal in Karlsruhe a constitutional complaint against the application of the minimum wage law. Source: Motor Transport Institute, 2017, "The impact of Regulation of the Road Transport Sector on Entrepreneurship and Economic Growth in the European Union"

<sup>39</sup> Source: Commission databases: Chap (ca 400 registered complaints), ARES (registered correspondence with hundreds of letters)

<sup>40</sup> This concerns operators from all EU-13 States and those established in 4 EU-15( DE, ES, PT and AT)

Also widely diverging national penalty systems (as regards the type and level of penalties for the same infringement) lead to unequal treatment of drivers and operators depending on the country in which the infringement has been committed. However, this issue is not being addressed by this Impact Assessment, as explained in Annex 5.

Diverging interpretations and implementation of the provision on the regular weekly rest (see Box 1) also cause legal uncertainty and result in unequal treatment of drivers and operators engaged in international operations.

Box 6. Belgium and France introduced national measures in 2014, penalising operators and drivers for spending the regular weekly rest in the vehicle. In France the fine is up to €30,000 for the operator and a year's prison sentence, whereas in Belgium, fines are up to €1,800 and in Austria up to €5,000. Other Member States do not prohibit taking regular weekly rest in the vehicle and other regard enforcement of such prohibition to be unfeasible.

These national measures on weekly rest mainly affect primarily foreign drivers engaged in long distance international operations (in particular from peripheral countries such as Portugal), because drivers carrying out domestic or short distance international operations usually return to their home/base for a regular weekly rest. In the context of a general shortage of adequate resting facilities and secured parking areas in the EU, international drivers engaged in long distance operations usually take their weekly rest in their vehicle, which often offers better rest conditions than those otherwise available. However they are then exposed to the risk of fines as BE and FR, which consider this practice to be an infringement.

Another example of different interpretation and enforcement leading to unequal treatment of drivers concerns the provision on recording driver's activities when away from the vehicle. As explained in Box 4 different evidence is required and/or accepted by the national enforcement authorities with regard to the presentation of records for periods when a driver could not use a tachograph when being away from the vehicle. This leads to the situation where the same set of driver's records is regarded as compliant in one Member State and is subject to sanctions in another.

As regards illicit employment practices linked with letterbox companies, illegal cabotage and uncertainty as to the application of PWD to road transport, these affect directly drivers and their right to equal pay for equal work. It concerns mainly EU-13 drivers who are employed under the terms and conditions of the Member State with lower labour costs and who work regularly or perform significant amount of work in host Member States with higher labour and social standards. Often drivers accept such working conditions because they fear losing their job or because they are not aware of their rights to choose the applicable labour law or the right to host country's terms and conditions of employment in case of posting situation.

Box 7. Anecdotal evidence suggests that Polish operators employ drivers from Romania at rates of pay that are up to 50% less than what is paid to Polish drivers – rates that are only possible if the requirements regarding applicable terms and conditions of employment are not complied with. It has also been reported that Spanish operators revert to drivers from mainly Romania and Bulgaria, who accept net salaries in the range of EUR 1,000 per month (CNR, 2013).

Such illicit employment practices affect also indirectly the EU-15 drivers whose jobs are threatened (rate of pay, as such, is not at risk as it is guaranteed by the national law or collective agreements) by unfair cost-based competition from operators (both from EU-15 and EU-13) applying such fraudulent business and employment practices. However, no evidence is available to show the magnitude of those risks.

The compliant operators, in particular from EU-15, suffer from a competitive disadvantage when having to compete with other operators active in the same Member State, but illegally established and employing their drivers elsewhere, where labour and social costs are significantly lower.

Such illegal practices have wider-reaching consequences. Several Member States<sup>41</sup> have adopted measures such as imposing national rules on a minimum wage under the PWD to fight what they consider illegal practices. These national measures have significant consequences on the internal market in terms of high regulatory costs (also for the compliant hauliers)<sup>42</sup>.

### **2.3.2 Problem of inadequate working and social conditions of drivers**

Working conditions of drivers cover a broad range of aspects, from working time (hours of work, rest periods, work schedules) to remuneration, as well as the physical and mental aspects of poor working conditions.

The result of two parallel ex-post evaluations (evaluations of road transport social legislation and of internal market rules) show that abuses of the EU social and market rules in force (see section 2.3.1.1) affect negatively working conditions of drivers. For instance, Tassinari et al (2014) highlighted continued issues of above-average long, atypical and irregular working hours reported by professional drivers when compared to other sectors.

In addition, not all risk factors have been adequately or sufficiently addressed by the current rules. These include long periods away from home, time pressure, inadequate resting facilities and performance-based payments which have also adverse effects on drivers' working and social conditions. 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 (Broughton et al, 2015).

Increasing cost-based competition and the emergence of complex, and sometimes illicit, business and employment practices amplify the problem. High regulatory costs (section 2.3.1.2) not only distort competition, but also create risk of depriving drivers from their protection rights when working temporarily in another Member States, because there is a higher incentive for operators to circumvent the rules.

Box 8. BBC article of 15/03/17, illustrates the inadequate working and social conditions in the road transport sector, due to illicit practices. It describes the situation of drivers coming from poorer countries, also non-EU countries, who are employed by haulage companies based in Eastern Europe and brought to Western Europe to transport goods around. They are paid low Eastern European wages while working for several uninterrupted months in Western Europe. A Romanian driver who transported goods in Denmark, claimed that his monthly salary averaged to 477 EUR, whereas a Danish driver can expect a salary of EUR 2,200. These drivers have usually no access to adequate sleeping, toilet or hygiene facilities and are exposed to long periods away from their homes.

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<sup>43</sup>. The main relevant causes of inadequate working and social conditions addressed by this Impact Assessment are described in the following sections.

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<sup>41</sup>Germany, France, Italy and Austria.

<sup>42</sup>These impacts are further analysed in the ongoing impact assessment on the revision of the social legislation.

<sup>43</sup> Broughton et al., 2015; TRT, 2013, Lodovici et al., 2009

## **Problem driver: Stress and fatigue and low level of social standards of drivers**

The following factors contributing to stress, fatigue and deterioration in social standards are analysed in this section: long periods away from home and inadequate rest facilities, illicit employment practices, performance-based remuneration, and stringent enforcement of the social rules.

### ***Long periods away from home and resting facilities***

Various reports note that working conditions have deteriorated with respect to issues such as long periods of work away from the driver's home base leading to issues of difficult work-life balance<sup>44</sup>. These periods away from home appear to have significantly increased<sup>45</sup> over the last decade due to the internationalisation of the transport market.

The studies<sup>46</sup> show that long periods away from home contribute to driver stress and fatigue, in particular when combined with inadequate accommodation for rest periods and lack of access to sanitary facilities. Long periods away from home also have adverse effects on drivers' health because of inadequate access to proper nutrition, which is frequently the case for drivers away from their home base, as well as poor quality sleep and work-related sleeping disorders.

The research and stakeholder consultations and other studies carried out as part of the ex-post evaluation<sup>47</sup> appear to confirm the increasing problem with long periods away from home/base. It was found that out of the 25 drivers engaged in international transport operations who responded to the targeted survey, 7 (or 28%) typically spend their regular weekly rest (of 45 hours) on-board the vehicle (all engaged in freight transport), 3 spend it in an accommodation provided by an employer (all engaged in passenger transport).

Box 9. According to a survey carried out among Polish drivers<sup>48</sup> by the Polish employers' association, 23% (46 out of 200) spend 15 days on the road. 15 % (30 of 200) spend more than 30 days away from home/base and 7% (14 of 200) less than 5 days away from home/base.

The Lithuanian trade union estimated that these periods have increased from around 5-10 days to up to 60 days in freight transport and even up to 90 days in passenger transport over the past ten years. Overall, out of the 11 responding trade unions, six stated that periods away from home for international journeys have increased.

In France, in 2011 it was reported that half of French drivers spend more than 15 nights a month away from their home with more than 95% reporting that they sleep in their vehicle.

There is a difference between EU-15 and EU13 drivers as regards the length of those periods and the place of taking rest.

<sup>44</sup>European Parliament, 2014, TRT, 2013, ETF, 2012R

<sup>45</sup>TRT, 2013. Social and working conditions of road transport hauliers, s.l.: s.n and Broughton et al., 2015. Employment Conditions in the International Road Haulage Sector

<sup>46</sup> EU-OSHA, 2010. A review of accidents and injuries to road transport drivers, s.l.: European Agency for Safety and Health at Work

<sup>47</sup>Final report <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-eval-road-transport-social-legislation-final-report.pdf>

<sup>48</sup>Source: Employers' Association 'Transport and Logistics Poland', 2016

Box 10. TRT (2013) found, based on a survey of 24 drivers that EU-13 drivers in particular stayed away for two to four consecutive weeks before returning to their homes, while EU-15 drivers do not generally stay away from home for more than one to two weeks.

The roadside survey carried out in Germany among 1,800 drivers suggests that EU-13 drivers spend at least two weeks away from home. While 72% of all drivers interviewed spend their daily rest periods in/by their vehicle, 43% of EU-13 compared with 11% of EU-15 drivers also spends their weekly rest period in/by their vehicle (Broughton et al, 2015).

The ETF survey on non-resident drivers reported that 95% (out of 1000 interviewed drivers) of non-resident drivers spend their rest time on board their vehicles (ETF, 2012).

However none of the sources mentioned above specify whether the weekly rest periods taken in the vehicle include regular weekly rest periods or only reduced rest periods.

### ***Illicit employment practices***

The problem is amplified when combined with 'letterbox' companies or illegal cabotage. Drivers are employed under terms and conditions of employment of low-cost 'home' country and carry out their work over long periods of time in high-cost 'host' countries. The drivers' actual wages and social protection conditions do not reflect the living costs, to which they are exposed during long periods of working in other Member States. This incites them to spend all their time in the vehicle to save, in particular on accommodation costs and meals.

The legal uncertainty as to the application of PWD to road transport and diverging national administrative requirements linked to the application of the posting rules contributes further to stress drivers. EU-13 drivers providing services in other Member States are exposed to a risk of extensive controls to verify compliance of their employers with national minimum wage law of the host Member State. EU-15 drivers are faced with a threat of losing their jobs due to unfair cost-based competition by operators recruiting low-cost drivers from EU-13.

Remuneration based on performance (related to distance travelled or amount of goods carried) is another factor increasing levels of stress. The Driving Time Regulation allows for performance-based remuneration provided that such remuneration does not endanger road safety or does not encourage infringement of the Regulation. This form of pay is widespread across the EU, particularly among drivers from the EU-13 Member States, where the variable proportion of driver pay amounts to 55% on average compared to 21% in the EU-15. This type of payment combined with pressure from the client or the employer creates an incentive to drivers to exceed allowed driving times or shorten rest periods. According to 36% (13 out of 36) of drivers interviewed in the framework of the ex-post evaluation, such payment schemes constitute a major cause of non-compliance with the social rules.

### ***Stringent enforcement of the social rules***

Road transport social legislation is comprehensive and demands a lot from drivers in terms of understanding and properly recording their activities, Accidental incorrect recording can lead to high fines. Stress related to compliance with these requirements is higher among drivers that participate in international operations, since these drivers have to be aware of potentially varying applications or interpretations of the EU legislation across the Member States. The stress due to roadside checks is 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 ex-post evaluation identified that drivers also perceive the rules as being too inflexible given the sometimes unpredictable nature of the drivers' work. Rigid enforcement of the rules on driving time, breaks or rest periods make it difficult to comply in case of unforeseen circumstances under which the transport operation is carried out (e.g. traffic, congestion, accidents, severe weather conditions,

long waiting times at loading points, etc.). The drivers survey carried out within ex-post evaluation study shows that 15 out of 22 drivers responding (or almost 70%) stated that inflexibility in the rules (e.g. to account for specific traffic conditions) was a cause of non-compliance.

Due to exceptional circumstances and inflexibility in the rules drivers may be forced to spend rest periods away from home even if they are only a short distance away, which contributes to stress as well as fatigue.

Box 11. For example, a Spanish driver starts his international transport operation in Barcelona, where he lives, to transport goods to Germany and Poland. He plans to take his weekly rest after 5 days of work in Barcelona. But due to unexpected heavy traffic situation in France he only manages to arrive in Perpignan, which is 192 km away from Barcelona. He is obliged to take his regular weekly rest (45 hours) on a parking facility on highway A9 just outside Perpignan, instead of spending it at home with the family. On top of that the French police imposed him a fine of 27.000 € since he took the regular weekly rest in the vehicle, which is not allowed in France.

Drivers engaged in the transport of passengers are also exposed to stressful situations, as compliance with EU rules on driving and rest times might be difficult for tourist tours. Drivers are frequently asked to continue driving to reach destination (e.g. hotel), even when he is required to make a break. If not meeting planned arrival times drivers might fear the risk of dissatisfied customers, which can lead to aggressions, increasing stress and fatigue levels.

All the factors taken together affect negatively the driver's working conditions, including health and safety, social protection and remuneration, creating indirect risks to road safety through stress and accumulated fatigue. Several studies (see Box 12) provide various figures on fatigue-related accidents. These sources do not, however, confirm whether the fatigue was due to the working, driving and resting times or conditions of employment or they are more linked to external factors such as health problems, drugs, alcohol, unhealthy life-style, sleeping disorders, etc.

Box 12. 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).

#### **2.4 What are the main legal issues underlying the problems on the ground?**

The main legislative deficiencies contributing to the problems are: (1) unclear or unsuitable road transport social rules; (2) disparities in interpretation and application of the rules; (3) inconsistent and ineffective enforcement; (4) insufficient administrative cooperation; (5) posting rules unfit for the highly mobile road transport sector; (6) disproportionate national measures for the enforcement of the existing posting rules to road transport. The issues linked to the existing social legislation are described in this section (where not already covered in previous sections) under two headings: unfit rules and inefficient and inconsistent enforcement. Issues related to the PWD are considered in section 2.4.3

The results of the Open Public Consultation confirm that disparities in national interpretations and enforcement are the most important obstacles to the effectiveness of the social rules. 84 % (969 out of 1152 respondents) of the individual stakeholders (drivers and operators) and 70 % (106 out of

152) institutional stakeholders (national authorities, enforcement bodies, industry associations and workers' organisations) expressed this view.

In the Open Public Consultation, 66% (753 out of 1148) of individual stakeholders regarded vagueness of the social rules as one of the important obstacles to their effectiveness and 52% (78 out of 148) of the institutional respondents concurred. As regards inadequate or insufficient social rules, 77 % (887 out of 1152) of individual stakeholders and 71% (107 out of 151) of institutional respondents considered it to be an important obstacle. Insufficient administrative cooperation between Member States was considered as a significant obstacle by 63% (93 out of 147) of institutional stakeholders (drivers and operators were not consulted on this specific issue). Inefficient or diverging use of control tools, leading to different results of checks, is a big obstacle according to 74% of individual stakeholders and 65% of institutional stakeholders. As regards application of PWD to road transport, 72% of all respondents regard these rules unclear and/or difficult to apply and enforce.

#### **2.4.1 Unclear or unsuitable road transport social rules**

##### ***Issue of weekly rest requirements***

The Driving Time Regulation clearly states that a driver may choose to spend his daily rest (minimum 9 or 11 hours) and his reduced weekly rest (min. 24 hours) in the vehicle, when away from base, provided that it has suitable sleeping facilities for each driver and the vehicle is stationary. The Regulation is, however, silent with regard to where the regular weekly rest must be taken (min. 45 hours). This leads to diverging interpretations by different Member States. As a result drivers face the legal uncertainty whether or not they can spend the regular weekly rest on board their vehicle, and transport operators face similar problems as regards the organisation of drivers' work.

All this leads to unequal treatment of drivers and operators engaged in international road transport operations (see sections 2.3.1.1 and 2.3.1.3) It also creates practical problems of overcrowded parking places and there is evidence that drivers cross borders in order to spend the weekly rest in a country where sleeping in cabins is not (yet) sanctioned. This in turn can have adverse effects on the driver's rest conditions.

Two factors amplify the difficulties with the application of the provision on the regular weekly rest. One is exogenous and concerns infrastructure deficiencies, namely the lack of safe and secure parking areas and poor accessibility or quality of resting facilities. This leads to the situation that a driver has often no choice but to spend the regular weekly rest on board the vehicle.

Another factor relates to the duration of the weekly rest and its inflexible application in the current EU regulation. The Regulation requires that in any two consecutive weeks, a driver must take two regular weekly rest periods or one regular and one reduced weekly rest. The reduced weekly rest shall be compensated by an equivalent period of rest taken *en bloc* before the end of the third week following the week in question. The operators and drivers claim that the implementation of this requirement does not take account of exceptional circumstances which drivers face, such as traffic issues (congestion, accidents), weather conditions, long waiting times at loading/unloading points, and which result in delays in transport operations. As a consequence, a driver often cannot reach his destination or a home/base for the regular weekly rest.

The European Court of Justice is expected to issue a preliminary ruling following a request of a Belgian Court<sup>49</sup> where the Advocate General suggests that: "*Article 8(6) and (8) of Regulation No 561/2006 is to be interpreted as meaning that a driver may not take regular weekly rest periods referred to in Article 8(6) of this Regulation inside the vehicle.*"

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<sup>49</sup>Opinion of advocate general tanchev delivered on 2 February 2017 (1) Case C 102/16 Vaditrans BVBA v Belgische Staat (Request for a preliminary ruling from the Raad van State (Council of State, Belgium))

The clarification of the issue of whether taking the regular weekly rest on board the vehicle is allowed, is however not expected to solve the problem of enforceability of such a prohibition and the other relevant issues of lacking adequate accommodation and lacking flexibility in organising weekly rest periods in order to reach home/base. Hence, the provision on regular weekly rest remains difficult to comply with, in particular by international drivers, and difficult to enforce, in particular if proof is required that regular weekly rest has not taken place in the vehicle.

### ***Issue of difficulties to comply with requirements on breaks, resting and driving periods***

The ex-post evaluation shows that for certain types of transport services, due to their inherent features, it is difficult to apply strictly the prescribed thresholds for work and rest. This concerns, in particular:

- International passenger transport by coach: there are distinct service needs (related to the demands of passengers) compared to freight transport. Drivers are often pressed to delay their break in order to reach the destination. Also the industry (bus and coach operators) has claimed that the current restrictions concerning the application of the 12-day rule<sup>50</sup> are excessive (e.g. the need for long rest periods before and after a journey; short daily shift times and inflexibility in the distribution of obligatory breaks).
- Domestic occasional passenger transport by coach: current rules provide different treatment of those operators and drivers from those engaged in international operations. The 12-day derogation allowing the driver to postpone his regular weekly rest is only applicable to international trips. This means that a driver carry out a trip between South Germany and Berlin will not be subject to the same rule on resting as his colleague who carries out a trip between Strasbourg and Berlin. There is however no difference between those two operations with regard to distance travelled, working time executed and job requirements, hence there is also no reason for differentiating the requirements related to working periods and weekly resting times.
- Fuel suppliers and construction site deliveries and heating oil or de-icing products distribution: the weekly rest period provisions are regarded as particularly problematic, because of the seasonal peaks in demand;
- Businesses that typically work all week, such as the catering trade, bakeries, or delivering specific goods e.g. perishable goods, live animals, concrete-mixers, indicate that they find it difficult to comply in particular with regular weekly rest rules;
- International drivers engaged in long international transport journeys -due to unforeseen waiting time or traffic obstacles they are not able to reach their scheduled destination or home/base and must therefore stop for a weekly rest elsewhere.

The difficulties with compliance due to lack of flexibility expressed by stakeholders are confirmed by data on infringements detected. In the period 2013-2014 the most frequent offences detected concerned the requirements of rest periods (25%) and breaks (23% of all infringements), whilst infringements concerning driving times and records occurred less frequently (16% and 17% respectively).

### ***Issue of the scope of the road transport social legislation***

The Driving and Rest Time Regulation applies to the carriage of goods by vehicles of more than 3,5 tons or of passengers by vehicles carrying more than 9 persons (including a driver). Whilst it specifies clearly the vehicles and the transport operations that fall within the scope of the legislation, it does not clearly identify types of drivers who are obliged to apply Regulation's provisions. The

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<sup>50</sup> Article 8.6a of Regulation (EC) No 561/2005 provides for derogation for international occasional transport of passengers by coach allowing postponing the weekly rest period for up to 12 consecutive 24-hour periods. The general rule is that the weekly rest must be taken not later than at the end of 6 consecutive 24-hour periods since the previous weekly rest.



Road Transport Working Time Directive is also not clear as it simply stipulates that it applies to those drivers who are covered by the Driving and Rest Time Regulation.

The definition of a "driver" is very general, which creates uncertainty whether all persons who drive the vehicle, regardless of their main professional occupation should therefore be obliged to use a driver's card<sup>51</sup> and record all driving and non-driving activities<sup>52</sup>.

Box 13. This is for instance the case of private individuals driving those vehicles, which, due to their type or size, fall within the scope of the legislation; those who are transporting their belongings for private purposes (e.g. persons transporting race cars or horses by vehicles beyond 7,5 t in order to participate in races as part of their hobby).

This leads to differences between Member States in the application of EU law. For instance the UK and Spain consider that driving time rules apply also to non-professional drivers, but the UK establishes a category of 'occasional drivers' who are exempt from the provisions. The matter also came up in a recent court case<sup>53</sup> but the ruling concluded that the *provisions of Regulation (EC) No 561/2006 apply essentially to professional drivers and not to individuals driving for private purposes*, so the scope has not been fully clarified.

#### **2.4.2 Inconsistent and ineffective enforcement of the road transport social rules**

##### ***Issue of difficulties with enforcement of the working time rules***

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 to the Commission quantitative information on the enforcement. The lack of quantitative data does not allow for regular monitoring of the working time provisions. A qualitative assessment suggests that the enforcement practices of the Road Transport Working Time Directive vary significantly across Member States and that the level of compliance is 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. For the implementation period 2013-2014 only ten Member States<sup>54</sup> provided statistics on offences detected.

Box 14. The evaluation study shows that 40% of drivers across the EU work regularly more than the allowed maximum 48 hours per week (with a particularly high result for Germany of 90%<sup>55</sup>).

The survey among enforcers carried out within the study on ex-post evaluation confirmed the problems with controlling compliance with working time rules. Almost half of the enforcers (8 of 18) regarded controls as not being frequent enough. They stated that the main obstacle is the excessive time needed for detecting infringements (14 out of 21 enforcers). This is mainly due to the fact that the average weekly working time is calculated over the long reference period of 4 months (which can even be extended to 6 months) and that the completeness of work records depends on the driver correctly using a switch mechanism in the tachograph to record 'other work' i.e., work other than driving (which is automatically recorded by tachograph). Other factors affecting effective enforcement of working time rules are linked with lack of control capacity (10 out of 19) and language barriers (10 out of 19).

<sup>51</sup> Driver card means a tachograph card, issued by the authorities of a Member state to a particular driver, which identifies the driver and allows for the storage of driver activity data

<sup>52</sup> Drivers shall record separately the following activities: driving time, other work, availability and breaks /rest period.

<sup>53</sup> Case C-317/12, Daniel Lundberg

<sup>54</sup> AT, BG, CY, CZ, FR, EL, IE, LU, PL, ES

<sup>55</sup> German study (ZF Friedrichshafen, 2014) for which 2,196 professional German drivers were consulted

### ***Issue of inefficient and inconsistent use of control tools***

The effectiveness and efficiency of enforcement is also affected by the lack of access to, or poor usage of, information contained in the national risk rating systems<sup>56</sup> which were established in order to better target controls at companies with a higher risk rating. Not all Member States have their risk rating system fully operational and accessible to control officers apparently because of underlying budgetary constraints, national arrangements as regards the enforcement system or data protection issues. 17 Member States<sup>57</sup> out of the 25 States (including Norway and Switzerland) responding to the consultation in the ex-post evaluation study use a risk rating system, while 3<sup>58</sup> of the remaining 8 States<sup>59</sup> admitted that they do not have their risk rating systems operational.

In addition, Member States differ in their definition of the details as regards the functioning and application of their risk rating system, including formulas for calculating the risk rating of a transport undertaking breaching the EU rules on driving and resting times and on use of the tachograph. Only 8 Member States<sup>60</sup> use the formula for calculation of risk rating of the transport undertaking based on or similar to the Commission recommended formula established in 2008. All others established their own methods.

As a result the same type and number of infringements may lead to classifying an undertaking in one Member States as a high risk company and hence being more frequently checked, whilst in another Member State a company acting in a similar fashion could be regarded as low risk and therefore not subject to more frequent targeted controls, giving them an advantage. In addition, due to diverging formulas and uses of the Risk Rating Systems, the data on risk rating coming from different Member States is not comparable and subsequently not exchangeable. All this makes the mechanism aimed at improving cost-effectiveness and consistency of enforcement ineffective.

### ***Issue of insufficient administrative cooperation***

A range of administrative cooperation measures set out in the social legislation were designed to address the issue of the low level of exchange of data, experience and intelligence between Member States as well as scarce cooperation in cross-border investigations. However, according to the results of the ex-post evaluation, the framework provided for in the legislation such as concerted checks, setting up an intra-community liaison body or common training sessions, appears not to have been sufficient. The requirement of carrying out a minimum of 6 concerted roadside checks per year is consistently not complied with by around half of Member States<sup>61</sup>. The Member States who cooperate on a regular basis in the field of enforcement, training and exchange of intelligence and good practices are those who also participate in Euro Contrôle Route (ECR)<sup>62</sup> – the network of European Transport Inspection Services or in Confederation of Organisations in Road Transport Enforcement (CORTE). Outside this network the cooperation between Member States is incidental and remains mostly between neighbouring states. Insufficient joint cross-border controls between Member States and insufficient exchange of information between national enforcement authorities lead to inconsistent and ineffective cross-border enforcement.

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<sup>56</sup> Article 9 of Directive 2006/22/EC requires Member States to introduce a risk rating system for undertakings based on the number and severity of infringements committed by individual undertakings. The overall aim of this system is to increase checks on undertakings with a poor record concerning the compliance with the driving time.

<sup>57</sup> AT, BE, CY, CZ, DK, EE, ES, FI, HR, LV, LT, NL, PL, RO, SI, SE, UK

<sup>58</sup> FR, HU, NO

<sup>59</sup> BG, FR, HU, LU, PT, SK, NO, CH

<sup>60</sup> LU, PL, FR, NL, LV, CY, EL, BG

<sup>61</sup> In 2013-2014 12 Member States (BE, HR, CY, EE, FI, EL, IE, DK, MT, NL, PT, SE) did not carry out or did not inform about the minimum required concerted checks; source: Commission report, op cit

<sup>62</sup> Members of ECR are: BE, LU, NL, FR, DE, IE, UK, PL, AT, RO, BG, HU, LT, HR.

Regular monitoring of developments in the road transport sector is very difficult due to the lack of regular exchange of information and structured cooperation between Member States on common understanding and application of the EU rules. This often results in the adoption of uncoordinated and unilateral national measures to address competition or social problems. This implies deficiencies in the EU regulatory framework (which leads Member States to feel driven to adopt national measures on the application of the minimum wage to road transport) and/or affects negatively the effectiveness of the EU social rules (e.g. national measures on sanctioning for taking regular weekly rest in the vehicle).

The Open Public Consultation shows that 63% (93 of 148) institutional stakeholders consider adopting uncoordinated national measures as an important market obstacle and 55% (80 of 145) consider insufficient cooperation between the national authorities as the factor hampering effectiveness of the social legislation.

### **2.4.3 Application of PWD rules to road transport sector**

#### ***Unfit posting rules for highly mobile road transport sector***

The PWD applies to businesses in all sectors (except the merchant navy and the self-employed) that post workers temporarily to a Member State other than the one in which the worker habitually works<sup>63</sup>. It does not establish the minimum duration of the temporary work, hence the core set of the terms and conditions of employment of host country apply in principle to foreign transport operators and their employees from the very first moment of their activity in the host State, regardless of the total duration and/or frequency of operations.

At first sight, it would appear that the PWD might not be suitable for the road transport sector. Whilst these general rules work well in "typical" posting situations such as construction or the meat industry, where the amount and the duration of work is usually significant, they are less appropriate in long cross-border sub-contracting chains and inherently high mobility of the workforce, such as in the road transport sector. In particular, the obligation to apply the host country minimum rates of pay and the rights to annual paid holidays is difficult to apply in case of drivers engaged in typical international road transport operations.

Box 15. Typically, international operations are carried out in several countries (5-6 in one month) often for a very short duration on the territory of one Member State. According to estimations provided by road industry, international transport operation involving several transport services of short individual durations performed on the territory of several countries over a period of around 2 weeks constitute around 40 % of all international freight transport activities.

In such cases it is difficult to establish the place where a driver 'habitually' works or the place in which he performs majority of his activities in order to calculate his salary and establish his rights to annual holidays.

On the other hand there are obviously cases of road transport operations which clearly meet the current criteria of posting. These concern transport undertakings that perform the substantial part of their transport activities in one or two 'host' Member States in one month (see Box 3 and Box 8). In other cases, the application of posting of workers rules creates disproportionate barriers to cross-border provisions of transport services while providing little benefits for the drivers.

As regards the administrative requirements provided for in the Posting Enforcement Directive aimed to fight and sanction circumventions, these are also not well adapted to the specificity of the sector. In particular, requirements of pre-notifications of each operation, keeping all work related documents

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<sup>63</sup> Article 2 of Directive 96/71/EC defines a 'posted worker' as a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works.

on board the vehicle (employment contract, payslips, time-sheets, proofs of payment of wages, all translated into the languages of 'host' Member States), designating a representative to liaise with national authorities of 'host' Member State and being available for a period of 18 months following the end of the posting are excessively burdensome and disproportionate, in particular in typical international road transport operations carried out for brief periods in many 'host' countries.

The Open Public Consultation shows that 70 % of all respondents (765 out of 1106 individual respondents and 97 out of 137 institutional respondents) regard the posting provisions as not adapted to the specificities of the highly mobile road transport sector. This opinion was expressed by more respondents from EU-13 than from EU-15. In the same vein the lack of clarity of application of PWD in transport was regarded a major problem by 91% (282 out of 309) of both institutional and individual EU-13 respondents and by 65% (599 out of 924) of EU-15 respondents. The SME Panel Review brought similar results with 70% (39 out of 56) of respondents regarding the posting provisions not to be fit for the sector.

### ***Disproportionate national measures for application of PWD in road transport***

Overall, Member States have diverging understanding of the applicability of PWD to road transport, where almost all EU-13 Member States consider that PWD should not apply to road transport sector. A few Member States (FR, AT, DE, BG) seem to regard that posting provisions are fully applicable from the first hour of a driver's work in the host State and the others (e.g. IT) consider the application of PWD justified when the activities of foreign operators in the host country represent a sufficient link with that country, in terms of amount or duration of work carried out.

In the absence of uniform application of the PWD to the road transport sector and in response to the issues linked to increasing cost-based competition such as illicit business and employment practices, some Member States (Germany, France, Austria, Italy<sup>64</sup>) introduced in 2015, 2016 and 2017, national measures on the application of their national minimum wages to all foreign operators and drivers carrying out any transport activities on their territories. The side effects of such national measures, in particular regulatory requirements provoked heated reactions from the industry (11 associations of road transport carriers mainly from EU-13)<sup>65</sup> and national authorities (mainly EU-13 Member States<sup>66</sup>) who sent joint position papers to the Commission denouncing what they saw as protectionist measures leading to fragmentation of transport market in the EU. This in turn triggered a response from seven Member States which sent a joint letter to the Commission urging analysis of the social and safety issues<sup>67</sup> in road transport sector and subsequently established the 'Road Alliance'<sup>68</sup> to combat what they see as social dumping and unfair competition in road transport. These actions show that the EU is essentially divided in two opposing blocs when it comes to some of the key social and competition aspects.

These national measures reportedly have resulted in significant regulatory burdens for industry, such as complying with the strict administrative and control requirements imposed by France and Germany, for instance, which must be fulfilled by foreign operators. The key requirements include

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<sup>64</sup> Italian measures on minimum wage apply solely to cabotage and to agency workers while German French and Austrian apply to all transport operations (excluding transit) regardless a duration or amount of work performed

<sup>65</sup> 11 associations of international road transport carriers: Antram (PT), Astic (ES), Aebtri (BG), Cesmad Bohemia (CZ), Cesmad Slovakia (SK) Eraa (EE), Latvijas Auto (LV), Linava (LT), Mkefe (HU), Untrr (RO), Zmpd (PL) submitted to the Commission joint resolution in May 2016 and joint declaration in October 2016.

<sup>66</sup> In June 2016 11 Member States: (BG, CZ, EE, HU, LV, LT, MT, PL, RO, SK and SI) sent to the Commission a 'Joint letter of like-minded Member States against fragmentation of transport market in the EU'. In December 2016 nine Member States (BG, CZ, EE, HU, LV, LT, PL, RO and SI) sent a joint statement to the Commission calling for balanced approach towards EU road transport market and its social rules.

<sup>67</sup> 8 Member State (AT, BE, DK, FR, DE, IT, LU, NO) sent a joint letter to the Commission in September 2016.

<sup>68</sup> 8 Member State (AT, BE, DK, FR, DE, IT, LU, SE and NO) established 'Road Alliance' at the Road Meeting of European Ministers responsible for Transport in Paris, 31 January 2017.

pre-notification of each and every transport operation intended to be carried out on/to/from the territory of the 'host'<sup>69</sup> Member State, translation of all relevant employment documents into the language of the 'host' State and designating a representative to provide information and documentation to control officers in the 'host' state. These requirements apply equally to all foreign operators from all Member States even those established in countries where minimum rates of pay are higher than in the host State. They do not seem justified in many cases as they are not linked to any benefits for drivers or to ensuring fair competition between hauliers.

The view generally held in the EU-13 Member States, both by governments and operators, is that if all Member States were to impose their national minimum wage legislation with different administrative requirements and control measures to foreign operators, this would create excessive administrative barriers restricting unduly the freedom to provide cross-border services and leading to fragmentation of the internal market for road transport. In such a situation, one typical international transport operation involving 6 different Member States would require from the operator the application of 6 different rates of pay in proportion to the time worked on the territory of those different states and the preparation of 6 different sets of documents in national languages of the 'host' countries.

Based on estimations provided by haulier organisations from Austria and the Czech Republic, the average additional administrative costs for Austrian and Czech hauliers related with the application of the national minimum wage measures in Germany and France are considerable.

Box 16. According to Austrian estimates, the additional administrative costs oscillate (depending on the size of the company and the volume of activities carried out on the territories of 'host' states) between 3,300 € and 4,000 €<sup>70</sup> per company per year for compliance with the German administrative requirements and between 4,000 € and 14,000 €<sup>71</sup> per company per year for the French requirements. These costs do not include costs related to controls which are estimated at the level of 750 € per day of control.

Box 17. The Czech estimations<sup>72</sup> show that average additional administrative cost linked to the German requirements is around 148 € per driver per month and 303 € in case of application of the French requirements. Additional one-off costs borne by Czech hauliers includes also software that has to be adapted for calculating working time, pay adjustments, separate work records, etc., meaning additional costs which is estimated to be around 1,100 € per company. Based on the number of Czech weekly shipments to Germany (31,500) and to France (2,100) and it is calculated that average administrative costs borne by Czech hauliers engaged in operations in Germany or in France reach around 64m € per year<sup>73</sup>. Including software costs the total additional costs borne by relevant Czech industry due to the application of the German and French minimum wage administrative

The above estimates shall, however, be considered carefully due to potential bias involved.

Additional regulatory costs may also occur in case of non-compliance with these national rules. The German legislation provides for significant penalties of up to 500 000 € if due wages are not paid or

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<sup>69</sup> 'host' Member State means a Member State in which a haulier operates other than haulier's Member State of establishment

<sup>70</sup> These costs exclude costs of translations into German and costs of representative, which is not required by the German measure.

<sup>71</sup> These costs include translation costs for all work-related documents, also those required specifically at the controls, and costs of representative on the French territory

<sup>72</sup> Estimates provided by the Czech association CESMAD

<sup>73</sup> CZK 1,612,800,000 for administrative costs + CZK 102,060,000 for representative in FR, according to CESMAD

if they are paid with a delay; and up to 30 000 € for other lesser breaches such as failure to conform to the various administrative documents required. The French legislation provides for a penalty of 2 000 € per 'posted' worker and 4 000 € in case of recurrence of failure to comply, with maximum sanctions of 500 000 €.

This situation risks leading to further distorted competition in the single market by 'penalising' (through additional administrative costs) operators who engage in transport activities on the territories of these countries compared to operators carrying out transport activities in other Member States, which do not impose similar requirements on foreign drivers and operators active on their territories.

## **2.5 How would the problem evolve, all things being equal (baseline scenario)**

The baseline scenario reflects a likely evolution of the identified problems in case of no EU policy intervention. To assess how these problems may evolve, several assumptions are made, set out in more detail in the following sections:

- a) Regulatory environment will become more complex and inconsistent due to proliferation of national measures and enforcement practices resulting from unclear or insufficient EU rules;
- b) Enforcement capacity in Member States will continue decreasing;
- c) EU measures to combat 'letterbox' companies and illegal cabotage will be adopted via the parallel revision of Regulations on access to the profession and access to haulage market;
- d) Social Dialogue on the Social Code will result in a Social Partners agreement on at least two topics (which seems possible in view of the current discussions between social partners): (i) conditions at loading/unloading points and (ii) conditions during a rest;
- e) Wage cost differentials between Member States will further decrease;
- f) Pending infringements cases will result in: (i) ECJ ruling that a regular weekly rest may not be taken in the vehicle, nevertheless diverging national enforcement practices will persist ; (ii) no immediate repeal or significant changes in the national measures in Germany, France and Austria concerning administrative and control requirements on the application of minimum wage laws to foreign operators in the context of posting of workers;
- g) Some technological developments, such as: automated driving and truck platooning<sup>74</sup> , remain hypothetical in practice at this stage, therefore only a gradual deployment of 'smart' tachographs is considered in assessing the baseline;
- h) Transport activity will grow due to GDP growth according to the 2016 EU Reference Scenario.

Certain assumptions may appear less certain (e.g.: outcomes of the mentioned earlier infringement cases or results of Social Dialogue) than the others; therefore, possible differences in the baseline scenario are considered in the relevant following sections.

As explained in section 2.1.2 on the policy context this initiative is complementary to the ongoing revision of PWD and it will neither affect nor be affected by the final outcome of the revision. However, certain elements of the baseline scenario may evolve differently depending on whether or not the proposed revision of PWD (currently under negotiation) is adopted by the European Parliament and by the Council. These will be described in relevant sections below.

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<sup>74</sup> Truck platooning refers to a group of lorries travelling safely and automatically in convoy, a short distance apart. Since the lorries communicate with each other, they can travel in synchronicity. The vehicle at the head of the convoy acts as the leader. Innovative technology is used to drive it.

### **2.5.1 Distortions of competition and inadequate working and social conditions**

It can be expected that due to persisting differences in national interpretations and enforcement, poor administrative cooperation between Member States, proliferation of national uncoordinated measures and also taking account of decreasing enforcement capacities and continuing cost-based competition, the problem of distortions of competition will be aggravated. This will lead to an increase in regulatory costs for hauliers and fragmentation of the internal market. Despite the transport growth projection (2016 EU Reference Scenario) and taking into account the challenge of an aging workforce and a growing shortage of drivers,<sup>75</sup> this will have indirect negative impacts on intra EU trade. However, the magnitude of these impacts cannot be estimated as it is uncertain how big the changes in transport activities will be and how sensitive intra EU trade will be to the fluctuations in transport activity.

On the other hand, the assumed adoption of the market measures addressing the issues of 'letterbox' companies and illegal cabotage will contribute to preventing and detecting illicit employment practices and subsequently to reducing, to a certain extent, abuses of the PWD. This will improve the working and social conditions of affected drivers.

This expected improvement in compliance will, however, only partially offset the negative impacts on fair competition of the above mentioned risks. Therefore, the market measures on their own cannot effectively solve the broader problem of illicit employment practices and other social challenges contributing to distortions of competition.

The results of the pending infringement cases will provide some legal clarity as to the issue of regular weekly rest, but will however not necessarily improve drivers' resting conditions, mainly due to lack of adequate accommodation and poor enforcement of the current weekly rest provisions in the driving time regulation.

It is not expected that the expected ECJ ruling in the cases against Germany, France and Austria on their minimum wage measures will result in consistent application of PWD in road transport. A judgment does not pronounce itself on the appropriate remedies to be adopted to put an end to the infringement. Following the judgment of the Court, the Member States concerned would probably modify their national law in an uncoordinated manner. This would not solve the issue of the national, fragmented approach to this issue. Hence, legal uncertainty will persist as well as abuses of drivers' rights in relation to adequate terms and conditions of employment.

It is unlikely that a potential Social Partners' agreement on any of the topics under negotiation will have a significant impact on preventing and reducing distortions of competition. The potential agreement on conditions at loading/unloading points and conditions at rest may be of added value to improving slightly working and social conditions of drivers. The lack of such agreement will have no impact on the evolution of the problem of inadequate working and resting conditions.

In line with the assumption that broader deployment of digital technologies, such as automated driving and truck platooning is highly hypothetical, this Impact Assessment does not speculate how these developments will impact working conditions and competition between operators.

Overall, it is expected that the distortions of competition will persist and that working and social conditions will remain inadequate leading to exploitation of drivers and fragmentation of the internal market.

To substantiate the assumed evolution of the main problems described above it is important to look at how the main problem drivers are likely to evolve.

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<sup>75</sup> Final report on ex-post evaluation of social legislation in road transport and its enforcement, Ricardo et al, 2016, p.28

### **2.5.1.1 Abuses of social, labour and market rules in road transport**

A gradual penetration of the 'smart' tachographs<sup>76</sup> in line with fleet turnover rates and gradual convergence in enforcement practices thanks to the forthcoming establishment of the EU common curriculum for training of enforcers will lead to a slight gradual decrease of unintentional non-compliance. Also the slowly increasing use of 'smart' enforcement tools<sup>77</sup> by enforcers should render controls more efficient and effective, which should act as an incentive not to breach the rules.

However, non-compliance is likely to continue due to cost-based incentives for circumventing the rules, where risks of being detected and fined are lower (in countries with weaker enforcement) than the perceived benefits from non-compliance; practical difficulties to comply with rules that are unfit for road transport operations; proliferation of national measures and disparities in application and implementation of the EU rules; the emergence of increasingly sophisticated techniques of manipulation of tachographs; and insufficient exchange of information between Member States. Although further guidelines on harmonised application of the EU rules may be issued, given their non-binding nature, these efforts can only have limited impact on the harmonisation of the enforcement/interpretation of the rules<sup>78</sup>.

Based on the data on number of infringements against the Driving Time Regulation and Tachograph Regulation<sup>79</sup> for years 2007-2014 it is estimated that a number of infringements detected will oscillate at around 1,6 million infringements per year. However, taking account of decreasing enforcement capacity, slow deployment of smart tachographs and digital control tools (to increase efficiency of enforcement) and the projected increase in transport activities, it is expected that the number of undetected infringements will grow significantly if no action is taken at the EU level.

The social provisions infringed most often will tend to remain the same (see section 2.3.1.1), with infringements of rest periods and breaks being most frequent, followed by infringements in relation to driving times and records. The infringements linked to manipulation of tachographs will decrease in the longer term due to deployment of the more tamper proof 'smart' digital tachograph.

Although the adoption of new measures to fight illegal cabotage and letter box companies will decrease the incidence of infringements in this area, reducing thereby also non-compliance with the EU rules in relation to minimum wages, the legal uncertainty as to the application of PWD in road transport will persist and the proliferation of different national measures will continue.

Overall, the low level of compliance with the EU social rules will continue, in particular in the context of insufficient enforcement.

### **2.5.1.2 High regulatory costs for operators and national authorities**

In the absence of clarification of those provisions which are currently ambiguous or difficult to apply and enforce, the regulatory burdens for operators and national authorities related to disparities in implementation, application and enforcement of the rules in force will persist.

In the short term, the enforcement costs for Member States seems likely to remain unchanged. In the mid-term some cost increases will occur due to gradual digitalisation of the enforcement system requiring that controllers be equipped with 'smart' control tools compatible with 'smart' digital tachographs and provided with initial and continuous training. These additional costs will, in the

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<sup>76</sup> 'Smart' tachographs will have GNSS (satellite) module allowing calculating and recording the position and the speed of the vehicle.

<sup>77</sup> Controllers will be equipped with DSRC (Digital short-range communication) modules for the communication of relevant data recorded in the tachograph to enforcement authorities. The ITS (intelligent transport system) interface will allow sending data from the tachograph to third parties through a suitable electronic communication device such as a smart phone.

<sup>78</sup> This is one of the findings of ex-post evaluation

<sup>79</sup> Commission reports, footnote 30



longer term, be compensated by increased efficiency in enforcement, which will be very much necessary given the continuing tendency towards decreasing enforcement capacity (in terms of human and financial resources).

It is expected that, in the long-term, the improved efficiency of enforcement activities due to the digitalisation of enforcement systems will lead to cost savings for both authorities and businesses. These were already taken into account in the impact assessment of the Tachograph Regulation, where the administrative burdens of compliance with road social rules were already identified as a problem. The net cost impact from the digital tachograph were estimated to lead to savings of €515.5 million in administrative costs for businesses, mainly due to improved tachograph functions requiring automated recording of location using GNSS<sup>80</sup>.

For businesses, costs of compliance with the EU rules are expected to slightly increase due to persisting diverging implementation of the rules, illegal activities and increasing cost-based competition, which will make it more difficult for operators to keep up their activities in compliance with the rules. Cost of compliance with proliferating national measures will further increase regulatory burdens on operators. ECJ ruling on weekly rest will not eliminate the diverging enforcement practices and hence will not reduce relevant compliance or non-compliance costs.

Based on the estimated level of infringements against the EU social rules in road transport of 1,6 million detected infringements per year and taking into account the average fines imposed, non-compliance costs can be estimated at €14,5 million per year. These estimates, however, do not include the costs of non-compliance with certain national measures, in particular those on application of posting provisions to road transport (see section below on application of PWD).

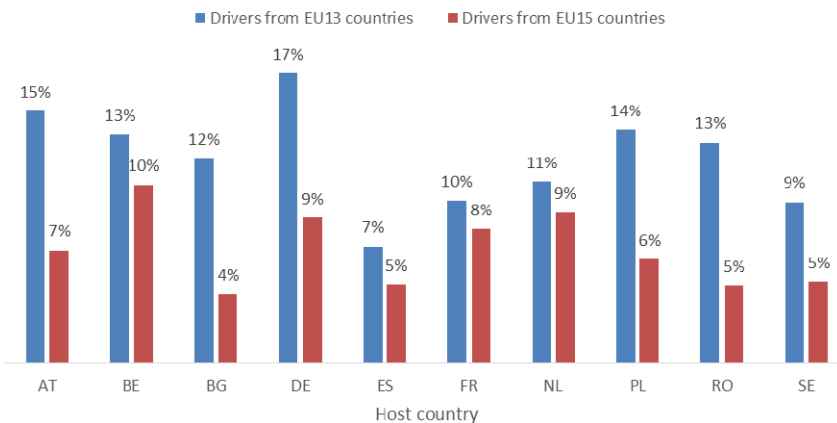
Overall, it is expected that compliance and non-compliance costs for operators will increase and enforcement costs for national authorities will increase in the medium term but will reduce in the longer term.

### 2.5.1.3 Stress and fatigue and low level of social standards

#### *Long periods away from home/base*

Figure 4 shows the probability of drivers from the EU-13 and EU-15 spending 10 or more days in a host country. It shows that EU-13 drivers are more likely to spend longer periods away from home in all 10 countries<sup>81</sup> for which data are available (12% of EU-13 drivers spend 10 or more days per month in a host country, compared to 7% of EU-15 drivers).

Figure 4: Average probability of a driver spending 10 or more days in a given month in a selection of host countries in 2014/15



<sup>80</sup>European Commission, 2011

<sup>81</sup> DTU study collected relevant data for 10 host countries: AT, BE, BG, DE, ES, FR, NL, PL, RO, SE.

Without EU intervention, the current length and frequency of periods away from home/base are likely to remain unchanged for EU-15 drivers whose working patterns will not be affected. For EU-13 drivers these periods may decrease as a consequence of market measures on eliminating illegal activities of 'letterbox' companies and illegal cabotage, which entail long periods spent by drivers away from home/base. The duration and frequency of those periods could potentially decrease if there is reduction in transport activity (despite the projected growth in 2016 Reference Scenario) resulting from higher regulatory burdens due in particular to the application of uncoordinated national law. In such a situation, EU-13 drivers would be spending less time away from home/base, but at the same time this would have negative impact on their remuneration due to decreased transport operations.

The expected ruling of the pending Court case on weekly rest *Vaditrans BVBA* (C-102/16) should provide some legal clarity. However, in the context of lacking resting facilities, time pressure and stringent application of the current rules on driving and resting times, the prohibition of spending weekly rests in the vehicle may even further increase drivers' stress levels.

### ***Working patterns***

Other more direct factor contributing to drivers' fatigue levels are working patterns, in particular long working hours (maximum 60 hours per week) over several consecutive weeks (up to 4 or 6 months), which contributes greatly to accumulated fatigue. Combined with growing time and cost pressures as well as projected shortage of drivers and lacking enforcement of the Road Transport Working Time Directive, it is expected that the excessive working time will increase even more.

### ***Illicit employment practices***

The above mentioned expected changes to Regulations 1071/2009 and 1072/2009 on access to profession and access to market, which should lead to more effective enforcement of cabotage and checks of stable establishment, will also contribute to a reduction in illegal employment schemes. Ricardo et al. (2017) estimated that the adoption of the preferred policy option could lead to a reduction of incentives for formation of letterbox companies by up to 10% and reductions in illegal cabotage by up to 62%. However, as road transport is characterised by low-profit margin and cost-driven competition, possibilities to use illicit employment schemes in order to cut costs will be further exploited. The 2016 EU Reference Scenario projects only slight convergence in labour costs between EU-13 and EU-15 countries, suggesting that this problem will not be solved by stand-alone measures on enforcement of cabotage and of stable establishment.

The controls carried out in the context of checking compliance by foreign drivers and operators with national minimum wage requirements in those Member States which apply and/or are expected to apply the PWD to road transport will contribute slightly to reducing illicit employment practices where drivers employed under the 'home' country's labour standards work most of the time in the 'host' country with higher labour standards. This will contribute to improving drivers' social protection and to reducing the level of driver stress linked to inadequate pay rates not reflecting the real costs to which they are exposed while working in the high-cost countries.

Benefits for drivers from low cost EU-13 Member States operating on the territories of those EU-15 countries will however materialise only in cases of significant amount of time worked on the territory of the higher-pay 'host' country. The benefit for drivers engaged in typical international operations, where the duration of presence in host country is not significant, would be minor.

### ***Social Dialogue***

The baseline may be positively affected, in the longer term, by the results of the Social Dialogue negotiations between the EU Social Partners (workers' organisations and road transport employers'

organisations) launched in September 2016 on the so called Social Code<sup>82</sup> in road transport. The expected Social Partners' agreement on the topics of conditions at loading/unloading points and conditions during rest could contribute to improving slightly working standards of drivers and reducing their fatigue and stress levels. In the event that Social Partners will not reach an agreement on any of these issues the difficult working and resting conditions will persist.

#### **2.5.1.4 Application of the PWD rules to road transport sector**

##### ***Diverging national measures on application of PWD to road transport***

In the absence of clarification on the conditions of application of the PWD to international transport operations, the application of the directive will remain inefficient and will give rise to the adoption of more national measures imposing different (and heavy) administrative and control requirements on foreign operators. The pending Commission proposal on the revision of PWD does not deal with the issue of application of the posting rules to road transport and the specific provisions under the revision will therefore have no influence on the baseline, regardless whether the proposal is adopted or not.

Given the wide differences in the implementation and enforcement of the PWD to the road transport sector, the baseline scenario is based on the *de-facto* regimes<sup>83</sup>, which reflect the way in which Member States actually enforce the rules on posting to the transport sector. Currently four Member States (Germany, France, Austria, Italy) have implemented and enforced a national minimum wage on their territory under the Enforcement Directive of the PWD, together with numerous associated administrative and control requirements, applying to transport operations carried out by foreign operators on their territories. In Germany, France and Austria, the minimum wage applies to cabotage and international transport operations from the very first hour of activity on their territory, even where operations are sporadic or very short. Italy currently applies the minimum wage only to cabotage but it is expected that it will extend the application to at least certain categories of international transport operations. The other Member States do not enforce the PWD on foreign operators and on drivers carrying out road transport services to/from/within their territories.

The expected increase in transport activities of foreign operators from “low-cost countries”, seen as undercutting local operators in high-cost 'host' countries, will continue to be a strong incentive for 'host' Member States to impose (uncoordinated) minimum wage measures in order to dissuade those foreign operators from providing services on their territories. It is assumed that the Member States which signed the 'Road Alliance'<sup>84</sup> demanding 'respect of fundamental social rights of drivers, namely: Belgium, Luxembourg, Denmark, Sweden and Norway, will adopt similar measures as the 4 Member States mentioned above. These 'Road Alliance' countries have relatively high labour and social protection standards and they are typically the 'host' countries (due to their location and their relatively high levels of GDP/capita) for cabotage and international operations<sup>85</sup> carried out by operators from States<sup>86</sup> with lower minimum rates of pay.

This baseline will not be impacted by the results of the ongoing infringement cases with Germany, France and Austria with regard to their national measures on the application of the posting provisions

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<sup>82</sup> The EU Social Partners (ETF and IRU) agreed to negotiate on the following topics: conditions on loading/unloading points, applicable law, access to medical assistance for drivers en route, conditions during rest, return home, language of labour contracts.

<sup>83</sup> Some of which are considered disproportionate in terms of administrative burden, and therefore subject to infringement cases launched by the Commission

<sup>84</sup> 8 Member State (AT, BE, DK, FR, DE, IT, LU, SE and NO) established 'Road Alliance' at the Road Meeting of European Ministers responsible for Transport in Paris, 31 January 2017.

<sup>85</sup> According to the Impact Assessment SWD for the road haulage Germany, France, Italy, UK and Sweden are the main Member States where cabotage operations take place accounting for 82% of total cabotage in EU.

<sup>86</sup> In 2014 around 29% of all cabotage activity was carried out by Polish operators.

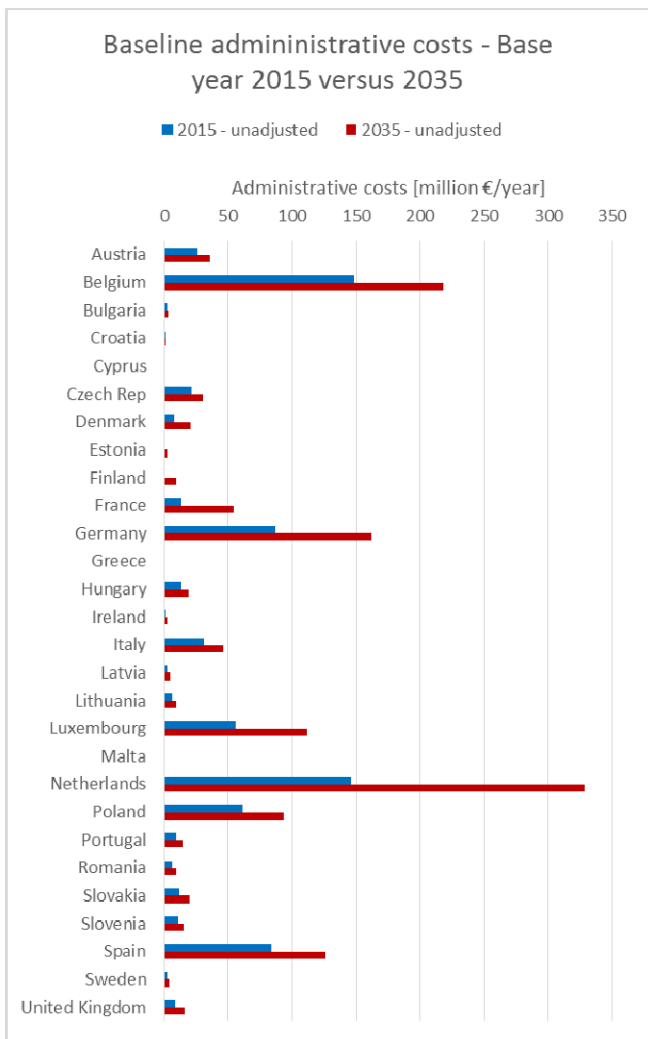
to road transport. Regardless whether or not these countries will repeal, change or maintain their national measures the diverging applications of PWD rules to road transport will persist.

**Regulatory burdens linked to the national measures on the application of PWD to road transport**

The regulatory costs borne by foreign operators carrying out activities in the territories with minimum wage legislation under the PWD applicable to road transport will increase significantly. The costs resulting from the posting of workers arising for operators are two-fold: (i) administrative costs linked to fulfilling all administrative and control requirements and (ii) compliance costs arising from matching the driver’s actual (lower) remuneration to the (higher) minimum pay rate in the host country.

Figure 5 gives an overview of the annual administrative costs by posting Member State, summing administrative costs across all hosting countries with minimum wage laws in place. The annual administrative costs are presented for the base year 2014/15 (minimum wage laws in AT, DE, FR for whom data collected) and 2035 (additional minimum wage laws in BE and SE). It can be seen that administrative costs increase significantly for all posting countries between 2015 and 2035, partly due to the projected increases in activity in line with the Reference Scenario, but mostly due to the introduction of the minimum wage laws in extra countries. These estimates are 'unadjusted' which means that they do not take into account a potential decrease in transport activities in host countries due to burdens linked with the national wage laws.

**Figure 5: Annual administrative costs by posting country summed up across all host countries that apply minimum wages in the baseline (AT, DE, FR, BE, SE).**

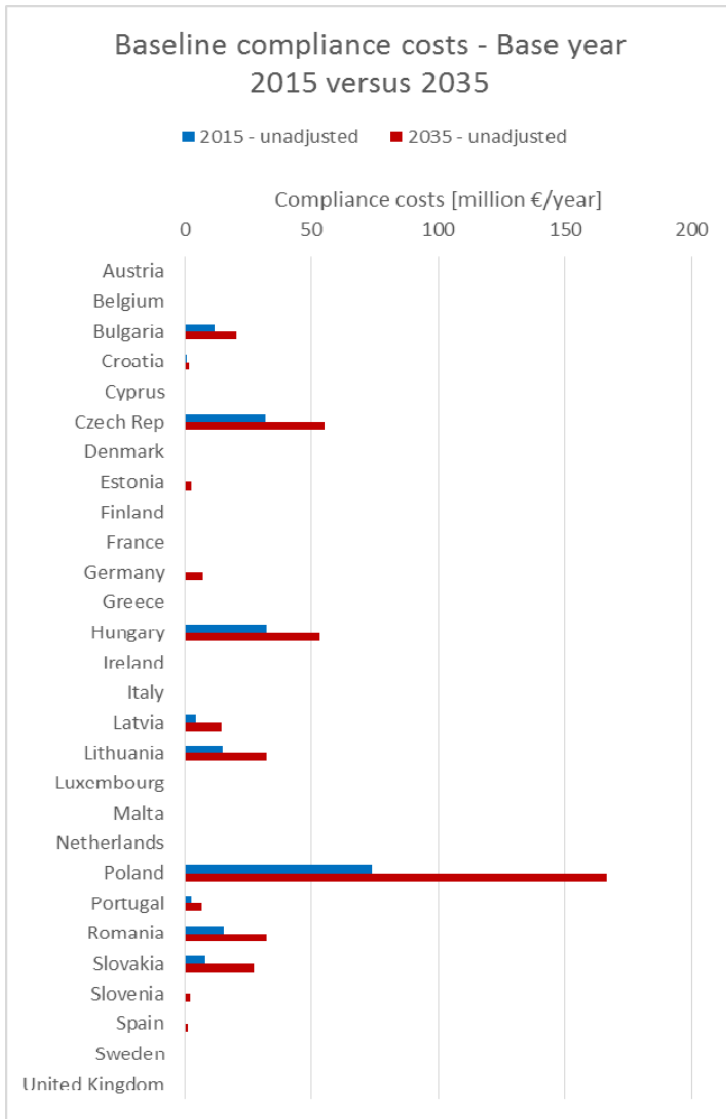


Source: Ricardo calculations based on DTU (2017) data and administrative cost data provided by Czech industry representatives

In the event that the infringements cases with Germany, France and Austria on the application of their national minimum wage laws to road transport will result in repealing these national measures or significantly reducing administrative requirements the administrative costs may be significantly lower than estimated above.

Compliance costs have been calculated by comparing the actual driver’s remuneration with the host country's minimum remuneration. In the cases where the actual driver’s remuneration is already higher than the minimum remuneration, the compliance costs were set to zero (since no adjustments would be required). In all other cases the difference is used to calculate the annual compliance costs (in terms of adjustment to drivers’ wages). Figure 6 shows the compliance cost for each posting country for activities across all host countries. The costs increase for all posting countries due to the introduction of minimum wage laws in additional countries and the projected increase in transport activity. These are 'unadjusted' estimates not taking into account a potential gradual decrease in transport activities due to burdens related to the national measures in host Member States.

**Figure 6: Annual compliance costs by posting country summed up across all host countries (AT, DE, FR, BE, DK, SE)**



Source: Ricardo calculations based on DTU (2017) data and (CNR, 2016), (TLP, 2016)

The adoption of the pending Commission proposal on the revision of PWD may have an impact on the evolution of compliance costs. This would be mainly due to the revised rules on remuneration, which would include all the elements rendered mandatory by national laws or collective agreements.

Overall, it will become very burdensome for road transport undertakings to apply different national labour laws (with different remunerations systems, composition of minimum wage, social entitlements, collective bargaining agreements) to those drivers involved in international transport.

The enforcement costs for the Member States applying such measures will also increase, mainly due to the need to establish notification systems, to deploy and train more staff (and in particular enforcers to carry out controls of compliance).

Due to high administrative costs related to the application of the national measures on minimum wage and the severe sanctions for non-compliance with these laws, it is expected that a number of foreign operators (mainly small and micro enterprises) will withdraw from activities on the national markets where such requirements are imposed. Others (mainly more prosperous or bigger operators) will make an effort to fulfil the obligations imposed by 'host' countries. However it is expected that a number of operators will try to circumvent the national rules on posting by changing the employment contracts into 'bogus' self-employment (posting provisions do not apply to self-employed), hence affecting negatively compliance level. All this will have adverse effects on the level and structure of employment, on the integrity of road transport market and consequently on intra EU trade.

### **3 WHY SHOULD THE EU ACT**

The general competence for this initiative derives from the aim to complete the internal market as stipulated under Title I 'Internal Market' in Article 26 of the Treaty on the Functioning of the European Union. It is also in line with the EU competence under Title VI 'Transport' of the Treaty on the Functioning of the European Union (in particular Article 91). The applicability of Title VI to road transport is stipulated in Article 100.

As explained under the problem definition section, efforts made so far by the Member States to improve the level of drivers' working conditions have not been fully effective due to low compliance with the existing social road transport legislation (driving, working and resting times) and market-based challenges which have together rendered the current rules not fit for purpose and their enforcement ineffective.

The differences in interpretation and enforcement practices by the Member States as regards the existing social road transport legislation and implementation of PWD in the road transport sector result in a proliferation of national measures creating disproportionate and unjustified barriers to the provision of cross-border transport services. Such national measures do not indeed solve the problem at stake but merely shift it to another part of the market, sometimes putting at risk health and safety of drivers. All this leads to legal uncertainty and unequal competitive and working conditions and creates a serious risk of fragmentation of the internal market.

The joint efforts of the Commission and the Member States to provide for a common understanding and enforcement of the rules in force through a number of guidelines issued between 2007 and 2016 have not yielded the results that were hoped for. This is mainly because these guidelines are not legally binding and are not taken up by all stakeholders and all Member States. Therefore, legally binding solutions at the EU level seem to be appropriate to address the issues of disparities in implementation, application and enforcement of the common EU rules.

Also the efforts made so far by the Member States (with the support of the Commission and the enforcement network organisations like Euro Contrôle Route) to enhance the effectiveness and

consistency of enforcement through the joint training projects and cooperation in expert and working groups appear insufficient, in particular because not all Member States participate in such activities.

The persisting problems of ineffective, inconsistent and disproportionate implementation of the current EU rules would put at risk the ultimate objectives of the EU legal framework and undermine the key provisions on workers' rights set out in the Charter of Fundamental Rights of the European Union (Article 31). Subsequently the Treaty objectives of an internal market based on a highly competitive social market economy aiming at full employment and social progress (Article 3(3) TEU) would also be jeopardized.

Finally, the road transport market has a strong international character. It is estimated that more than 2 million drivers (out of 5 million employed in freight and passenger transport sector) are engaged in international transport operations. A third of all freight services in the EU are operated between Member States. For instance, according to Eurostat, in 2013 international road transport (including cabotage) accounted for over 27% of overall freight transport in EU-28 (in tkm). Therefore, it is essential to ensure that the social rules in the road transport are consistently applied throughout the EU. This will contribute to a more coherent and better achievement of the legislative objectives and will contribute to achieving a balance between enshrined in the Treaty freedom to provide cross-border services, social protection of workers and a level-playing field between local and foreign competitors.

For these reasons, action at EU level is justified in order to promote fair and adequate business and working conditions in the sector.

#### **4 WHAT SHOULD BE ACHIEVED?**

The initiative should contribute to the following Treaty-based policy objectives:

- The sustainable development of the internal market, based on highly competitive social market economy (Article 3 TEU);
- The freedom to provide services across borders (Article 56 TFEU);
- The improvement of living and working conditions (Article 151 TFEU);
- The establishment of common rules for fair and safe international transport services (Article 91 of TFEU).

In particular, this initiative aims at ensuring the effectiveness of the original system put in place and therefore contributing to the original transport policy objectives of EU social legislation, i.e.: (1) to ensure a level playing field for drivers and operators, (2) to improve and harmonise working conditions for drivers, (3) to improve road safety.

This translates into the following set of specific objectives (SO):

- SO1: To reduce and prevent distortions of competition between transport operators;
- SO2: To ensure appropriate social protection and working conditions for drivers.

This will be achieved through the following operational objectives:

- clarifying and adjusting the EU social rules applicable to road transport (including those on posting of workers);
- providing for uniform interpretation and application of the rules;
- facilitating cost-effective and consistent cross-border enforcement of the social legislation;
- and

- strengthening cooperation between Member States.

The initiative should also contribute to a better coherence and complementarity between the social and market rules applicable to road transport, i.e. between the core road transport social rules on driving, working and resting times, the rules on posting of workers and the market rules on the access to occupation of road transport operator and on the access to haulage and passenger markets.

This coherence and complementarity will contribute to the achievement of the overarching EU policy goal of ensuring a balanced development between the social protection rights of workers and the freedom to provide cross-border services<sup>87</sup>. The objectives are also coherent with the Charter of Fundamental Rights, which provides under Article 31 for the right to fair and just working conditions<sup>88</sup>.

In line with the REFIT objectives of simplification, clarification and reducing administrative costs, this initiative should contribute to solving the regulatory problems of legal uncertainty of the applicable EU provisions, diverging national interpretations and different enforcement practices of the EU common rules. It should also ensure that the applicable rules are fit for purpose and meet the specificities of the road transport services. The achievement of the specific objectives should contribute to the further integration of the market while protecting social and working conditions in the sector and improving the attractiveness of the profession.

There are clear synergies between the specific objectives of the intervention, as common understanding and application of the EU rules will lead to consistent enforcement throughout the EU and to legal certainty for drivers, transport operators and enforcers. There are no trade-offs between the main specific objectives of the intervention as pursuing one of the objectives does not put at risk the achievement of the others.

According to the Open Public Consultation, the importance of the objective of ensuring a balance between the freedom to provide cross-border services and the social protection rights of road transport workers was indicated by the same share of 73 % of individual (822 of 1126) and institutional (103 of 142) respondents.

## **5 WHAT ARE THE VARIOUS OPTIONS TO ACHIEVE THE OBJECTIVES?**

### **5.1 Discarded policy measures**

The wide range of stakeholder consultation activities, targeted stakeholder meetings<sup>89</sup>, research<sup>90</sup> and feasibility and proportionality analyses carried out have allowed the identification and selection of a set of individual measures with the potential to address the identified problem drivers and their root causes. As a result of the initial screening based on i) effectiveness and efficiency; ii) enforcement feasibility and iii) political feasibility, a final list of 20 policy measures was selected for further consideration. A long list of 86 initial measures and further detailed explanation of the reasons for discarding them is presented in Annex 6.

One policy measure that has not been pursued further in this impact assessment merits more explanation here as it is increasingly politically prominent and debated in a number of different contexts. It concerns establishment of a European Road Agency. It must first be noted that a

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<sup>87</sup> As highlighted in the White Paper on Transport *Roadmap to a Single European Transport Area – Towards competitive and resource efficient transport system* (COM(2011)144), where it makes clear that the creation of a Single European Transport Area should go together with a higher degree of convergence and enforcement of social rules. It adds that market opening needs to go hand in hand with quality jobs and working conditions.

<sup>88</sup> Article 31 grants rights to workers to daily and weekly rest periods and a limitation to the maximum working hours.

<sup>89</sup> Including conferences, seminars, Social Dialogue meetings and bilateral meetings between the social partners and the Commission services;

<sup>90</sup> Based on literature review and two (additional to support study on impact assessment) studies on collection and analysis of data concerning international road transport operations in the context of posting of workers.



European Road Agency would need to be established by a Regulation under the ordinary legislative procedure and be supported by a fully-fledged impact assessment detailing which tasks such an agency would undertake and which added value it would bring. Moreover, this would need to be supported by a calculation of costs due to the financial implications on the EU budget. Given that such an assessment would go beyond the current revision of the existing road transport legislation carried out as part of the REFIT programme, it has been excluded from the assessment in the framework of the planned Road Initiatives<sup>91</sup>.

The planned Road Initiatives have a strong focus on enforcement, which has been identified as one of the main issues by stakeholders. As described in this impact assessment as well as in the parallel impact assessment on haulage market, it is envisaged to exploit better both existing enforcement tools and data systems such as the tachograph and the Risk Rating System, and to improve cooperation between the “host” and “home” Member States in terms of exchange of information. Better cooperation between Member States can also be achieved via participation in already existing enforcement network organisations, i.e. Euro Contrôle Route (ECR) – the network of European Transport Inspection Services – and the Confederation of Organisations in Road Transport Enforcement (CORTE). So the focus of the Road Initiatives on improving existing enforcement measures aims to bring benefits in the short and mid-term.

In this context, it should perhaps be noted that a European Road Agency, following a separate Impact Assessment and legislative procedure, would need to obtain funding and to recruit staff. As such, the process of establishing an Agency would require a relatively longer period, and would therefore not be able to address the acute problems faced by the road transport sector.

The Commission will closely monitor the effects of the proposed enforcement measures stemming from the Impact Assessment. Should these measures not achieve the expected results in terms of uniform application of the EU rules throughout the EU and improved effectiveness and consistency of cross-border enforcement, it would remain open to the Commission to launch a new legislative initiative leading to the establishment of a European Road Agency. But it would be premature to consider this as an option under this impact assessment.

## **5.2 Retained policy measures**

The 20 retained policy measures have been grouped according to the key problem areas. It is to be noted that several measures could address more than one problem driver or root cause and that some measures may be proposed as voluntary (V) – introduced through “soft-law” or Compulsory (C) – introduced through “hard law”.

The proposed policy measures - grouped under existing social legislation or implementation of PWD to road transport – are addressing the following aspects:

### Requirements concerning the weekly rest:

1. Calculate the required regular weekly rest period of 45 hours as a minimum average resting time over a reference period of rolling 4 weeks. The weekly rest period of less than 45 hours should not, however, be less than 24 hours and the reduction should be compensated by an equivalent period taken *en bloc* and attached to another weekly rest period.
2. The weekly rest of 45 hours and more must not be taken in the vehicle. It should be taken either at the suitable accommodation provided/paid by the employer, or at the home base or at another private place of rest. A definition of ‘adequate accommodation’ would also be introduced.

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<sup>91</sup> See Annex 7 describing in detail the whole package of Road Initiatives

3. Allow for spending the regular weekly rest in the vehicle, provided that it is the free choice of a driver and is justified by the circumstances, such as lack of resting facilities. All other weekly rest requirements remain unchanged.

#### Requirements on breaks, resting and driving times:

4. Clarify that breaks, resting and driving time arrangements may be adapted to specific exceptional circumstances under which a transport operation is carried out or to enable the driver to reach his home/operational base. This measure would not change the existing time limits.
5. Allow drivers to split a minimum break in driving time of 45 minutes into a maximum of 3 portions of at least 15 minutes each. The basic provisions on breaks remain unchanged.
6. Adapt '12-day rule' in international occasional passenger transport by coach by abolishing the obligation to take two regular weekly rest periods after the use of the derogation or one regular and one reduced weekly rest, with a compensation. Instead introduce the obligation to take one regular and one reduced weekly rest (minimum 69 hours), to be taken *en bloc*, without obligatory compensation for the reduced rest.
7. Allow for flexibility for domestic occasional transport of passengers by coach. Two scenarios are considered for the assessment:
  - (a) '12-day rule' – allowing the postponement of the weekly rest for up to 12 periods of 24 hours, provided that a driver takes regular weekly rest of minimum 45 hours before and 69 hours after the use of the derogation;
  - (b) '8-day rule' – allowing postponement of the weekly rest for up to 8 periods of 24 h provided that a driver takes his regular weekly rest of minimum 45 hours before and after the use of the derogation.

#### Enforcement

8. Allow controllers to access the risk-rating system in real time when performing checks at the roadside and premises
9. Establish a EU uniform formula for calculating risk rating, which would also include the results of so called "clean" checks where no infringement is detected. This measure will appear in two policy packages in PP1 (recommended approach - Voluntary) and PP2 (Compulsory).
10. Enhance administrative cooperation of national control authorities by introducing a (Voluntary or Compulsory) time to respond to requests for information by Member States within a certain time period: (i) 2 working days in urgent cases (e.g. in case of very serious infringements and (ii) 25 working days in non-urgent cases unless a shorter time limit is mutually agreed.
11. Abolish the requirement of attestation forms, even if required, instead of tachograph records to demonstrate the activities/inactivity periods when away from the vehicle, and define a solution as to how 'other' work is best controlled.
12. Clarify links between Regulation No 561/2006 and Directive 2002/15/EC in terms of derogations on the driving and resting times rules granted in exceptional circumstances. Two scenarios are considered for the assessment:
  - (a) derogations under the Driving Time Regulation may also result in derogation from the weekly working time thresholds set out in the Road Working Time Directive;
  - (b) derogations under the Driving Time Regulation may not result in derogation from the weekly working time thresholds set out in the Road Working Time Directive.

### Working time requirements and control:

13. Reduce the reference period used for a calculation of the maximum average weekly working time of 48 hours from 4 months (or 6 months according to national law) to 4 weeks in order to avoid accumulated fatigue and to enable the controls of working time at roadside via tachograph records and hence render enforcement more efficient.
14. Establish (Voluntary or Compulsory) minimum threshold for controlling compliance with working time provisions in line with the requirements for checks at the premises under Directive 2006/22/EC. Extend roadside checks and checks at premises to include also control of compliance with working time, which should be made easier if the calculation of the maximum average working time is done over 4-weeks reference period.
15. Establish a (Voluntary or Compulsory) reporting template for biennial national reports on results of controls of compliance with the Working Time Directive similar to reporting template for checks in Regulation 561/2006.

### Scope of the road transport social legislation

16. Define occasional driver and operations for private purposes excluded from the scope of the Regulation 561/2006.

### Performance-based pay:

17. Forbid (Compulsory) (or allow (Voluntary) Member States to forbid) all performance based payments on their territories (based on distances travelled / amount of goods carried);

### Sector-specific requirements on the application of posting of workers rules to road transport:

18. Set sector-specific time-thresholds for the application of PWD requirements in relation to providing cross-border services in other Member States. The time-thresholds of 3, 5, 7 or 9 days (accumulated over 1 month) would be set, and below which drivers would not fall under the full application of the PWD - they would be exempted from the minimum wage and minimum paid annual holiday of the 'host' Member State as stipulated in Article 3 (1) of Directive 96/71/EC. The time would be measured by the number of days and nights spent in a host Member State over a month. A definition of time spent should include driving times, other work, periods of availability and breaks as well as daily and weekly rest periods. If a driver has spent the majority of his time during one day in a Member State, this should be accounted as a "full day" for the purpose of application of the PWD.
19. Develop a tailored enforcement system in relation to posting in the context of road transport operations by making better use of existing control tools and systems. This would entail a simplified notification and other administrative requirements to be fulfilled by operators every time road transport operations are carried out in other EU Member States. A two-step process of control would be in place. The first step of control is the roadside check based on tachograph records (and other relevant documents such as declaration of posting) carried out by the controllers on the territory of the 'host' Member State and the second step is the control at the premises of a company (driver's employer), by the enforcement authorities of the 'home' Member State (country of establishment of that company), if requested by the 'host' Member State.
20. Oblige a driver, each time s/he stops a vehicle, to record in the tachograph the country code of the country s/he currently is. This would enable the controller at the roadside to check the frequency of the driver's presence in a given Member State and would enable the controller to pinpoint cases in which further controls at the premises should be triggered to verify compliance whether the proposed time-threshold in the PWD has been observed.

A threshold expressed in time as suggested in measure 18 (four potential variants) of PP4 would have similar effects to the derogation provided for in Article 3(2) of Directive 96/71/EC, which makes the full application of Article 3(1) subject to a minimum duration of the posting.

The majority of the requirements provided in Article 3(1), e.g. on health, safety and hygiene at work, would be immediately applicable from the first day of the posting. However, in order to take into account the specificities of road transport activities, the requirements on minimum paid annual holidays and the minimum rates of pay, provided in Article 3(1)(b) and (c) respectively, would be applicable only if the posting reaches a certain temporal threshold. If the posting of a worker in a host Member State exceeds the pre-defined period of time, all the requirements under Article 3(1), including the rules on holidays and pay, would be applicable for the entire duration of that posting.

The administrative requirements for foreign operators as set out in the PWD Enforcement Directive would be adapted to take account of the specificities of road transport. The requirements which appear disproportionate taking account of the highly mobile nature of road transport activities (e.g. representative in 'host' countries, translation of all employment related documents into the 'host' countries' languages) would be derogated from and replaced by more adapted requirements for road transport.

As indicated in sections 2.1.2 on the policy context and 2.2.2 on the market context an initiative of establishing sector specific criteria for the application of PWD to road transport sector is strongly justified by the market challenges and the existing legal and practical difficulties with the implementation of general rules on posting to the highly mobile sector. The legal feasibility of the policy measures on posting is described in section 7.3 and more detailed presentation is in annex 9.

An overview of possible interactions of all the policy measures with the parallel on-going revision of the haulage market legislation is presented in annex 8.

### **5.3 Identification of policy packages (in addition to a baseline scenario)**

#### **5.3.1 Methodological consideration for identification of policy packages**

Given the diversity and complexity of the defined problematic issues to be addressed and the fact that the underlying drivers of these problems are related to two different sets of rules (problem tree in **Figure 3**), a twofold approach has been considered and two sets of policy options have been established.

The following process has been applied for establishing the policy options and assessment of impacts:

- Step 1: Identify a list of policy options addressing the problem-drivers of the existing social road transport legislation;
- Step 2: Identify a list of policy options addressing the problem-drivers of the application of PWD
- Step 3: Perform a separate assesemnt and comparison of policy options for the two different sets of rules
- Step 4: Select a separate preferred policy option under each of two sets of rules;
- Step 5: Perform an assesment of the cumulative effects for a combined preferred policy option.

#### **5.3.2 Identification of two sets of policy packages**

Three policy packages (PP1 to PP3) concern the regulatory issues linked to the existing road transport social legislation. They have been defined in a way to show the expected impacts of increasing levels of regulatory intervention. Except for certain aspects highlighted below, these packages are cumulative, in the sense that the measures in package 1 are also part of package 2, which includes further measures, and the package 3 then contains all measures from previous two packages plus additional measures.

The issues linked to the application of the posting of workers rules to road transport will be assessed under the cross-cutting policy package 4 (PP4). They do not stem from the deficiencies of the existing road transport social legislation, but have an impact on achievement of its objectives. The policy package 4 considers four different scenarios dependent on the application of a specific time-threshold for road transport, i.e. 3, 5, 7 or 9 days (total accumulated per month), below which drivers would not fall under the full application of the PWD. It could be combined with any of the first three packages.

**Table 2: Definition of policy packages to address issues linked to the existing social road transport legislation**

<b>Policy package 1 – Clarification of the legal framework &amp; improve cooperation (PP1)</b>
<ul style="list-style-type: none"> <li>Measures aimed at clarifying existing ambiguities without substantially changing the rules;</li> <li>Measures aimed at improving cooperation among enforcement authorities that are not expected to have significant costs impacts.</li> </ul>
<b>Policy package 2 – Strengthening of enforcement and changes to obligations (PP2)</b>
<ul style="list-style-type: none"> <li>Measures aimed at strengthening enforcement that are expected to involve more significant regulatory costs;</li> <li>Measures introducing changes to the existing obligations of operators/drivers;</li> </ul> <p>However, this policy package does not significantly change the overall framework of the rules.</p>
<b>Policy package 3 – Targeted revisions of the social legislation (PP3)</b>
<ul style="list-style-type: none"> <li>Significant changes to current provisions (e.g. forbid all performance-based remunerations);</li> <li>Derogations for specific activities from the scope of the legislation</li> </ul>

**Table 3: Definition of policy packages to address issues linked to the application of PWD**

<b>Policy package 4 – horizontal policy option with three variants corresponding to the three thresholds of 5, 7 and 9 days (PP4 a, b and c)</b>
<ul style="list-style-type: none"> <li>Enforcement, recording (tachograph) and cooperation measures are applicable for all variants of PP4</li> <li>Measures for transport-specific rules on posting, including sector-tailored administrative and enforcement requirements. Three variants under policy package 4 are considered to reflect different levels of intervention: <ul style="list-style-type: none"> <li>a) specific time-threshold for road transport of 3 days</li> <li>b) specific time-threshold for road transport of 5 days</li> <li>c) specific time-threshold for road transport of 7 days</li> <li>d) specific time-threshold for road transport of 9 days</li> </ul> <p>is set under which drivers would not fall under the full application of the PWD</p> <p>Policy Package 4 a, b, c or d can be combined with any of Policy Packages 1-3</p> </li> </ul>

Table 4 defines the policy packages related to the existing social legislation. The following issues are addressed: (1) Abuses of the social, labour and market rule in road transport; (2) High regulatory costs for operators and member States; (3) Stress, fatigue and low social standards for drivers; (4) Unequal treatment of drivers and operators. Table 5 shows the allocation of measures to each policy package related to the existing social road transport legislation and to the implementation of PWD in road transport respectively, as well as mapping out which root cause and driver each measure is addressing.

Key for the existing social road transport legislation:

*Root Causes:* (A) Unclear or unsuitable rules; (B) Disparities in interpretation and application; (C) Inefficient/inconsistent enforcement; (D) insufficient administrative cooperation.

*Drivers:* (1) Abuses of social, labour and market rules; (2) High regulatory costs for operators and Member States; (3) Stress, fatigue, low social standards for drivers; (4) Unequal treatment of drivers and operators.

*Legal instrument:* V – voluntary measure (soft law), C – compulsory measure (hard law)

**Table 4: Definition of Policy Packages related to the existing social road transport legislation and mapping to root causes and drivers**

POLICY PACKAGES	ROOT CAUSES				DRIVERS			
	A	B	C	D	1	2	3	4
<b>(PPI) Clarification of the legal framework &amp; improve cooperation</b>								
<b>Requirements concerning the weekly rest<sup>92</sup></b>								
Allow for spending the regular weekly rest in the vehicle, provided that it is the free choice of a driver or it is justified by the circumstances (3) <sup>93</sup>	✓	✓	✓		✓	✓	✓	✓
<b>Breaks, resting and driving times</b>								
Clarify that break, resting and driving time arrangements can be adapted (without changing the time limits) to address specific exceptional circumstances under which transport operations are carried out and/or to enable reaching home/base(4)	✓				✓		✓	
<b>Enhance enforcement</b>								
Establish recommended EU uniform formula for calculating risk rating (9 V)		✓	✓	✓				✓
Enhance administrative cooperation of national control authorities by introducing a recommended time to respond to requests of a MS within a certain time period (10)			✓	✓	✓			
Clarify links between Regulation 561/2006 and Directive 2002/15 in terms of derogations: (12 a) derogations from the driving and resting times rules granted in exceptional circumstances may also result in derogations from the weekly working time thresholds; (12 b) derogations from the driving and resting times rules granted in exceptional circumstances may not result in derogations from the weekly working time thresholds;	✓	✓			✓			✓
<b>Working time requirements and control</b>								
Establish recommended minimum threshold for controlling compliance with working time provisions in line with requirements for checks at the premises under Directive 2006/22 (14 V)	✓		✓		✓			✓
Establish recommended reporting template for biennial national reports on results of controls of compliance with the working time directive similar to the reporting template for checks in Regulation 561/2006 (15V)	✓		✓		✓			
<b>Scope of the social legislation</b>								
Define terms: 'occasional driver' and 'operations for private purposes' excluded from the scope of the Regulation 561/2006 (16)	✓	✓	✓		✓	✓		✓
<b>Performance-based pay<sup>94</sup></b>								

<sup>92</sup> Measures addressing an issue of requirements concerning the weekly rest are not cumulative and their distribution varies depending on the PP

<sup>93</sup> number of policy measure

POLICY PACKAGES	ROOT CAUSES				DRIVERS			
	A	B	C	D	1	2	3	4
Allow Member States to forbid (on their territories) all performance based payment (based on distances travelled / amount of goods carried) (V 17)	✓	✓	✓		✓	✓	✓	✓
<b>(PP2) Strengthening of enforcement and changes to obligations – includes all PP1 measures plus:</b>								
<b>Requirements concerning the weekly rest</b>								
Calculating the required regular weekly rest period of 45 hours as a minimum average resting time over a reference period of rolling 4 weeks. The weekly rest period of less than 45 hours should not be less than 24 hours and the reduction should be compensated by an equivalent period taken <i>en bloc and attached to another weekly rest period</i> . (1)	✓				✓	✓	✓	✓
The weekly rest of 45 hours and more must not be taken in the vehicle. It should be taken either at the suitable accommodation provided/paid by the employer, or at the home base or at another private place of rest. A definition of 'adequate accommodation' would also be introduced. (2)	✓	✓	✓		✓	✓	✓	✓
<b>Breaks, resting and driving times</b>								
For all drivers: a break of minimum 45 minutes may be split into maximum 3 portions of at least 15 minutes each. Basic provision on breaks remains unchanged. (5)	✓		✓		✓	✓	✓	
<b>Enhance enforcement</b>								
Allow controllers to access the risk-rating system in real-time of control (both for roadside and premises checks) (8)			✓		✓	✓		✓
Establish recommended EU uniform formula for calculating risk rating (9 C)			✓	✓	✓	✓		✓
Abolish attestation forms on top or instead of tachograph records and define how 'other' work is best controlled (11)	✓	✓	✓		✓	✓		✓
<b>Working time requirements and control</b>								
Reduce the reference period used for a calculation of the maximum average weekly working time (of 48h) from 4 months (or 6 months according to national law) to 4 weeks. (13)	✓		✓		✓		✓	✓
Establish obligatory minimum threshold for controlling compliance with working time provisions in line with the requirements for checks at the premises under Directive 2006/22 (14 C)	✓		✓		✓			✓
Establish obligatory reporting template for the biennial national reports on results of controls of compliance with WTD similar to reporting template for checks on Regulation 561/2006 (15 C)	✓		✓		✓			
<b>(PP3) Targeted revisions of the social legislation – includes all PP1 and PP2 measures plus:</b>								
<b>Breaks, resting and driving times</b>								
Adapt '12-day rule' in international occasional passenger transport by coach (6)	✓					✓		✓
Allow for flexibility for domestic occasional transport of passengers by coach: (7 a) '12-day rule' –postpone weekly rest for up to 12 periods of 24h, etc. (7 b) '8-day rule' –postpone weekly rest for up to 8 periods of 24h, etc.	✓					✓		✓
<b>Performance-based pay</b>								
Forbid all performance based payment (based on distances travelled / amount of goods carried) (C 17)	✓	✓				✓	✓	✓

<sup>94</sup> Measures addressing an issue of performance-based pay are not cumulative. Two implementation scenarios are assessed for PP1/PP2 and PP3

Key for the application of the application of PWD:

*Root Causes:* (E) Posting rules unfit for the highly mobile road transport sector; (F) disproportionate national measures for application of PWD in road transport.

*Drivers:* (1) Abuses of social, labour and market rules; (2) High regulatory costs for operators and Member States; (3) Stress, fatigue, low social standards for drivers; (4) Unequal treatment of drivers and operators.

**Table 5: Definition of Policy Packages related to the application of PWD and mapping to root causes and drivers**

<b>(PP4) Revisions to PWD – horizontal policy option with three variants corresponding to the three thresholds of 5, 7 and 9 days (PP4 a, b and c)</b>						
<b>Posting of Workers</b>	<b>ROOT CAUSES</b>		<b>DRIVERS</b>			
	<b>E</b>	<b>F</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
Set time-thresholds (measured as the number of days and nights spent in a host Member State over a month). Variant a – 3 days, variant b – 5 days, variant c – 7 days and variant d – 9 days (18)	✓	✓	✓	✓	✓	✓
Tailored enforcement system with simplified administrative requirements and a two-step enforcement process, where the first step is the roadside check carried out by the controller on the territory of the 'host' Member State and the second step is the check at the premises of a company (driver's employer) by the enforcement authorities of the country of establishment of that company (19)	✓	✓	✓	✓	✓	✓
Oblige the driver to record in the tachograph the country code of the country where s/he is, each time s/he stops a vehicle. Establishing frequency of presence of a driver in a Member State at roadside checks by controller(20)	✓		✓			

Three variants under PP 4 are considered with regards the application of policy measure 18:

- a. A specific time-threshold for road transport of 3 days accumulated over a month;
- b. A specific time-threshold for road transport of 5 days accumulated over a month;
- c. A specific time-threshold for road transport of 7 days accumulated over a month
- d. A specific time-threshold for road transport of 9 days accumulated over a month

is set under which drivers would not fall under the full application of the PWD.

The majority of the requirements provided in PWD, e.g. on health, safety and hygiene at work, would be immediately applicable from the beginning of the posting independently on a specific time-threshold. However, in order to take into account the specificities of transport activities, the requirements on minimum paid annual holidays and the minimum rates of pay would be applicable only if the posting reaches a certain temporal threshold. If the posting of a worker in a host Member State exceeds the pre-defined period of time, all requirements under PWD, including the rules on holidays and pay, would be applicable for the entire duration of that posting. If the threshold over a month is not reached, a driver will be subject to the requirements on minimum paid annual holidays and the minimum rates of pay of his/her home country.

**6 WHAT ARE THE IMPACTS OF THE DIFFERENT POLICY OPTIONS AND WHO WILL BE AFFECTED?**

This section summarizes the main expected economic and social impacts of each policy option. No environmental impact has been identified. The analysis includes an evaluation of the impacts of the proposals on small and medium enterprises (SMEs). A fundamental limitation to the analysis of impacts is the scarcity and incompleteness of available data. Therefore, to partially compensate for a



lack of quantifiable data, multiple sources of qualitative evidence have been used, including stakeholders' assessments. Where possible, national data sources have been used to complement EU data, although noting that national data is not representative of the situation in other Member States. The detailed assumptions and modelling used in the analysis of impacts are described in Annex 4. The detailed description of how main stakeholders will be affected by the policy options is provided in Annex 3.

## 6.1 Analysis of social impacts

The overall social impact of the initiative is measured against the baseline scenario and in view of achieving the policy objective of ensuring adequate working conditions of road transport mobile workers.

### 6.1.1 Compliance with the EU social, labour and market rules in road transport

A range of policy measures are expected to impact positively on compliance with the EU rules. The impacts are assessed in terms of the potential short- and long-term implications, cross-implications with the parallel initiative on the haulage market and the pending Commission proposal on the revision of PWD.

**PP 1** contains 4 voluntary measures, the implementation of which will depend on the individual decision of a Member State, 4 measures providing clarification to the existing rules and 1 measure on enhancing administrative cooperation between Member States.

Measure 3 on the possibility to spend a regular weekly rest in a vehicle, if so chosen by a driver or if justified by circumstances, will help reduce unintentional non-compliance with the rules, where a driver has no choice, due to external factors, other than to spend the rest in the vehicle. On the other hand it may lead to an increase in intentional abuses, considering in particular that verifying a driver's free choice would be very difficult.

Box 18. While there is support among operators concerning the proposal, there are significant reservations raised among authorities and trade unions about the capacity to properly enforce such a measure. A large number of national authorities (22 in total)<sup>95</sup>, primarily from EU15, consider that there are important difficulties concerning the ability to prove “free choice” of the driver. The industry representatives from HU, BG, PL considered that a declaration is sufficient and easy to check. Trade unions at EU (ETF) and national level (NL, BE) question the capacity of drivers to withstand possible pressure by their employers to sign any such declaration (given the possible cost implications) and the difficulty for authorities to prove this. Nine authorities<sup>96</sup> also pointed out that proving that a driver has been able to exercise his or her free choice of where s/he wishes to spend the regular weekly rest will be particularly difficult. Thus, the actual effectiveness of enforcement – in terms of the ensuring that staying in the vehicle is a free choice of a driver – is expected to be particularly problematic and open to abuses.

Measure 4 clarifying that driving and resting rules may be derogated for in exceptional circumstances will also enhance driver's ability to cope with such circumstances and allow him to prevent committing and infringement. The difficulty with proving retroactively exceptional circumstances may, however, have adverse effects on infringements level, as drivers may not be able to provide reliable evidence at a roadside control.

Measure 9 on the uniform EU formula for calculating risk rating should facilitate the use of data on enforcement from other authorities and improve targeting of control activities on the basis of a

<sup>95</sup> 3 from AT, CY, CZ, HU, IE, LT, NL, EL, CH, CZ, DE, EE, FI, FR, IT, RO, SE, SK, BE, NO

<sup>96</sup> AT, BE, FR, FI, SE, SK, NL, LT, EL

uniform risk-rating. This will contribute to increase the detection rate and in longer term to reduction, as a dissuasive effect, of committed infringements.

Box 19. Most national authorities that responded to the survey were supportive of the potential role that could be played by improving enforcement by establishing an EU uniform formula for calculating risk rating (measure 9), with 23 out of 32 (72%) indicating that it will make enforcement more or significantly more effective.

It can thus be assumed that, even though the common risk rating formula is a voluntary measure, it should be adopted by a majority of Member States. Yet, EU-wide harmonisation in this regard will not be achieved as some Member States will continue applying their own different methods leading to a risk of unequal treatment of operators and weaker effects on reducing the level of infringements level.

Measure 10 on enhancing administrative cooperation of national control authorities by introducing a maximum time to respond to requests of a MS within 2 or 25 days depending on the urgency of the matter will further improve consistency and effectiveness of enforcement leading in the longer term to reducing abuses.

Box 20. National authorities were supportive: 19 out of the 27 respondents suggested that such measures will lead to more or significantly more effective enforcement. However, in the case of the 2-day deadline for responses, 10 authorities considered that implementation will be a major problem while 9 felt that it will be a small problem. The two day period is considered too short – and by a few (FR, UK, BE) as rather unrealistic. It will require additional resources specifically allocated by most Member States.

Measure 12a and 12b will have no impacts on infringement levels.

Voluntary measures 14 and 15 on the application and enforcement of the Road Transport Working Time Directive will have limited impact on general compliance. Compliance with working time rules will improve only in those Member States which will decide to introduce such measures.

Also measure 17 allowing Member States to forbid all performance based payment will help clarify the legal framework applicable in certain Member States but will possibly decrease clarity at EU28 level concerning the applicable rules related to performance based payments and whether such payments are allowed. Hence, the level of un-intentional non-compliance will persist or slightly increase.

Box 21. 14 authorities that responded to the survey (BG, 2 from EE, 2 from FI, RO, SE, EE, FR, EL, HR, IT, PT, BE) expect the measure to improve enforcement and compliance.

The Spanish and Czech associations argued in favour of maintaining some form of performance based payment – although not linked with distance travelled – while others (DE, AT, SL) were clearly in favour. Among authorities, the Latvian authorities also considered that a performance based element should be allowed.

Measure 16 on exclusion of occasional drivers performing operations for private purposes from the scope of the Driving Time Regulation should help to reduce unintended non-compliance due to elimination of different national approaches to the implementation of this issue.

Box 22. A number of stakeholders from industry (BG, RO, DK, DE, SE, CZ, UK) pointed out that a clear definition of occasional driver and private purposes is still needed to ensure clarity.

Taking account all positive effects and negative side-effects of the measures on effectiveness of enforcement and incentives for non-compliance, as well as decreasing enforcement capacity, it is anticipated that detected infringements will remain at the baseline level of 1,6 million/year.

Overall, PP1 is expected to have neutral or minor impact on reducing abuse of the existing road transport social rules

**PP 2** covers all measures of PP1, 4 measures modifying current obligations on weekly rest, breaks and weekly working time and 2 additional measures strengthening enforcement. Three out of four measures that are voluntary under PP1 are compulsory under PP2. This concerns measure 9 on uniform risk rating and measures 14 and 15 on enforcement and reporting on results of controls of the Road Transport Working Time Directive. Measure 17 on performance based remuneration remains voluntary.

Box 23. Most authorities consulted within the impact assessment support study indicated that the compulsory nature of measures 9, 14 and 15 will have a positive contribution to enforcement effectiveness if properly implemented.

Measure 1 on the changes to the calculation of the required regular weekly rest period will provide more flexibility to drivers and to operators in carrying out transport operations in a more efficient and suitable manner. It will allow better adaptation to changing circumstances on the road (traffic, border controls, severe weather conditions) and to let drivers, in particular those engaged in long international trips, to reach their home/base for taking a regular weekly rest at home (or another private place of choice). It will also help enforcers to effectively and consistently control the duration of weekly rest periods and compensations. This should contribute to reducing incentives for breaching the provisions on weekly rest. Nevertheless, this measure has triggered varied opinions.

Box 24. Majority of national authorities (25 of 32 who responded) consider that the measure can improve enforcement of the rules, but 7 expect major difficulties. 19 also thought that there will not be issues with fraud/evasion of the rules while 9 expect significant problems.

Drivers' representatives (BE, NL, SL) indicated that the 4 week reference period will allow drivers to pile up all rest period in one week and make controls more difficult.

From the point of view of industry, this is recognised as increased flexibility (AT, CZ, DE, ES, PL, RO, DK) which is supported.

Overall, the input provided suggest that there may be issues of unintentional non-compliance during the initial period but, in the longer term, improved enforcement and increased flexibility should lead to higher compliance levels.

Measure 2 is complementary to measure 1, as it further clarifies the weekly rest requirements by providing that a regular weekly rest of over 45 hours may not be taken in a vehicle, but in an adequate accommodation or at home/private place of choice. The greater clarity will improve consistent implementation of the provision contributing to reducing unintentional compliance. However, national authorities and trade unions question the capacity to properly enforce such a measure.

Box 25. While 15 out of 32 authorities that responded to the survey expect this measure to improve enforcement, other 15 pointed out to major problems with the practical enforcement.

Operators and their representatives also pointed to possible problems that operators may face to comply with the provisions. A number of industry associations and drivers, mainly from the EU-13 (CZ, BG, HU, RO) but also DK and at EU level (NLA) stressed that sufficient facilities are not available across Europe, particularly in terms of ensuring safe parking space for trucks. Some industry representatives (AT,DE) indicated that proving that weekly rest was spent at home or another private place of choice can be difficult while others pointed out that the extra costs for operators from such a measure can be particularly difficult to meet and create an incentive for non-compliance.

Measure 5 on breaks in driving does not change substantially the current provisions, as the minimum duration of break (45 minutes) and the maximum driving period after which or within which (4,5 hours) the break shall be taken remain unchanged. The measure is a response to the demands from drivers and operators engaged in certain transport services (section 2.4.1 **Error! Reference source not found.**) who, due to the specificities of their operations, have difficulties with compliance with current rules on breaks. The measure thus provides more flexibility in taking the prescribed breaks without changing substantially the main requirements of duration and frequency of breaks. Therefore it is expected to help reducing non-compliance with break provisions.

Measure 13 provides for a reduction of the reference period used for a calculation of the maximum average weekly working time from 4 months (with possibility to extend to 6 months) to 4 weeks. This measure will contribute greatly to reducing abuses of working time provisions only if it is accompanied with a proper enforcement, as proposed in measure 14 in the same package.

Box 26. There is strong support among national authorities (22 out of 32 respondents) in terms of measure 13 potential to improve enforcement and compliance.

Some operators (HU, PL, CZ) and industry representatives (AT, DE, ES and UETR and the EEA ) referred to a negative impact on the flexibility of planning the transport operations, while others (DK, PL, CZ) considered that ensuring compliance with the Working Time Directive provisions is difficult for operators.

Drivers and trade unions (ETF, NL) were supportive of the essence of the proposal, but pointed out possible difficulties with enforcement.

Overall, PP2 is expected to substantially improve enforcement in terms of its effectiveness and consistency as well as enhance administrative cooperation between Member States. This will effectively dissuade infringements. In addition, it adapts certain provisions to the needs of the sector, which will further improve compliance level. PP2 is expected to have a strong impact on preventing and reducing abuses against the existing road transport social rules. Even taking into account slight increase in short term in transitional intentional non-compliance and assumed reduction in enforcement capacity, it is estimated that the number of infringements will, in longer term, drop from 1,6 million/year in the baseline to 1,2 million/year.

**PP 3** contains all the measures of PP2 and 2 additional measures (measure 6 and 7) providing for more flexibility for occasional transport of passengers by coach. In addition, measure 17 forbidding performance based remuneration is made compulsory.

Measure 6 on the adaptation of the '12-day rule' in international occasional passenger transport by coach is intended to address restrictions on the 12-day rule, which are considered by the industry as unnecessary, are difficult to enforce and incite non-compliance. The proposed measure essentially reduces the rest period following 12-day derogation to a total of 69 hours en bloc (from 90 hours), before a new 12-day period may start (while still ensuring compliance with the Working Time Directive restrictions of maximum average of 48 hours per week). It is expected that the measure will facilitate enforcement and encourage compliance.

Box 27. Among national authorities, 43% (15 out of 35) that responded to the survey considered that it will improve enforcement.

Representatives of transport operators also considered that abolishing the compensation period will make compliance easier.

Drivers and trade unions consider that a reduction of the rest time will have a negative impact on the overall level of rest. They expect higher levels of fatigue and breaches (mainly unintentionally) of driving time rules.

Nonetheless, strictly from the point of view of compliance with social legislation, the proposed change should have a positive impact on compliance levels, as it will make it easier for operators to comply and for national authorities to monitor, in comparison to the current situation.

Measure 7 is highly demanded by passenger transport operators and provides for derogation similar to 12-day derogation in international transport also for domestic occasional passenger transport of passengers by coach (variant (a) 12 days and variant (b) 8 days). It is expected that increasing flexibility of operations will reduce reasons for non-compliance.

Box 28 Measure 7 is highly supported by the coach industry in countries where lengthy domestic trips are most common: Germany, Sweden, Finland, UK, Ireland.

However, the negative views were expressed by drivers and some trade unions (BE, NL, ETF) which suggested that the introduction of additional derogations for domestic transport would be abused by some operators who will organise trips with different passenger groups over a 12 or 8-day period.

Measure 17 forbidding a performance based pay, if accompanied by enhanced enforcement measures, would reduce abuses in this area, thanks to greater clarity and simplified enforcement by removing the need to prove the negative impact of such pay on road safety. However, cases of abuses are still to be expected, because such schemes are common practice in many Member States and it is difficult to prove that such payment schemes are used.

Box 29 ETF claims that measures prohibiting performance based pay will not solve the problem of abuses, as operators will be incited to transform such performance based payments into different kinds of allowances and additions to drivers' basic pay.

Overall, positive and negative impacts on reducing abuses of measures in PP3 counterbalance each other and therefore PP3 is not expected to have stronger positive impacts than PP2.

**PP4** is a horizontal policy option which contains measure 18 with four time-based variants addressing the issue of unfit rules on posting for highly mobile workers in road transport and two measures (19 and 20) on administrative requirements and enforcement of the posting rules in the sector.

Measure 18, regardless the time-based variant, would lead to a general and more uniform application of PWD to the road transport sector. Compared with the baseline scenario any time based threshold (3, 5, 7 or 9 days) will lead to a reduction of foreign operators having to apply the minimum wage(-s) to their drivers engaged in operations in 8 'baseline' host countries. As analysed in the support study<sup>97</sup>, the share of EU-13 and EU-15 drivers engaged in international trips that last less than 5 days in 10 host countries would be between 24% and 53% for EU-13 drivers and between 9% and 40 % for EU-15 drivers. The share of drivers who spend more than 5 days per month in the analysed host countries is the following: between 8% and 24% for EU-13 drivers and between 2% and 18% for EU-15 drivers. For trips longer than 10 days the share of drivers would decrease to the range of between 3.4% and 12.6% for EU-13 drivers and between 0,5% and 7.5% for EU-15. However, as PP4 leads to much broader and uniform implementation of PWD in all Member States, the absolute number of drivers covered by PWD and operators having to apply PWD to their drivers would increase compared with the baseline.

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<sup>97</sup> section 6.1.1.4 of the draft final report of the support study on impact assessment for the social legislation in road transport

It is expected that measure 18, providing for sector-specific criteria for the application of PWD in road transport will reduce legal uncertainty and improve compliance. The lowest threshold (3 days) for application of the PWD provisions (i.e.: minimum pay rate and a right to annual holiday of the host country) is very close to the current situation where minimum rates of pay of host Member State are applied from the moment of entry on the territory of that State. Therefore, this threshold would, at most, incite violations by some operators engaged in international transport activities who would try to avoid paying to their drivers a host country's higher wages and/or applying several different pay rates of different Member States where the drivers worked during one month. Thresholds of 5 and 7 days would also bear the risk of circumventing the rules through rotating drivers to maintain regular operations in host countries without reaching the prescribed 5 or 7-day threshold beyond which host country wages and annual holiday rights apply. The highest threshold (9 days) appears to provide the least incentive for such abuses, in particular among operators engaged in typical international operations carried out in several countries for brief periods.

Measures 19 and 20 proposing tailored measures for the enforcement of PWD in road transport, based on extensive use of the tachograph (work records, including country of work, available for consecutive 29 days checked at roadside) and lighter administrative requirements, would reduce significantly administrative costs for operators (described in section on economic impacts 6.2.1).

These three measures together are expected to considerably reduce incentives for non-compliance with PWD, contributing to improving overall working conditions of drivers and fair competition between national and foreign operators. In addition, the expected reduction of illegal cabotage infringements by 60% and 'letterbox' companies by 10% due to the prospective introduction of relevant haulage market measures would also contribute to elimination of illicit employment practices and abuses of PWD. On the other hand PP4, by ensuring efficient application of PWD to road transport, would help to combat the phenomena of illegal cabotage and 'letterbox' companies. The combined positive effects of these parallel social and market measures would therefore be significant, resulting in fairer working and business conditions.

The stakeholders are divided in their opinions on these draft measures.

Box 30. Trade unions and some EU-15 Member States (FR, DE, BE), do not support time thresholds in measure 18; they consider that PWD should apply from day 1 to drivers involved in road transport operations. Other Member States (e.g.: CZ, HU, LV) consider that PWD should not apply to transport at all. A number of industry representatives (from AT, BG, CZ, PL, RO and UETR) consider that a time threshold will be difficult to apply as drivers often work in multiple Member States during a single trip.

7 national enforcement authorities (BE, 2 from BG, EE, HR, IT, SK) out of 20 who responded to the survey on this question consider that a time threshold and specific enforcement measures would improve effectiveness of application of PWD, while 8 enforcement authorities (CZ, 2 from DE, FI, FR, HU, BE, LV) consider that it would have negative impact. With regard to measure 20, nine national authorities (2 from BE, BG, EE, FI, HR, IT, NL, SK) out of 20 consider that it would improve enforcement while 4 (CZ, 2 from DE, LV) consider that it would have a negative impact. Trade unions suggest that drivers may be pressured by their employers to report less than the real time spent in Member States applying a minimum wage.

Overall PP4, by ensuring the 'generalised' application of PWD (and not only in a few Member States as is the case now) and proportionate enforcement to road transport, is expected to significantly improve compliance. This should lead to higher social protection for drivers and reduced distortions of competition between operators.

### **6.1.2 Impacts on working conditions**

Working conditions of drivers are affected mainly through measures which have an impact on fatigue (due to excessive working hours or disruptive work patterns) or through measures having an impact on the stress level of drivers. These are second-order effects deriving from the impacts of the main policy measures.

**PP 1** will have indirect positive impacts on working conditions through the measures 3 and 4 which are expected to reduce somewhat work-related stress thanks to flexibility in arranging for taking breaks and/or rest periods in order to cope with unforeseen circumstances. Drivers will no longer be exposed to varying national legislation on weekly rest and risks of fines for spending weekly rest on board their vehicles, especially where no adequate accommodation is available. In certain cases such flexibility would allow drivers to reach their home/operational base for taking their regular weekly rest. A limited and justified flexibility combined with consistent enforcement would also indirectly reduce stress of drivers. This impact is however highly dependent on the Member States' uptake of the recommended approaches and clarifications provided in PP1.

Measures 14, 15 (on enforcement of working time provisions) and 17 (forbidding performance based pay) will contribute to reducing illicit employment practices in terms of excessive working hours of drivers or remuneration based on performance which endangers road safety. The impacts, however, will be minor due to voluntary nature of the measures.

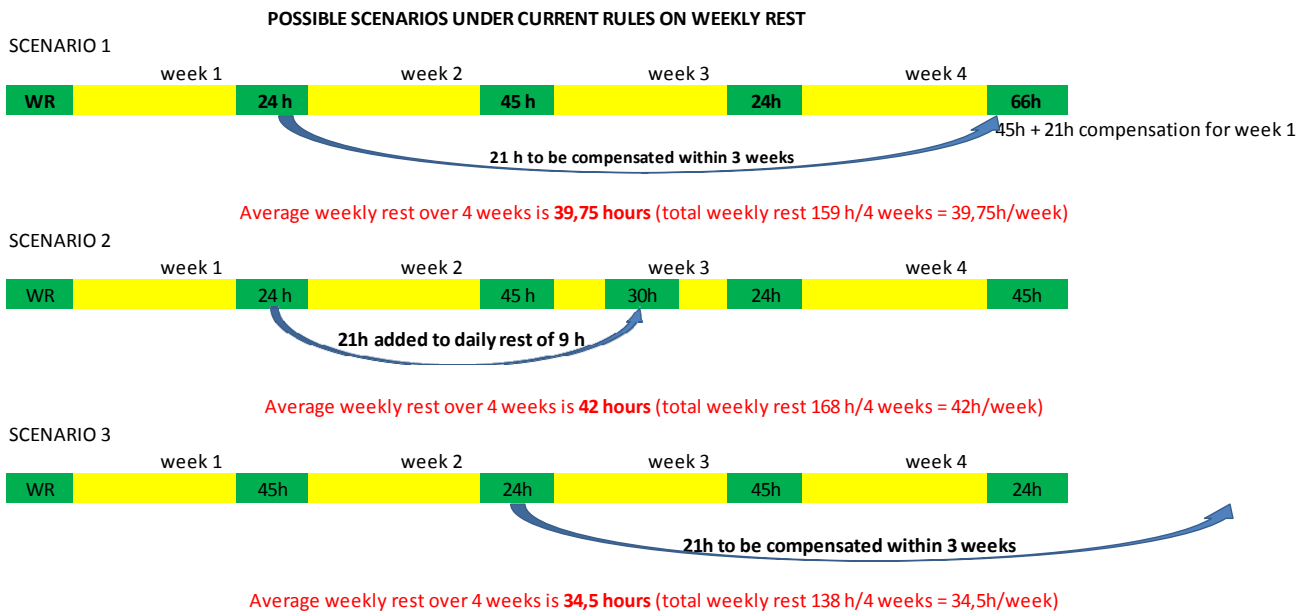
Overall, PP1 will have minor impact on improving working conditions.

**PP 2** will have a direct impact on improving working conditions through measure 1 on calculating average weekly rest period of 45 hours over the period of 4 rolling weeks and measure 2 requiring adequate accommodation (outside a vehicle) for the weekly rest of 45 hours or more.

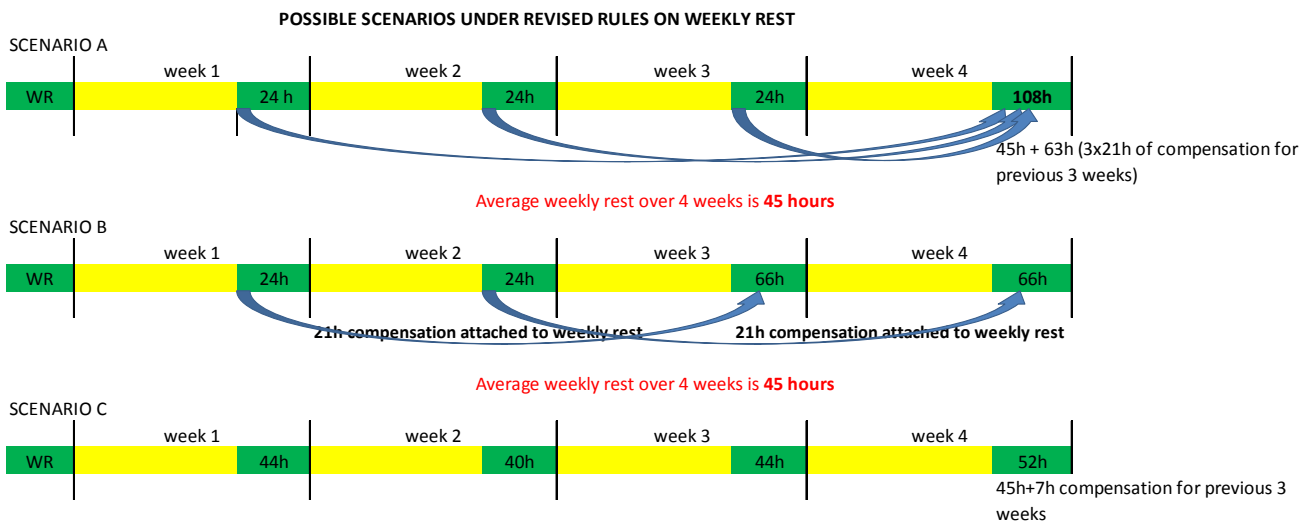
**Figure 7** presents possible scenarios under the current rules whereas

**Figure 8** illustrates a possible scenario under the revised rules. It shows how the length of the average weekly rest period will improve due to the measure.

**Figure 7: Possible scenarios for the weekly rest under current rules**



**Figure 8: Possible scenarios for weekly rest under revised rules**



Source: DG MOVE elaboration

As shown above measure 1 will lead to an increase of an average length of a weekly rest calculated over a period of 4 consecutive weeks compared to current requirements. Under current rules it is possible that over four weeks period an average legitimate weekly rest is only 34,5 hours, whilst the revised rules would ensure that in any 4 week period a driver benefits from a minimum average 45 hours of weekly rest.

Measure 2 will also lead to a small reduction in the length and frequency of periods away from home/operational base. It is expected that additional costs of providing accommodation may encourage employers to arrange for drivers to return home more often. Measure 2, combined with measure 1 ensuring average minimum 45 hours of weekly rest in any four weeks and allowing for flexible arrangements of weekly rest periods to enable reaching home/base, would increase the regularity of drivers' returns to home/operational base and improve quality of rest and working conditions, in general.



Box 31. Respondents to the drivers' survey expect an increase in their ability to spend weekly rests at home (19%). Although the sample size is rather small for EU-13 responses, the available inputs suggest that they expect a relatively larger impact in terms of being able to spend weekly rest at home (43%) compared to EU-15 respondents (16%). At the same time, the hauliers' survey shows that the hauliers would prefer to pay for accommodation, rather than returning driver to home/operational base, suggesting that this measure might not have a significant effect on periods away from home.

The compulsory measures 13 and 14 changing the reference period for the calculation of the maximum average weekly working time and introducing uniform enforcement are expected to contribute greatly to reducing accumulated fatigue of drivers resulting from long working hours (60 hours a week) over several consecutive weeks (4 or 6 months) and to a reduction of illicit practices based on breaches of weekly working time thresholds. The accumulated fatigue levels will reduce significantly, as measure 13 will allow a maximum of 180 hours work per week over 3 consecutive weeks only, whilst under the current rules drivers may work up to 180 hours weekly over a period of consecutive 13 weeks or even over consecutive 20 weeks (where the reference period is extended from 4 to 6 months by national law or collective agreement).

All the measures on enhanced enforcement would contribute to better working conditions through a reduction of illegal activities which is usually linked with poor working conditions.

Measure 5 on breaks, by making it easier for drivers performing certain transport services to comply with the rule, would decrease stress levels. It would not have any impact on fatigue as the minimum duration of break and the maximum driving period within which the break has to be taken will not change. Hence, employers would have no benefit in forcing drivers to split their breaks into three portions of 15 minutes each. However the stakeholders' views on this measure diverge.

Box 32. Industry representatives (AT, CZ, BG, ES, PL, RO, DK, Nordics logistic association, UETR, EEA) as well as individual operators (HU, PL, CZ, EU-wide) consider that measure 5 will have positive impacts on the flexibility of operations and rest taken without endangering compliance. But trade unions consider that measure is detrimental to drivers' ability to recuperate. The survey of drivers does not however support this view showing that 61% of drivers (199 of 326), equally from EU-13 and EU-15, support the measure.

Overall, PP2 is expected to bring positive impacts on stress, fatigue and social conditions of drivers.

**PP 3** will slightly improve working conditions through the expected reduction of stress related to performance based remuneration, which incites non-compliant behaviour (exceeding driving times, reducing breaks or rest periods, manipulating tachograph) in order to travel longer distances or to carry out more operations. On the other hand, the abolition of performance based pay may negatively affect drivers' wages, in particular for EU-13 drivers whose remuneration is to a greater extent than for EU-15 drivers composed of variable elements of pay<sup>98</sup>. There is a risk that a reduction in variable pay may not be (fully) compensated by increases in fixed pay.

Measure 7 providing flexibilities for domestic occasional passenger transport by coach may have diverging effects on drivers' working conditions. On the one hand, such flexibility helps to reduce stress related to coping with passengers' needs and/or with external factors influencing the journey. On the other hand, such derogation could encourage longer periods away from home/operational base.

<sup>98</sup> Variable components make up a very significant proportion of wages in the case of EU-13 drivers - 55% on average compared to 21% for EU-15 (Ricardo et al, 2016)

Box 33. The drivers survey shows that out of 148 responses, 125 (all from EU-15, except one from CZ) see problems with the measure 7 allowing for postponing weekly rest in domestic passenger transport operations by 12 or 8 24-h periods. 23 out of those 125 respondents expect that the introduction of such derogation will lead to situations where drivers will be away from home more than today, as 12 day or 8 day stretches of work will become more common due to pressure from the employer.

While it is not possible to quantify the change in periods away from home due to the introduction of these measures, the results from the drivers' survey strongly indicate that the impact will be negative.

Overall, PP3 will have no positive impacts on improving working conditions.

**PP4** will affect directly working conditions through measure 18, which will affect the wages of drivers that spend time in excess of the threshold for application of PWD in host countries with high social standards. The impact would concern primarily drivers employed under "low-cost" country labour conditions who carry out significant amount of work on the territories of 'host' countries with high labour and social standards. For other drivers that do not work internationally and those employed under high labour standards and working in countries with similar or lower wages there would be no real impact on their working conditions.

Depending on the variant applied - PP4a (3 days), PP4b (5 days), PP4c (7 days) or PP4d (9 days) - the share of drivers who would benefit from higher wages would differ.

Due to the general application and less burdensome enforcement of PWD to road transport sector, it is expected that the group of drivers who would benefit from a posting situation (i.e. 'host' country labour pay and conditions) would be bigger compared to the baseline (de facto regime), although the legal scope of application would be limited by the minimum time threshold.

**Figure 9** shows the percentage of driver/trips<sup>99</sup> from EU-13 countries carried out per year on the territories of Belgium, Germany or Sweden for periods of 5 days and more (in total over one month), 7 days and above 9 days. The reference level is the share of driver/trips shorter than 5 days in those 'host' countries.

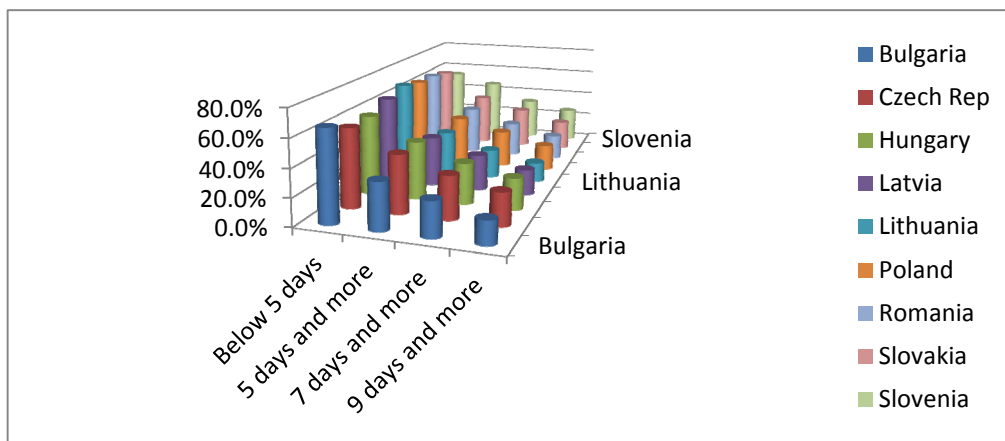
This diagram illustrates the approximate size of the group of drivers from EU-13 whose remuneration would possibly increase (i.e.: in cases where an average pay of the 'home' country is lower than a minimum pay rate of the 'host' country) in proportion to the number of days worked in host Member States and the difference between the actual 'home' country salary of a driver and the minimum wage applied in the 'host' country.

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<sup>99</sup> calculated based on number of trips (international and cabotage) by country of registration of vehicle and multiplied by on average 1.2 driver per trip

Due to the general application and less burdensome enforcement of PWD to road transport sector, it is expected that the group of drivers who would benefit from a posting situation (i.e. 'host' country labour pay and conditions) would be bigger compared to the baseline (de facto regime), although the legal scope of application would be limited by the minimum time threshold.

**Figure 9 : Share of EU-13 drivers who work on the territories of 3 Member States (BE, DE, SV), by accumulated number of days per month**



Source: DG MOVE calculation based on data collected within small study

Based on data concerning the share of EU-13 drivers spending less than 5 days in 3 high-wage host Member States and applying linear approach it can be assumed that under PP4a (3 days) around 80% of driver/trips would be subject to the rules on posting, hence the drivers engaged would potentially benefit from higher wages. However, given that majority of drivers in this group spend only short periods in host countries with higher wages an increase in their salaries would not be significant, in particular when a difference between actual pay rate of home country and minimum pay rate of host country may be small. PP4b (30-40%), PP4c (20-30%) and PP4d (10-20%) would imply gradually lower numbers of driver/trips. However, taking into account longer duration of work in host countries (5 days and more) the benefits for drivers resulting from higher wages could be more significant than in PP4a. It should be noted that normally such drivers working outside their country of employment receive allowances (per diems, accommodation allowance, etc.) to cover basic expenses in host Member State where they temporarily work.

The drivers who would not reach the minimum threshold of days worked in a 'host' country over a month would not experience any change in their working conditions, in terms of remuneration and rights to annual paid holidays.

**Box 34.** Trade unions (from BE, NL, SL, IT and ETF) considered that the measure would not improve working conditions, and one (from BE) considered that the provisions would lead to more frequent rotations of drivers in order to avoid that they reach the time threshold in a given "host" Member States. This would result in circumventions of the PWD requirements which, according to that stakeholder, would have a negative impact on their working conditions.

The impact of measure 18 on periods away from home is expected to mainly concern low-wage 'home' country drivers (EU-13) who operate in high-wage 'host' countries. Due to the differences in wages EU-13 operators might have an incentive to make sure that driver schedules are set up in a way to avoid exceeding the thresholds for PWD. However, the time thresholds for PWD are not expected to bring about significant impacts in terms of reducing the periods away from home, as there are limits to an operator's ability to rearrange the transport schedules. In addition the administrative costs for the application of PWD will be significantly reduced compared with the baseline.

Box 35. The majority of operators (50 out of 68) who responded to the hauliers' survey expect that the average time spent away from home base for drivers will stay about the same. A similar opinion was expressed by less than half of drivers (126 out of 320) who participated in the drivers' survey, whilst 65 out of 320 drivers expect significant decrease in ability to spend weekly rest at home due to this measure.

Overall PP4, providing for improved social protection of drivers and ensuring pay rates reflecting better the living costs to which drivers are exposed when working in other Member States, is expected to reduce considerably stress and fatigue and improve social protection of drivers.

### **6.1.3 Impacts on road safety and occupational health**

To the extent that fatigue is reduced the risk of road accidents should also decrease. None of the measures in **PP1** are expected to result in meaningful changes in terms of road safety. Measures 9 and 10 should slightly improve enforcement and subsequently also road safety.

**PP 2** is expected to bring positive impacts on improving road safety levels as well as health and safety of drivers, mainly due to changes to reduced accumulated fatigue resulting from measure 13 on calculation of working times and measure 14 on enforcement of working time provisions.

It is expected that effective and dissuasive controls, resulting from all enforcement measures together (8, 9, 10, 14 and 15), will contribute to reducing the road safety risks. In addition, the measures contributing to reducing periods away from home/operational base (i.e. measures on weekly rest inciting to spend regular weekly rest and compensation at home) are also expected to contribute to better occupational health and lesser risk to road safety. The reduction of periods spent in a vehicle means a reduction of exposure to diesel exhaust emission and reduced time in postures more likely to pose risks of occupational injuries or diseases.

**PP 3** might slightly contribute to improving road safety even in freight thanks to the measure 17 forbidding performance based payment, which is seen as the main incentive for breaching driving and resting time limits (as well as exceeding the speed limits and the maximum weight limits imposed by EU legislation). In passenger transport, the measures 6 and 7 on derogations from weekly rest requirements in international and domestic transport of passengers may result in an increase in road safety risk of 4% for international coach drivers and 4-5% for domestic coach drivers.

**PP 4** is only expected to have marginal impacts on road safety and occupational health. The positive impacts on health may occur only if, due to introduction of measures under this package, drivers reduce their periods away from home/operational base and will spend their rest periods in adequate accommodation which will be more affordable if the 'host' country's minimum wage is applied. Also the 'host' country's rules on health, safety and hygiene at work may have positive impacts if those standard are higher and more beneficial for drivers compared to those of the 'home' country.

### **6.1.4 Changes in employment levels and types of work contracts**

Impacts on employment levels will arise from measures that affect the demand side (i.e. the number of drivers demanded by employers to carry out a given amount of transport) or the supply side (i.e. the supply of drivers available for employment). Measures that affect the demand include measures that change the level of flexibility in scheduling drivers' activities, or measures that impact compliance levels (such as measures for improved enforcement, which could create a demand for more drivers to make up for the reduced amount of illegal overtime worked in the sector).

On the supply side, any measure that has an impact on the attractiveness of the profession of driver may help to increase employment levels in the Member States with driver shortages. This is a second order impact resulting from changes in working conditions.

Measures of relevance for the type of employment contracts are any measure that might change the differences in standards or rules between employees and self-employed drivers, which could lead to contracts shifting from one type to the other.

In **PP1** only measure 17 (voluntary prohibition of performance-based pay) may affect the supply of drivers due to slightly improved working conditions. The impact of this measure on wages is highly uncertain, but some reduction in net monthly pay received by drivers should be expected if operators are affected by this measure, primarily in EU13. Overall, given the voluntary nature of the measure, and the limited effect on both demand and supply side, the actual impact on employment levels should be limited.

**PP 2** measures are expected to have an impact on the attractiveness of the job and hence on the supply side. This concerns mainly the measures on working time, on weekly rest arrangements and on flexibilities to better organise the transport operations to cope with different circumstances. The positive effect on employment levels may be partially offset by increased costs for operators linked with the obligation to provide decent accommodation to drivers for regular weekly rests. The reduced illegal activity due to strengthened enforcement under this package as well as the measure forbidding performance based remuneration might increase the need for operators to employ more drivers to deliver the same transport volumes.

The weighted average response of transport undertakings consulted within the support study suggests that measure 1 would lead to an increase of 11% of drivers needed. With regard to the supply side, measure 1 is likely to have a second order positive impact resulting from the improvements of the overall working conditions.

The majority (i.e. 46 out of 69 respondents) of transport undertakings responding to the data request considered that measure 2 would affect the number of drivers needed (potentially up to 12%). Among the reasons given to justify the disagreement with the measure, both industry associations and transport undertakings commented on the lack of accommodations having secured parking facilities. This situation would not allow the drivers to ensure their vehicle and the goods contained overnight<sup>100</sup>. The supply side is expected to rise due to the positive impact of measure 2 on the overall working conditions.

Measure 13 on the reference period for the calculation of the maximum average weekly working time is expected to have a positive impact on employment. From the demand side, a small rise in demand for drivers should be expected.

Box 36. Interviewed stakeholders<sup>101</sup> commented that the changes to the reference period for the calculation of the working time will reduce their flexibility, particularly for those types of operations characterised by significant seasonal fluctuations. On the other hand, this is expected to increase the number of drivers needed (13)<sup>102</sup>.

With regard to the supply side, measure 13 is likely to have a net positive impact on levels of fatigue, road safety, and overall working conditions as analysed in previous sections.

Box 37. 66 % (123 out of 186) of self-employed drivers and 67% (234 out of 350) of employed drivers participating in the Open Public Consultation consider these measures as having positive impacts on growth and job creation and on job attractiveness.

**PP4** is expected to have a significant impact on attractiveness of the job and hence on the supply side, mainly as regards operators and drivers from "low-cost" countries operating regularly or for

<sup>100</sup> As per results of interviews.

<sup>101</sup> i.e. transport undertakings from HU, PL, SK and CZ.

<sup>102</sup> Results of interviews with individual transport undertakings

long periods in high-cost countries. This positive effect on employment levels may be partially offset by increased costs for operators linked with the obligation to pay the higher pay rates and relevant social contributions. The reduced illegal activity due to strengthened enforcement under this package might also increase the need for operators to employ more drivers to deliver the same transport volumes.

Measure 18 is not expected to impact on the overall (EU-level) demand for transport operations – and thus for drivers - since customers will still need their goods to be carried, and this level of demand is driven by the GDP activity. Rather, the measure might affect the distribution of employment between drivers. Drivers from EU-13 Member States, which in future will be subject to the minimum wage, might lose part of their current competitive advantage on drivers from EU-15.

The application of the posting provisions in general entails an increased risk of 'false' self-employment as operators may find it advantageous to recruit drivers under purportedly independent work arrangements, falling outside the protection scope of PWD. However, as PP4 provides for lighter uniform administrative requirements on operators compared to the current situation, the risk of "bogus self-employment" is considerably lesser than in the baseline scenario. The difference in pay rates would be the only incentive for a circumvention of the posting rules, as administrative requirements would be equally applied to all operators carrying out activities in other States, regardless the duration and frequency. Hence, the magnitude of this negative effect will depend on the type of time-threshold chosen for the application of posting provisions to international road transport operations. The lower the threshold, the higher the risk of changing employment contracts into 'false' self-employment or applying other schemes to circumvent the rules, such as rotating drivers.

#### ***6.1.5 Impacts on non-discrimination, equal treatment and equal opportunities***

The unequal and inconsistent enforcement of the existing road transport social rules among Member States is a major source of unequal treatment of drivers and operators. As such, it is expected that measures that contribute to a more consistent enforcement of the rules will have a potentially positive impact on reducing discrimination and ensuring a fair treatment of all drivers and operators.

**PP1** will have only a minor contribution to ensuring equal treatment at the EU level. This will depend on the number of Member States voluntarily applying EU recommended uniform schemes for enforcement.

**PP2** is expected to have a positive impact on reducing and preventing discriminatory enforcement practices. The uniform EU formula for calculating risk rating of non-compliant operators will reduce inequalities between operators from different Member States applying different methods for establishing the company's risk score. The measures on calculating average weekly working time and on common minimum requirements for checking compliance with working time rules will level out opportunities for drivers as regards better protected working time limits.

**PP3** would ensure equal opportunities between operators and drivers engaged in international occasional transport of passengers by coach and those engaged in similar, but domestic operations. Extending the scope of derogations to domestic occasional operations would have no negative bearing on road safety and would ensure equal opportunities for operators and equal treatment of drivers in terms of weekly rest (i.e.: the possibility to postpone it and then receive compensation) and availability of a second driver (i.e.: the obligation to drive in a team).

**PP 4**, by establishing a proportionate common approach for the application of the posting provisions in road transport, would contribute to reducing the inequalities between foreign and national drivers and operators working on the territory of the same country. The operators established in high-cost Member State would not face an undercutting cost-based competition from other operators applying terms and conditions of employment of "low-cost" Member States.

The negative side effect of this measure may be unequal opportunities for drivers employed in the same undertaking in a "low-cost" country and assigned with international operations on different routes, where some involve work in high-cost countries (meaning that the driver will receive a higher salary) and others in low-cost countries (in which case the driver will receive the salary of his "home" country).

Box 38. According to the calculations provided by the Polish employers' association<sup>103</sup> the difference in drivers' pay employed in the same company may be more than double, depending solely on the route assigned.

Overall, PP4 is expected to bring strong positive effects in terms of equal treatment of drivers and operators.

## 6.2 Analysis of economic impacts

### 6.2.1 Impacts on businesses/SMEs (operational, compliance, administrative costs)

The latest available Eurostat data (for the year 2014) indicates that in total there were 553,873 registered road freight transport enterprises in Europe with an average size of 5.2 employees per company<sup>104</sup>. 90% of companies have less than 10 employees, whereas fully 99% have less than 50 employees. As a direct consequence of the large share of SMEs in the sector, most of the impacts analysed for transport operators have an impact on SMEs.

In general, it is likely that SMEs are relatively more affected by measures that introduce constraints to transport operations, due to their reduced flexibility in organising their operations. Similarly, measures that introduce additional administrative costs may represent a relatively higher cost burdens for SMEs and in certain circumstances may represent a barrier to entry in a market or a for SMEs to exit the market. In contrast, measures that simplify requirements and reduce costs can have a relatively greater positive impact on SMEs. Wherever a proposed measure poses specific or disproportionate impacts on SMEs, it is specifically highlighted.

**PP1** measures are not expected to have any meaningful impacts on the costs or savings for operators, because they do not entail substantial changes in administrative processes and do not require an investment in equipment. The non-compliant operators may face higher costs related to re-scheduling drivers' work and keeping work records in order to comply with working time rules that will be more thoroughly and regularly checked. This will, however, be only the case of operators based in countries which will implement the recommended enforcement scheme to control compliance with working time rules. The slight improvement in efficiency of operations may occur due to flexibility in arranging for driving and resting times in exceptional circumstances and to take a weekly rest in the vehicle in such cases.

**PP2** is expected to increase the efficiency of organising transport operations, which allows for slight reductions in compliance costs. The measures 1 and 2 on weekly rest encourage the organisation of the work of drivers in such a way that they are able to return to home/operational base for their regular weekly rest instead of spending it in the vehicle or in accommodation outside the vehicle. If this possibility is effectively used operators will benefit from twofold types of savings: reduced cost of fines (non-compliance costs) for spending weekly rest on board the vehicle and reduced costs of paid accommodation (compliance costs) outside the vehicle if a driver can then take the rest at home or another private place of his/her choice.

Increased flexibility of operations due to measure 1 will allow for longer distance operations to be completed with less time and costs.

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<sup>103</sup> TLP, 2017, "End of the single market?"

<sup>104</sup> Eurostat, 2016b

Box 39. The positive impact of measure 1 on cost savings was recognised by the individual hauliers interviewed (HU, PL, DE) as well as most of the industry representatives (AT, CZ, BG, ES, PL, DK, Nordic logistics). Asked to assess the balance of costs and benefits, most industry representatives (AT, DK, RO, PL, CZ) and individual operators (DE, CZ, PL) considered that the benefits will outweigh the costs. Only two (UEAPME and the Bulgarian association) suggested that the measure will imply important additional costs due to reorganisation of activities.

Overall, it appears that on balance the longer terms benefits from increased flexibility should outweigh short term costs for operators. Thus, the measure should be expected to bring savings to operators.

Measure 2 imposing an obligation on the operator to provide for/pay for adequate accommodation for a regular weekly rest of a driver when away from home/base increases the compliance costs. This may in particular affect SMEs, who may not be able to benefit from the proposed flexibility in calculating the regular weekly rest and will more often than today have to bear the costs of accommodation outside the vehicle during such regular rest periods (of 45 hours and more).

Estimates of the costs per night provided by some interviewees suggest that current costs for accommodation are typically in the range of €25-80/driver/night. To these, some hauliers (BG, HU) also added costs for parking (although these should typically apply even if the rest is spent in the vehicle) but also the costs for possible detour and empty runs just to find adequate accommodation. Adequate facilities (hotel/motel with parking space) are generally not available according to most industry representatives. Besides the fact that many operators already pay for accommodation, in some Member States accommodation allowances are already mandatory as part of the collective agreements (e.g. ES). In such cases, there will not be additional compliance costs for covering accommodation costs from the proposed measure. Overall, additional compliance costs should be expected to arise for an important share of operators that currently allow/instruct drivers to spend their regular weekly in vehicles and where paying for accommodation is not already provided.

Measure 13 on the calculation of a weekly working time over 4 weeks will entail one-off administrative cost related to the change in administrative process to modify driver's working time records. For larger companies this may involve one-off costs in changing the relevant software, which would not be substantial taking account of economies of scale (number of drivers). For SMEs and self-employed the administrative cost may be relatively slightly higher. However, bearing in mind that most of driver's work is driving, which is automatically recorded by the tachograph, and that drivers are obliged by the current rules to record all other work than driving in tachograph, the new calculation method should not lead to a considerable increase in administrative costs. The measure may entail additional compliance costs for non-compliant operators due to the reduction of illegal activity concerning excessive weekly working hours. Also compliant operators, mainly those affected by seasonal peaks in demand for transport services, may face additional compliance costs ; in order to maintain the volume of services during high demand season they would have to employ additional drivers.

Box 40. Industry representatives indicated that this measure decreases flexibility. An operator from Hungary commented that moving to a much shorter 4 week reference period would have a negative impact on the planning and organisation of working time and thereby would result in extra costs for the employers. This is a view also supported by a Polish haulier but also by the German, Czech and Polish associations and the UETR. Another haulier from the Czech Republic interviewed suggested that the proposed measure will lead to the need to hire more drivers and purchase more vehicles, a point also made by a Slovakian haulier and the Austrian industry. However, none of the stakeholders mentioned above provided estimates of the additional costs that may arise from this change. In contrast to the above, two hauliers (SK, BG) and the Nordic Logistic Association argued that the



proposed measure will not have any impact for hauliers that do not rely on seasonal employment to address demand fluctuation and only have full time employees. Furthermore, as was pointed out by the Spanish industry representatives, it is not relevant to operators that face higher level of fluctuations, as in the case of passenger transport or freight operations related to seasonal goods (UETR).

Overall, PP2 is expected to cause limited compliance and administrative costs.

**PP 3** would reduce compliance costs to coach operators thanks to more efficient organisation of domestic occasional trips of passenger using the possibility of postponing the weekly rest by 12-day or 8-day rule. In particular, it is estimated that measure 6 will bring a decrease in average compliance costs per trip for operators involved in international transport by coach of ca 5%. Measure 7a allowing to postpone the weekly rest of up to 12 periods of 24 hours for domestic transport by coach is expected to bring up to 2,3% of savings in compliance costs per trip. Measure 7b allowing for postponing the weekly rest by up to 8 periods of 24 hours will bring significantly smaller savings. Both variants of measure 7 would bring benefits only to a few large Member States.

The measure 17 forbidding performance based payments will entail compliance costs only in case of those operators who apply such type of payments and who will compensate the reduction in variable payments by increases in fixed salaries. This measure will impact mainly operators from EU-13, where such type of performance-based pay is common (e.g. Lithuania, Poland, Slovakia or Slovenia) and where the variable proportion of the driver's pay amounts to 57%.

**PP 4** (measures 18-20) will have positive and negative impacts on both compliance costs and administrative costs for operators. This is based on the following assumption:

- that the revised PWD will be implemented in all EU28 Member States, and not only in the 8 'baseline' Member States. As a consequence, the administrative and compliance costs will affect operators engaged in cross-border transport operations of all EU28 Member States.
- that the application of PWD will be consistent in all Member States, hence the currently differing national administrative measures for enforcing PWD (in AT, DE, FR, IT) will disappear and the high administrative costs on hauliers will be replaced by lower administrative costs resulting from uniform sector-specific administrative requirements.
- that the main reductions in administrative costs will be due to:
  - o Pre-notification for each individual operation, which will not be required;
  - o Posting operators will not have to have a local representative in the host country;
  - o Translation of employment contract and relevant documents will not have to be provided by operators.

PP4 will introduce time thresholds (3, 5, 7 or 9 days/month) below which the transport operations will not fall under the full application of the PWD. The compliance costs for such operations below the threshold will thus be zero.

Since under PP4 the provisions will be harmonised across all host countries the same administrative requirements will apply. Differences in actual administrative costs will arise from different labour costs (salaries of administrative staff) in the posting countries. Using the same approach as for the baseline (indexing the Czech administrative costs value according to labour costs from Eurostat as described in section 2.5.1.2) the administrative cost value is adjusted for each posting country.

The administrative cost per operation has been multiplied by the number of international and cabotage operations as provided by the DTU (DTU, 2017). There are limits in the data provided by DTU as it only covers 10 host Member States (AT, BE, BG, DE, ES, FR, NL, PL, RO, SE). The calculations thus only present a share of the total costs across all EU28 Member States. These

calculations are carried out for each posting country to obtain the total annual administrative costs for 2035 (Table 6). The 2035 values are calculated assuming that the administrative costs stay constant; the transport activity however changes in line with the 2016 Reference Scenario (European Commission, 2016a). These values are unadjusted and do not take into account changes in transport activity as a result of increased or decreased compliance and administrative costs.

**Table 6: Annual administrative costs for operators under PP4 - UNADJUSTED**

Administrative costs [million €/year]	
Posting country	2035
Austria	17
Belgium	75
Bulgaria	2
Croatia	1
Cyprus	N/A
Czech Republic	15
Denmark	10
Estonia	1
Finland	5
France	30
Germany	80
Greece	N/A
Hungary	9
Ireland	1
Italy	16
Latvia	2
Lithuania	4
Luxembourg	40
Malta	N/A
Netherlands	144
Poland	44
Portugal	9
Romania	4
Slovakia	9
Slovenia	7
Spain	35
Sweden	2
United Kingdom	6
<b>Total</b>	<b>567</b>
<b>EU15</b>	<b>470</b>
<b>EU13</b>	<b>97</b>

In terms of compliance costs, the main change is that under PP4 drivers operating in any EU28 Member States are eligible for the minimum remuneration of the host country, whereas in the baseline this was only the case for 8 Member States. The total annual compliance costs have been calculated by comparing the actual remuneration of the posting country with the minimum remuneration of the host country. In the countries where the actual remuneration lies below the minimum pay rates the compliance costs have been calculated by multiplying the value with the number of operations in the respective posting country – host country category- as estimated in the baseline.

Table 7 shows the annual compliance costs for 2035. Again the compliance costs are assumed to stay constant over time. The transport activity on the other hand is indexed to the 2016 EU Reference Scenario (European Commission, 2016a).

**Table 7: Annual Compliance costs for operators under PP4 – UNADJUSTED**

Compliance costs [million €/year]				
	2035			
Posting country	3 day threshold	5 day threshold	7 day threshold	9 day threshold
Austria	0	0	0	0
Belgium	0	0	0	0
Bulgaria	24	7	5	3
Croatia	2	1	0	0
Cyprus	N/A	N/A	N/A	N/A
Czech Republic	60	23	16	12
Denmark	0	0	0	0
Estonia	3	1	1	0
Finland	0	0	0	0
France	0	0	0	0
Germany	7	2	1	1
Greece	N/A	N/A	N/A	N/A
Hungary	59	20	14	11
Ireland	0	0	0	0
Italy	0	0	0	0
Latvia	16	5	3	2
Lithuania	37	10	7	5
Luxembourg	0	0	0	0
Malta	N/A	N/A	N/A	N/A
Netherlands	0	0	0	0
Poland	197	63	43	30
Portugal	7	2	1	1
Romania	35	10	7	5
Slovakia	30	11	8	6
Slovenia	2	1	0	0
Spain	1	0	0	0
Sweden	0	0	0	0
United Kingdom	0	0	0	0
<b>Total</b>	<b>480</b>	<b>155</b>	<b>107</b>	<b>77</b>
<b>EU15</b>	<b>16</b>	<b>4</b>	<b>3</b>	<b>2</b>
<b>EU13</b>	<b>464</b>	<b>151</b>	<b>105</b>	<b>75</b>

Change in administrative and compliance costs under PP4 compared to the baseline<sup>105</sup>

The analyses show that the compliance costs reduce for three thresholds: 5, 7 and 9 days, for all 15 EU Member States that showed compliance costs in the baseline. The EU-wide reduction is 63% (from 423 million€/year in the baseline to 155 million€/year under PP4b) for the 5 day threshold.

<sup>105</sup> See Annex 4 for detailed calculation

The reductions range from 59% in the Czech Republic and Slovakia to 84% in Spain for the 5 day threshold. For the 7 and 9 day threshold the reductions are subsequently higher: 75% and 82% respectively compared with the baseline. The lowest threshold of 3 days is expected to bring some increase of compliance costs - 13% in total, where 14% increase will be experienced by EU-13 operators and 5% by EU-15 operators.

The administrative costs are reduced significantly across all Member States. The EU average is a reduction of 58% (from 1,352 million€/year in the baseline to 567 million€/year under PP4). The highest reductions can be observed for Spain (-72%). The percentage changes in compliance and administrative costs for operators in 2035 compared to the baseline are presented in Table 8.

**Table 8: Change in compliance and administrative costs for operators under PP4 in comparison to the baseline (2035) – UNADJUSTED**

Change in costs compared to the baseline					
Posting country	Compliance costs				Administrative costs
	3 day threshold	5 day threshold	7 day threshold	9 day threshold	
Austria	0%	0%	0%	0%	-52%
Belgium	0%	0%	0%	0%	-66%
Bulgaria	16%	-66%	-76%	-83%	-40%
Croatia	12%	-67%	-77%	-84%	-49%
Cyprus	N/A	N/A	N/A	N/A	N/A
Czech Republic	9%	-59%	-71%	-78%	-51%
Denmark	0%	0%	0%	0%	-52%
Estonia	8%	-65%	-76%	-84%	-38%
Finland	0%	0%	0%	0%	-50%
France	0%	0%	0%	0%	-44%
Germany	0%	-70%	-81%	-87%	-51%
Greece	N/A	N/A	N/A	N/A	N/A
Hungary	10%	-62%	-73%	-80%	-50%
Ireland	0%	-79%	-86%	-90%	-49%
Italy	0%	0%	0%	0%	-66%
Latvia	9%	-67%	-78%	-85%	-54%
Lithuania	14%	-68%	-79%	-85%	-55%
Luxembourg	0%	0%	0%	0%	-64%
Malta	N/A	N/A	N/A	N/A	N/A
Netherlands	0%	0%	0%	0%	-56%
Poland	18%	-62%	-74%	-82%	-53%
Portugal	11%	-72%	-83%	-87%	-31%
Romania	9%	-70%	-79%	-85%	-58%
Slovakia	10%	-59%	-71%	-78%	-56%
Slovenia	18%	-67%	-79%	-85%	-54%
Spain	0%	-84%	-88%	-92%	-72%
Sweden	0%	0%	0%	0%	-37%
United Kingdom	0%	0%	0%	0%	-59%
<b>Total</b>	13%	<b>-63%</b>	<b>-75%</b>	<b>-82%</b>	<b>-58%</b>
<b>EU15</b>	5%	<b>-72%</b>	<b>-83%</b>	<b>-87%</b>	<b>-59%</b>

<b>EU13</b>	15%	<b>-63%</b>	<b>-74%</b>	<b>-82%</b>	<b>-53%</b>
<b>Net increase/reduction EU28 [million€/year]</b>	<b>57</b>	<b>-268</b>	<b>-316</b>	<b>-347</b>	<b>-785</b>
Net reduction / increase EU15 [million€/year]	<b>1</b>	<b>-11</b>	<b>-12</b>	<b>-13</b>	<b>-673</b>
Net reduction / increase EU13 [million€/year]	<b>56</b>	<b>-257</b>	<b>-303</b>	<b>-333</b>	<b>-109</b>

It is further assumed that the changes in administrative and compliance costs will have an impact on increasing slightly the transport activity. The analyses of adjusted impacts by changes in transport activity show that the EU wide reduction in compliance costs for the 5 day threshold is 58% (from 329 million€/year in the baseline to 139 million€/year under PP4), for 7 day threshold – 70% and for 9 day threshold 79%. The 3 day threshold will bring increase in compliance costs by 17% (mainly for EU-13 operators).

The reduction in administrative costs for the EU as a whole is 53% (from 1,141 million€/year in the baseline to 536 million€/year under PP4). The reduction in annual costs is higher for EU15 Member States than for EU13 Member States. Looking at the absolute annual numbers the changes in compliance costs are of significantly higher importance for EU13 Member States, as 97% of the total compliance cost is allocated to EU13 Member States. For administrative costs, on the other hand, the percentage reductions are higher for EU15 Member States. 82% of the EU-wide administrative costs can be attributed to EU15 operators.

### 6.2.2 Impact of costs and benefits for national authorities

Most measures in **PP 1** are not expected to have measurable impacts on costs and savings for national authorities. Since most measures are voluntary, there will only be an impact in case the measures are taken up voluntarily by the authorities. This concerns mainly the enforcement costs related to increased controls of compliance with the working time and changes to the risk rating system. Table 9 shows the estimated weighted average impact on enforcement costs from respondents to the survey of authorities. However, these (and following) estimates on changes in enforcement costs should be treated with great prudence as they are not based on absolute values, but on predicts of consulted representatives of the national authorities.

**Table 9: weighted average estimated increase in costs due to relevant measures in PP1**

Measure	Overall	EU-15	EU-13	Nature of costs
(3) Allow for spending the regular weekly rest in the vehicle	3.3%	4.5%	0.9%	Additional documentation required (NO, SE) More complex enforcement, esp. proving free choice. Changes to legislation (FR)
(10i) Enhance administrative cooperation - response in 2 days (urgent)	5.5%	6.4%	3.3%	Additional staff to respond to requests (FR, SE, SL, BE, LT, NL) 2 day limit is too restrictive (BE, GR, FR, SK)
(10ii) Response in 25 days (non-urgent)	4.3%	7.2%	1.1%	
(16) Define operations of occasional non-professional driver for private purposes	3.0%	3.1%	1.7%	Time consuming to verify (CY, NL, SE, NO) Training (PT)

Notes: Red = ≥10% increase, orange = 5-10% increase, white = ±5% change

Source: Survey of authorities. 17 respondents from EU-15 and 13 from EU-13. Positive numbers indicate cost increases, negative numbers indicate cost decreases.

**PP 2** measures are designed to strengthen enforcement and are, subsequently, expected to entail enforcement costs. Measure on modifying risk rating systems, including mandatory adoption of a

common formula for calculation of risk levels, determining minimum data to be included and enabling regular access to controllers and also to other Member States is estimated to bring about an annual cost increase for the EU28 enforcement authorities of around € 0.4 million.

The enforcement staff costs may increase slightly from the current level of around €400m/year, mainly due to introduction of the obligatory minimum threshold for checks of compliance with the working time rules. These obligatory checks are not expected to significantly increase the enforcement costs as they can be combined with the currently performed controls of compliance with the driving time rules. The measure on calculation of the weekly working time over the reference period of 4 weeks will enable controls of working time also at the roadside by checking tachograph records. This measure will, hence, improve the efficiency of the controls. The measures under this package, and in particular those on the calculation of weekly rests and of weekly working time as well as the measures using risk rating systems, will entail costs of training of enforcers. The average training cost is estimated at a level of € 355 /officer.

The measure on administrative cooperation obliging national authorities to deal with the requests of other Member States within a certain time will imply some changes in administrative processes. The administrative cost increase will depend on the nature of the request and the follow-up which will be required: significant costs would occur in relation to requests requiring in-depth controls at premises of undertakings.

Table 10 presents the measures in PP2 that are expected to have enforcement and administrative costs impacts (weighted averages).

**Table 10: weighted average estimated increase in costs due to relevant measures in PP2**

Measure	Overall	EU-15	EU-13	Nature of costs
(1) Changes to weekly rest	4.3%	6.5%	2.5%	Increase in time taken for checks (indicated by 16 out of 32 respondents, 48% <sup>106</sup> ) Software updates (indicated by 28 out of 33 respondents, 85% <sup>107</sup> ).
(2) Forbid spending regular weekly rest inside the vehicle	2.4%	1.8%	2.1%	21 out of 32 respondents (64% <sup>108</sup> ) felt there could be problems – e.g. in determining whether drivers indeed stayed in “adequate accommodation” outside of the vehicle (AT, IE, SE)
(5) Break may be split into maximum 3 portions of at least 15 minutes each.	1.3%	0.9%	1.9%	Software updates (CH, SL and CY)
(8) Allow controllers to access the RRS in real-time of control	8.0%	11.0%	4.0%	Equipment/ software implementation & maintenance (CY, CZ, FR, IT, PT, BE, NO, HU, SK)
(11) Abolish attestation forms	-1.2%	2.8%	-4.0%	Lower administrative burdens when forms do not need to be checked (LT, SE)
(13) Changes to calculation of working time	2.6%	4.4%	3.3%	Software updates (CY, PT, SL) Training (PT)

Notes: Red = ≥10% increase, orange = 5-10% increase, white = ±5% change

Source: Survey of authorities. 17 respondents from EU-15 and 13 from EU-13. Positive numbers indicate cost increases, negative numbers indicate cost decreases.

<sup>106</sup> GR, EE, FI, LV, NL, SK felt that this was a “small problem”; BG, CH, DE, ES, FR, IE, IT, LU, PT, SI felt that this was a “major problem”

<sup>107</sup> Only AT, CZ, GR, HR, SK felt that this was “no problem”

<sup>108</sup> DE, FI, HU, LU, LV, SK indicated “small problems” and BG, CZ, EE, EE, FR, GR, IE, IT, LT, NL, RO, SE, SI, BE, NO indicated “major problems”

In the long term the enforcement cost increases are expected to be largely offset by savings in enforcement costs resulting from more cost-effective targeted controls combining checks of the provisions of the Driving Time Regulation and the Road Transport Working Time Directive as well as thanks to better cooperation and rules that are easier to control.

PP 3 is expected to entail some additional enforcement costs related to checking the correct use of derogation from weekly rest by domestic coach operators and controlling compliance with a provision forbidding in all cases the remuneration based on performance.

Table 11 shows the weighted average impact of measures in PP3. Most comments received (summarised in the table) refer to increased complexity of enforcement due to additional domestic coach derogations.

Table 11: weighted average estimated increase in costs due to relevant measures in PP3

Measure	Overall	EU-15	EU-13	Nature of costs
(6) Adapt '12-day rule' in international occasional passenger transport by coach	1.4%	3.3%	0.0%	More complicated/ time consuming enforcement (CH, NL, SE, BE, NO) New software (CY, PT, SL) Staff training (PT)
(7a) 12 day rule for domestic coach	4.5%	6.5%	2.2%	
(7b) 8 day rule for domestic coach	5.7%	8.0%	2.2%	
(17C) Forbid performance pay	1.9%	0.9%	2.3%	Complex enforcement / more time spent (CH, NO) Increased referral to courts (LT) Software and training (PT)

Notes: Red =  $\geq 10\%$  increase, orange = 5-10% increase, white =  $\pm 5\%$  change

Source: Survey of authorities. 17 respondents from EU-15 and 13 from EU-13. Positive numbers indicate cost increases, negative numbers indicate cost decreases.

As mentioned in the beginning of this section all these cost changes are highly speculative and do not provide information on a level of enforcement costs.

PP4 measures will bring an increase in enforcement costs for the Member States which currently do not carry out controls of compliance with PWD provisions in road transport and they will remain unchanged for 'baseline' Member States. The increase in enforcement costs will differ considerably between Member States, depending on the volume of activities carried out by foreign operators on their territories. It should be highlighted that Member States which are main target markets for foreign operators are already covered by the baseline scenario.

Overall, the increase in the enforcement costs for the EU as a whole will be minor.

## 7 HOW DO THE OPTIONS COMPARE?

The policy options have been compared with regard to their effectiveness in achieving the specific objectives of the initiative, their efficiency (regulatory costs) in achieving those objectives and coherence with the general objectives of the EU. They have also been compared in terms of social and economic impacts as well as against the criterion of balance between social protection of workers and freedom to provide cross-border services, due to the cross-cutting goal of the legal framework. The results of the analysis of impacts are summarised in

Table 12.

Table 12: Comparison of policy packages

	PP1	PP2	PP3	PP4 a	PP4 b	PP4 c	PP4d

Effectiveness							
Reduce and prevent distortions of competition between operators	+	++	++	++	++	++	+
Improve social protection and working conditions of drivers	+	++	0	++	++	+	+
Balance between social protection of workers and freedom to provide cross-border services	+	++	+	-	+	++	-
Efficiency							
Compliance costs for businesses (savings)	0	0/-	0/-	0	+ (EU13) 0/+ (EU 15)	+(+)(EU13) 0/+ (EU15)	++ (EU13) 0/+ (EU15)
Administrative costs for businesses (savings)	0	0	0	+	+	+	+
Costs for authorities for implementation and enforcement (savings)	0 / -	-	--	- (EU13) 0 (EU15)	- (EU13) 0 (EU15)	- (EU13) 0 (EU15)	- (EU13) 0 (EU15)
Coherence							
Coherence with other initiatives and with social dialogue	+	++	+	+	++	+	+
Coherence with general objectives	+	++	+	+	++	+	+
++ very positive; + positive; 0 neutral; - negative; n/a option is not intended to contribute;							

## 7.1 Coherence

In terms of the coherence with EU policy, the following aspects have to be examined:

- Internal coherence among the policy measures under consideration;
- Coherence with key EU policy objectives;



- Coherence with other relevant EU legislation, including internal market rules in road transport, Tachograph Regulation, the General working time Directive and the Posting of Workers Directive.

In general, there are no specific issues regarding **internal coherence**, inconsistencies or gaps among the policy packages, which were designed in a way to ensure that all root causes and drivers are addressed. This is particularly the case for **PP2**, **PP3** and the horizontal **PP4**, which include mandatory measures that are expected to work in a complementary manner to strengthen effectiveness of enforcement by increasing consistency, improving communication, cooperation and increasing legal clarity. This is probably less the case for **PP1**, which includes voluntary measures that may not be adopted by all Member States and thus, in practice, only partly addresses some of the problems identified.

**PP4** as regards the application of posting of workers rules to road transport is coherent with the other measures that address the existing road transport social rules.

As regards **coherence with key EU policy objectives**, several aspects should be considered, such as the social impact, in particular the working conditions of drivers, the impact on SME operations and on the internal transport market. **PP2** and **PP3** together with **PP4** perform better than **PP1**, which has limited impact as it is a voluntary measure.

**PP1 (+PP4)** is expected to improve coherence with other EU policies. It will have a positive impact on drivers, in particular as they will be able to choose if they would like to take the regular weekly rest in the vehicle or elsewhere.

**PP2 (+PP4)** is expected to have a better impact on coherence. It will have an impact on working conditions and also how operators and drivers can organise the work in a more flexible manner without infringing the rules in force.

**PP3 (+PP4)** is estimated to have a similar impact on coherence as **PP2 (+ PP4)**.

As regards **coherence with other relevant EU legislation** (see annex 7 on road initiatives and annex 8 on interactions with measures on haulage market), a number of measures under consideration should have synergies in terms of reducing distortions of competition, ensuring better protection of rights of workers, enhancing road safety and overall improving administrative cooperation and consistency and effectiveness of cross-border enforcement with better use of digital tools and data exchange systems.

Under **PP4**, the measures are a response to the need to address the identified challenges with application of the PWD to road transport through sector-specific legislation, as stipulated in recital (10) of the Commission proposal of 8 March 2016<sup>109</sup>. Hence the two proposals are complementary as they both aim at clarifying and updating the PWD provisions and rendering their implementation easier, proportionate and uniform throughout the EU.

## 7.2 Conclusion of the comparison of options and combined effects

Based on the analysis above, the preferred policy option - as regards the existing road transport social measures - is the Policy Package 2 on strengthening of enforcement and clarification of the EU legal framework. It provides the most positive impacts in terms of reduction of stress and fatigue of drivers without negative impact on road safety and occupational social health conditions, while delivering a similar level of reduction of administrative burdens for national authorities and transport undertakings. **PP3** appears to have a more negative impact in relation to social conditions, mainly as

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<sup>109</sup> COM (2016) 128 final

a result of the proposed derogations for passenger transport operations (particularly the derogations for domestic operations for coach drivers).

As regards the options on posting of workers, the administrative costs for operators and enforcement costs for national authorities are the same for each of the four time thresholds (3, 5, 7 or 9 days) analysed. The compliance costs for operators are the lowest in the case of a 9 day threshold – due to a reduced number of trips within the scope of the minimum wage rules. On the other hand, from the point of view of workers the lowest threshold could potentially lead to (some) reduced periods away from home as well as the largest group of drivers benefiting from host country minimum wage remuneration (mainly for EU-13 drivers carrying out operations in higher-wage EU-15 Member States) even though this would not necessarily mean that they would see a significant increase in remuneration due to short periods spent in those countries. Lower time threshold might therefore have higher positive effects in terms of improving social and working conditions of drivers and increasing job attractiveness.

Having analysed the road transport social measures and measures on posting of workers separately, the outstanding question is in how far the envisaged measures would be concurrent. It is our assessment that notably measures of weekly rest and on calculation of working time, both included in PP2, together with specific rules for posting of workers in road transport, will provide synergy effects which will help to improve working conditions through reduced level of stress and accumulated fatigue. This combination will also contribute to clear and fair terms and conditions of employment for drivers (in particular as regards remuneration). Rules on accommodation when spending long periods away from home will also benefit drivers. This synergy effect is thus expected to reinforce the positive impacts of PP2, which relative to the other Policy Packages, therefore remains the preferred option. Equally, the measures in PP2 will also contribute to the objectives of PP4 of improving social and working conditions of drivers and facilitating fair cross-border provisions of transport services.

The combination of these options will also complement other Road Initiatives, in particular the revision of Regulations 1071/2009 and 1072/2009. While 1071/2009 and 1072/2009 will tackle issues of illicit employment linked to 'letterbox' companies and of illegal cabotage, PP2 will ensure that other cross-cutting measures taken by hauliers, when drivers are abroad for longer periods, e.g. sleeping in cabins, will not undermine social conditions and the level playing between hauliers. In addition, specific rules on posting of workers in road transport will ensure that current wage differentials, which can be an incentive to establish 'letterbox' companies or carry out illegal cabotage, will be reduced. Very importantly, the enforcement measures foreseen by PP2 and Regulations 1071/2009 and 1072/2009 are complementary and can be carried out jointly by national enforcement authorities, thus providing for overall better efficiency of enforcement. As such, the road initiatives, seen as a package, will work jointly and be mutually reinforcing. None of the initiatives stand-alone will be able to effectively solve the broader multifaceted problem of worsening working, social and business conditions.

The draft measures are proportionate to the problems that have been identified and they do not go beyond what is needed to solve them. As mentioned in section 2.1, this impact assessment concerns a REFIT initiative, one of the key objectives of which is to reduce the regulatory burden for private operators. Therefore, it is important to understand the expected "REFIT balance" of the analysed options. The

Table 13 summarises the expected impacts of the preferred option on business costs.

Table 13 REFIT savings of PP4

Policy measures	Range of quantitative	Quantitative impacts for	Qualitative assessment/comments
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	<b>impacts for 5, 7 and 9day thresholds</b>	<b>3 day threshold</b>	
	- €1132mln/year to - €1053mln/year	-€785	The savings for businesses stemming mainly from PP4 are due to reduction in administrative and compliance costs for private operators
<i>In more detail:</i>			
Savings in administrative costs	-€785	-€785	PP4 will reduce costs connected to posting of a driver e.g. maintaining extra records of working time, setting up different payslips with separate remuneration for every country, notifications to the host country.
Savings in compliance costs	- €347mln/year to - €268mln/year	No savings	Compared to the baseline, the thresholds of PP4 will reduce burdens on private operators due to minimum wage differentials between 'home and 'host' countries

The cost savings for operators may be slightly reduced by some increases in compliance costs resulting from some measures in PP2 (e.g. measure 13 on working time or measure 2 on paid accommodation). As explained in section 6.2.2, due to data limitations, it is not possible to provide robust estimates on changes in enforcement costs for national authorities resulting from measures in PP2 and PP4. Therefore, comparison of costs for national authorities and costs for operators could not be performed.

**To conclude, PP2 is the preferred option as regards the existing road transport social legislation. As far as posting of workers in road transport, the effects of the different options (PP4a, PP4b, PP4c and PP4d) are not easy to compare, as reduction in costs of compliance for operators mirrors the reduction of benefits for drivers in terms of higher pay. While some time-based variants have more positive effects for operators, other have more positive effects for workers. Therefore the option to be retained as far as posting of workers is concerned is a political decision.**

### 7.3 Preliminary assessment of possible delivery instruments for PP4

#### **Clarification of existing legislation on posting of workers through guidelines or interpretative communication (non-legislative instruments)**

An interpretative communication or guidelines issued by the Commission, attempting to clarify the application of the posting of workers legal framework to road transport, would in principle represent a resource-efficient and minimum level of intervention. However it is expected that this approach will result in no change, at least in the short/medium term, compared to the baseline scenario.

An interpretative communication or guidelines would merely reproduce the reasoning developed by the Commission in the infringement procedures against FR and DE. Moreover, it makes little sense to issue guidelines now, before a judgment of the Court of Justice in at least one of the pending cases. First, the Member States concerned will probably not amend their legislation/practice before receiving a judgment of the Court. Second, in terms of substance, it would not be wise to formulate guidelines without the guidance of the Court.

On the other hand, it remains very uncertain to what extent a judgement of the Court could help the Commission in clarifying how posting of workers rules shall apply to road transport. A judgment does not pronounce on the appropriate remedies to be adopted for putting an end to the infringement.

Finally, following the judgment of the Court, there is no reason to believe that the Member States concerned would modify their national law in a coordinated manner, so we would not expect this to solve the issue of fragmented national approaches to this issue. We can also expect that other

Member States will implement the rules of posting to road transport in any case. In the absence of clear rules at EU level, we might therefore see a multiplication of non-coordinated national systems incompatible with EU law and EU Treaty.

In summary, guidelines or interpretative communication could not deliver what is needed, namely legal certainty and uniformity within the internal market, within a reasonable time frame.

### **Legal delivery instruments**

PP4 implies the adoption of legislative measures specifying the conditions of application of the posting of workers rules to road transport. This can be implemented in different ways (more details in annex 9):

**a. Revision of existing posting of workers rules through a proposal for a Directive amending Directive 96/71/EC and Directive 2014/67/EU.**

This approach has the benefit of allowing targeted modifications of the relevant provisions and requires therefore a minimum level of legislative intervention. There is also no duplication of legal texts as the sector-specific rules for road transport will be "inside" Directive 96/71/EC and Directive 2014/67/EU).

**b. Adoption of a separate legal instrument for road transport.**

Directives 96/71/EC and 2014/67/EU remain untouched. The specific rules applicable to road transport would be part of a separate legal instrument "outside" the two existing directives on the posting of workers. Two sub-options are possible:

- i. Legislative framework regulating all aspects of posting of workers in road transport. Road transport would be (fully) regulated in a sector-specific framework. This approach represents a significant legislative initiative and would also create additional administrative and financial burdens as it would require the transposition and practical application of a large volume of new rules.
- ii. Legislative framework regulating only the specific aspects for road transport. The new framework would include only the rules which are specific to road transport. Although targeted and efficient, this option does not guarantee the integrity of the EU legal framework as application of the EU posting of workers rules in road transport would require a combined reading of the existing provisions and the new specific provisions for road transport.

## **8 HOW WOULD ACTUAL IMPACTS BE MONITORED AND EVALUATED?**

### **Operational objectives of the preferred policy option**

As a first step, the development of the monitoring and evaluation framework requires the establishment of the operational objectives of the preferred policy option.

A set of operational objectives that are derived from the respective generic and specific objectives and reflect the nature and type of measures adopted is presented in Table 14.

**Table 14 Different levels of objectives**

General objectives	Specific objectives	Operational objective
<ul style="list-style-type: none"> <li>• Ensure a level playing field for drivers and operators</li> <li>• Improve and harmonise working conditions for drivers</li> <li>• Improve the road safety level</li> </ul>	<ul style="list-style-type: none"> <li>• Contribute to the higher compliance with the existing rules</li> <li>• Contribute to the reduction of the regulatory burden to businesses and Member States</li> <li>• Contribute to reduction of stress and fatigue of drivers</li> </ul>	<ul style="list-style-type: none"> <li>• To provide for uniform interpretation and application of the social rules in road transport by Member States;</li> <li>• To facilitate cost-effective and consistent monitoring and enforcement of the social legislation</li> <li>• To ensure better cooperation between Member States in order to allow more effective cross-border enforcement</li> </ul>

### **Monitoring and evaluation framework – Relevant indicators and data sources**

The monitoring framework should cover the following aspects of the initiative:

- **Application:** focuses on the actual changes observed as a *result* of the realisation of the policy and is closely linked with the *specific objective*. Data for some of the relevant indicators should be relatively easily available and it should be possible to include this data in the biennial reports submitted by authorities or collected directly by the Commission services. Other aspects will have to be covered as part of the evaluation of the Regulations where surveys and other tools will be used to collect relevant information (such as costs of compliance).
- **Enforcement and Cooperation:** focuses on the actual changes observed as *an outcome* of the intervention and is closely linked with the *operational objectives*. This includes the extent of enforcement activities and levels of cooperation. Relevant data for most of the indicators is available in the biennial monitoring reports submitted by authorities.
- **Contextual information, if applicable:** focuses on the greater information on the level of use of smart tachographs but also level of use of LCVs in domestic and international transport (for which information is limited). The latter is justified by requests for a possible extension of the scope of the legislation (see Annex 5). This is in addition to the more contextual information concerning the evolution of road transport (national, international, cabotage) which is already monitored.

**Table 15** below presents the indicators and data sources proposed for the four different aspects.

**Table 15: Proposed monitoring and evaluation framework**

Monitoring - evaluation aspect and relevant objectives	Indicator	Source(s)
<b>Application</b>		
Contribute to higher compliance with existing rules:		
• Driving Time Regulation	infringement detection rates	National monitoring reports according to the <i>existing requirements</i> of the Enforcement Directive
• Road Transport Working Time Directive	infringement detection rates	National monitoring reports according to the <i>new requirements</i> of the Enforcement Directive
• Provisions on the application of the posting rules	infringement detection rates	National monitoring reports according to the <i>new requirements</i> of the Enforcement Directive
Contribute to reduction of stress and fatigue of drivers		
	Drivers' assessment of the level of fatigue	Evaluation (survey)

Monitoring - evaluation aspect and relevant objectives	Indicator	Source(s)
	Drivers' assessment of the level of stress	Evaluation (survey)
Contribute to reduction of illicit business and employment schemes		
	Level of illegal cabotage and letterbox companies identified (subset of total infringements)	National monitoring reports/Evaluation
Ensure the reduction of the regulatory burden		
• to Member States	Costs associated with enforcement of Regulations	Evaluation (survey)
• to the industry	Costs associated with compliance Regulations Administrative costs associated with Regulations	Evaluation (survey)
<b>Enforcement and cooperation</b>		
Provide for uniform interpretation and application of the social rules in road transport by Member States;		
	Number of cases of non-consistent application documented	Commission registered correspondence with stakeholders
Facilitate cost-effective and consistent monitoring and enforcement of the social legislation		
	Number of times that information from national rating systems was used during controls (both for roadside and premises checks)	European Commission/National authorities
	Number of roadside and premises checks of: <ul style="list-style-type: none"> <li>• Driving Time Regulation</li> <li>• Road Transport Working Time Directive</li> <li>• Provisions on the application of the posting rules</li> </ul>	National monitoring reports according to the <u>existing(Driving Time Regulation) and new requirements</u> of the Enforcement Directive
Increased level of communication and cooperation		
	Number of joint-cross border controls	National monitoring reports
<b>Contextual information</b>		
Evolution of road freight and passenger transport	Level of road freight/passenger transport activity (domestic, international and cabotage operations) (in t-kms, p-kms and v-kms)	Eurostat
Use of LCVs in road transport	Share of LCVs in domestic, international and cabotage operations (% of total vehicles and t-km)	Specialised study National statistics
Development in international road transport operations in the context of posting	Number of drivers being subject to posting criteria	Specialised study and national data sources